APPENDIX 2

BEFORE THE WASHINGTON STATE
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 UT-053025 MODIFIED INTERPRETIVE STATEMENT REGARDING DESIGNATION OF NON-IMPAIRED WIRE CENTERS
. . . .	)	

I. INTRODUCTION

1 This is an interpretive statement of the Washington Utilities and Transportation Commission (Commission) pursuant to RCW 34.05.010 (8), RCW 34.05.230, and WAC 480-07-920. The purpose of this statement is to advise the public of the Commission's interpretation of provisions of the Federal Communications Commission's (FCC) Triennial Review Remand Order, or TRRO[1] and accompanying FCC rules[2] governing access by competitive local exchange carriers (CLECs) to high capacity loops and transport in wire centers owned or controlled by incumbent local exchange carriers (ILECs). After interpreting the FCC's order and rules, this statement modifies the list of wire centers designated by Qwest Corporation (Qwest) and Verizon Northwest Inc. (Verizon) as non-impaired, or ineligible for unbundled access by competing local exchange carriers (CLECs).

II. BACKGROUND

2 On February 4, 2005, the FCC released its Order on Remand, also known as the Triennial Review Remand Order, or TRRO. In the TRRO, the FCC reexamined whether competitors were impaired without unbundled access to certain network elements, pursuant to Section 251(c)(3) of the federal Telecommunications Act of

[1] 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"].

[2] 47 C.F.R. §§ 51.5, 319 (a) (4), (5) and (6).

1996 (the Act).[3] In determining whether competitors are impaired without unbundled access to high-capacity loops, the FCC looked to the number of fiber-based collocators[4] in a wire center and the number of business lines[5] terminating and leaving a wire center as indicia of competition. To find non-impairment, both criteria must be met. When determining whether a wire center is considered non-impaired for access by competitors to high-capacity interoffice transport, the FCC requires the wire center to meet either criteria.[6] The FCC classified ILEC wire centers into three tiers for determining non-impairment for transport UNEs "based on indicia of the potential revenues and suitability for competitive transport deployment."[7]

3 Wire centers designated as Tier 1 for transport are considered the most competitive, requiring that there be four or more fiber-based collocations at the wire center, or serve 38,000 or more business lines.[8] Wire centers are designated as non-impaired for DS3-capacity loops if the wire center serves at least 38,000 business lines *and* four fiber-based collocators.[9] The FCC classifies wire centers as non-impaired for purposes of access to DS1-capacity loops if the wire center serves at least 60,000

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[3] Pub. L. No. 104-104, 110 Stat. 56 (1996).
[4] The FCC defines fiber-based collocators as: [A]ny carrier, unaffiliated with the incumbent [local exchange carrier] LEC, that maintains a collocation arrangement in an incumbent LEC wire center, with active electrical power supply, and operates a fiber-optic cable or comparable transmission facility that (1) terminates at a collocation arrangement within the wire center; (2) leaves the incumbent LEC wire center premises; and (3) is owned by a party other than the incumbent LEC or any affiliate of the incumbent LEC, except as set forth in this paragraph. … Two or more affiliated fiber-based collocators in a single wire center shall collectively be counted as a single fiber-based collocator. 47 C.F.R. § 51.5; *see also* TRRO, ¶ 102.
[5] 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." 47 C.F.R. § 51.5.
[6] *TRRO*, ¶¶ 111-12, 118.
[7] *Id.*, ¶ 111.
[8] *Id.*, ¶¶ 111-12. .
[9] *Id.*, ¶ 174.

business lines *and* four or more fiber-based collocators.[10] Tier 2 wire centers must have three or more fiber-based collocations or serve 24,000 or more business lines.[11] Tier 3 wire centers are those that are not Tier 1 or 2 wire centers.[12] Tier 1 and Tier 2 wire centers are considered "non-impaired," such that competitive carriers do not have unbundled access to high-capacity loops and transport in these wire centers.[13] Competitors continue to have unbundled access to these network elements in Tier 3 wire centers.[14]

4 After the FCC issued the TRRO, the FCC's Wireline Competition Bureau requested that ILECs, such as Verizon and Qwest, submit lists of wire centers satisfying the TRRO's non-impairment criteria. Qwest and Verizon submitted lists in February 2005 using the most recent data filed with the FCC, reflecting data collected through December 2003.

5 The Commission opened this docket as a staff investigation in April 2005. After receiving comments from Qwest, Verizon and the Joint CLECs,[15] 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 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 unbundled network element (UNE) loops, high-capacity circuits and transport.

6 Following the workshop, the Commission chose to change the nature of the proceeding to consider whether to issue an interpretive or policy statement. The

[10] *Id.*, ¶ 178.
[11] *Id.*, ¶ 118.
[12] *Id.*, ¶ 123.
[13] *Id.*, ¶¶ 111, 118.
[14] *Id.*, ¶ 123.
[15] 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. submitted comments jointly, and are referred through this statement collectively as the "Joint CLECs."

Commission held a conference on February 6, 2006, and established a schedule for obtaining information from Qwest and Verizon about the wire centers in question. The schedule provided an opportunity for interested parties to file exceptions to Qwest's and Verizon's data, for Qwest and Verizon to respond, and for interested parties to file final exceptions or state agreement with Qwest's and Verizon's designation of wire-centers.

7 At the request of the participating CLECs, Qwest and Verizon, the Commission entered Order 01 in this proceeding, a protective order, to allow interested persons who have filed appropriate exhibits to the protective order access to confidential and highly confidential information provided by Qwest and Verizon.

8 On February 21, the Commission entered Order 02, Order Requiring Disclosure of Information, requiring Qwest and Verizon to provide certain information to the Commission and interested persons.

9 After reviewing interested parties' comments about and exceptions to the data, Administrative Law Judge Ann E. Rendahl entered an initial order, Order 03, in this proceeding on April 20, 2006. The initial order resolved disputes about how to interpret and apply the FCC's order and rules. The order directed Qwest and Verizon to submit additional data concerning fiber-based collocators in the disputed wire centers. The order also required Verizon to submit, as confidential, data concerning fiber-based collocators and business lines, as required by the Commission's Order 02.

10 The Commission evaluated the additional data Qwest and Verizon provided to the Commission and reviewed comments and exceptions to this data, as well as certain CLECs' and Qwest's petitions for administrative review of the initial order.

11 On October 4, 2006, the Commission entered Order 04, resolving the remaining disputes about interpreting the FCC's TRRO and accompanying rules governing wire center designation, and adopting this interpretive statement. The Commission also directed Qwest to submit additional data to allow the Commission to evaluate the proper designation of the wire centers that remained in dispute.

12 After the Joint CLECs and Qwest sought reconsideration of Order 04, the Commission entered Order 06 on December 15, 2006, modifying in part and reversing in part Order 04.

III. STATEMENT OF INTERPRETATION

13 This statement reflects the Commission's interpretation of the FCC's Triennial Review Remand Order and accompanying rules governing wire center designation, 47 C.F.R. §§ 51.5, 319 (a) (4), (5) and (6). A more detailed discussion of the Commission's interpretation is set forth in the initial order, Order 03, Order 04 and Order 06 in this docket. The Commission will use this statement when resolving disputes about competitive carriers' access to high capacity loops and transport in Qwest and Verizon wire centers in Washington.

14 As discussed above, the FCC looks to the number of fiber-based collocators and business lines serving a wire center to determine whether competitors are impaired without unbundled access to high-capacity loops and interoffice transport in a wire center.

15 The Commission has resolved disputes between certain CLECs, Qwest and Verizon concerning the type of data Qwest and Verizon must submit to demonstrate a wire center meets the FCC's criteria. The Commission interpreted the TRRO and FCC rules in resolving these disputes in Orders 03, 04, and 06 in this docket. The interpretations address the process of designating a wire center as non-impaired, the role of state commissions under the TRRO, the appropriate age or year of data to use in evaluating a wire center designation, the data necessary to verify the number of fiber-based collocators, the method for calculating business lines serving a wire center, and the effective date of wire center designations for determining a transition period. These interpretations are stated below to advise the public and interested parties of our current opinions concerning wire center designations.

16 **Process for designating a wire center.** The FCC established in the TRRO a self-implementing process for determining which wire centers meet the non-impairment criteria. The TRRO does not identify who, or which entity, will designate a wire

center as non-impaired.[16] In practice, the ILECs designate wire centers as non-impaired by submitting lists to the FCC identifying which wire centers the ILECs believe meet the non-impairment criteria in the TRRO.[17]

17 **Role of state commissions.** The role of state commissions in implementing the FCC's non-impairment criteria is to resolve disputes between the ILECs and their competitors, providing a check on the ILECs' designation. The FCC requires carriers to work out between themselves which wire centers are non-impaired, but if they cannot agree, the state commissions may resolve disputes among parties about whether a wire center is properly classified or designated as non-impaired.[18] In resolving the dispute, state commissions must evaluate the most current data available when the ILECs designated the wire center as non-impaired.

18 **Age of data.** ILECs must provide the most current data filed with the FCC or available to the ILEC identifying the number of fiber-based collocators and business lines serving a wire center when seeking to designate the wire center as non-impaired. 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.

19 It is appropriate to use 2003 ARMIS 43-08 data in evaluating the ILECs' initial wire center designations.[19] The ILECs reasonably relied on the readily available 2003 ARMIS data in making their initial wire center lists. While 2004 ARMIS data had been collected and was soon to be filed with the FCC, 2003 ARMIS data was publicly available from the FCC.

20 For wire center designations an ILEC makes after February 2005, the appropriate data to use is that most recently filed with the FCC. However, for wire center designations

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[16] The word "designate" is used only twice in the TRRO, and not in the context of a wire center being designated as non-impaired.
[17] Qwest March 14, 2006, Responses to Joint CLEC Exceptions, ¶¶ 4-5.
[18] *TRRO*, ¶ *234*.
[19] Each year on April 1, ILECs file annual network, financial and service quality data with the FCC's Automated 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.

made between January 1 and April 1, the appropriate data is ARMIS data the ILEC will file on April 1. Using this data will ensure that ILECs use the most recent available data when designating a wire center, and that the designation reflects the most recent state of competition between competitive and incumbent carriers at the wire center level. Table 1, below, illustrates our interpretation:

Table 1: Applicable ARMIS Data for Wire Center Designations

Date of Wire Center Designation	Applicable ARMIS 43-08 Data
January 1, 2007 to April 1, 2007	ARMIS data to be filed on April 1, 2007, reflecting data collected through December 31, 2006.
April 1 to December 31, 2006	ARMIS data filed on April 1, 2006, reflecting data collected through December 31, 2005.

21 **Verification of fiber-based collocators.** When seeking to designate a wire center as non-impaired, an ILEC must provide sufficient documents and explanation to allow the Commission and interested parties to verify the number of fiber-based collocators terminating a collocation arrangement in that wire center. The ILEC must demonstrate that the collocator "maintains a collocation arrangement in an incumbent LEC wire center, with active electrical power supply, and operates a fiber-optic cable or comparable transmission facility that (1) terminates at a collocation arrangement within the wire center; (2) leaves the incumbent LEC wire center premises; and (3) is owned by a party other than the incumbent LEC or any affiliate of the incumbent LEC."[20]

22 **Calculation of business lines.** When seeking to designate a wire center as non-impaired, ILECs must calculate the number of business lines serving the wire center by including the actual circuits in use when calculating ILEC-owned business lines, and the total capacity of circuits, not actual circuits in use, when calculating business UNE-P lines and UNE loops.

23 The first two requirements for tallying business lines listed in the FCC's definition of "business lines" (i.e., that the access lines connect only actual customers and the

[20] 47 C.F.R. § 51.5.

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. 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 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.

24 Where the FCC requires that business lines be counted as actual circuits in use,[21] and ARMIS 43-08 data is provided on a statewide basis, not by wire center, it is reasonable for an ILEC to modify ARMIS data to provide meaningful information about specific wire centers. It is appropriate and reasonable for an ILEC to modify raw ARMIS data by using ratios or fill-factors to extrapolate data referring to specific wire centers and to reflect the actual circuits in use.

25 ILECs must provide a clear explanation of how business and residential UNE-P lines are separately identified in its ARMIS 43-08 data.

26 ILECs must include all UNE loops when calculating the number of business lines. The clear language of the TRRO and the FCC's definition of "business line" demonstrate the FCC's intent to include all UNE loops in the business line calculation. The FCC did not qualify UNE loops as business UNE loops or non-switched UNE loops, but *all* UNE loops.[22] The FCC's definition of business line provides: "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 UNE loops* connected to that wire center, including UNE loops provisioned in combination with other unbundled elements."[23]

27 **Effective date of wire center designations.** The FCC established a one-year transition period in the TRRO for competitive carriers to transition from using UNEs to alternative facilities, beginning with March 11, 2005, the effective date of the

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[21] *See* 47 C.F.R. § 51.5.
[22] *TRRO*, ¶ 105 (emphasis added).
[23] 47 C.F.R. § 51.5 (emphasis added).

TRRO.[24] The FCC also provided that ILECs could begin charging higher rates for UNEs during the transition period.[25] Where an ILEC designates wire centers as non-impaired in the future the FCC noted that ILECs and competing carriers would need to "negotiate appropriate transition mechanisms" through negotiation or arbitration under Section 252 of the Act.[26]

28 Where an ILEC designates a wire center as non-impaired a period of time after the FCC released the TRRO, it is appropriate to apply the FCC's treatment for wire centers designated in the future. A one year transition period from the date the wire center is designated as non-impaired is consistent with this Commission's recent decision in an arbitration proceeding in Docket UT-043013.[27]

29 **Additional designations of non-impaired wire centers.** If Qwest and Verizon seek to designate additional wire centers as non-impaired wire centers, the companies must notify the Commission of the proposed designation and submit data consistent with the interpretations in this statement. The Commission will open a docket to consider the data, and will notify interested parties of the opportunity to participate in the docket.

IV. NON-IMPAIRED WIRE CENTERS IN WASHINGTON

30 Table 2, attached to this statement, identifies the Qwest and Verizon wire centers in Washington that meet the FCC's criteria for non-impairment, as interpreted in this statement, and their designation as Tier 1 or Tier 2 wire centers for high-capacity transport UNEs.

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[24] *TRRO*, ¶¶ 141, 195.
[25] *Id.*, ¶¶ 145, 198.
[26] *Id.*, ¶ 142, n.199, ¶ 196, n.519.
[27] *In the Matter of the Petition for Arbitration of an Amendment to Interconnection Agreements of Verizon Northwest Inc. With Competitive Local Exchange Carriers And Commercial Mobile Radio Service Providers In Washington Pursuant to 47 U.S.C. Section 252(b) and the Triennial Review Order*, Docket No. UT-043013, Arbitrator's Report and Decision, Order 17 (July 8, 2005) ¶¶ 108, 115, *affirmed* in Commission's Final Order Granting, In Part, And Denying, In Part, Verizon's Petition For Review; Denying AT&T's Petition For Review; Affirming, In Part, And Modifying, In Part, Arbitrator's Report And Decision, Order 18 (Sept. 22, 2005) ¶ 10.

31 The Commission will update the information in Table 1 after considering additional requests by Qwest or Verizon for a non-impairment designation.

Dated at Olympia, Washington, and effective December 15, 2006.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

TABLE 2

CARRIER	LOCATION	CLLI CODE	TIER DESIGNATION
Qwest	Bellevue Glencourt	BLLVWAGL	Tier 2, Transport
Qwest	Bellevue Sherwood	BLLVWASH	Tier 1, Transport
Qwest	Kent O'Brien	KENTWAOB	Tier 1, Transport
Qwest	Olympia Whitehall	OLYMWA02	Tier 1, Transport
Qwest	Tacoma Fawcett	TACMWAFA	Tier 2, Transport
Qwest	Seattle Atwater	STTLWA05	Tier 1, Transport
Qwest	Seattle Cherry	STTLWACH	Tier 2, Transport
Qwest	Seattle Campus	STTLWACA	Tier 1, Transport
Qwest	Seattle Duwamish	STTLWADU	Tier 2, Transport
Qwest	Seattle East	STTLWA03	Tier 1, Transport
Qwest	Seattle Elliott	STTLWAEL	Tier 1, Transport
Qwest	Seattle Main/Mutual	STTLWA06	DS1 Loops, Tier 1 Transport
Qwest	Spokane Riverside	SPKNWA01	Tier 1, Transport
Verizon	Bothell	BOTHWAXB	Tier 2, Transport
Verizon	Redmond	RDMDWAXA	Tier 1, Transport