

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**In the Matter of the Petition of Qwest
Corporation for Arbitration with Eschelon
Telecom, Inc. Pursuant to 47 U.S.C. Section
252 of the Federal Telecommunications Act of
1996**

Docket No. UT-063061

EXHIBIT DD-34

TO THE

SURREBUTTAL TESTIMONY OF DOUGLAS DENNEY

ON BEHALF OF ESCHELON TELECOM, INC.

APRIL 3, 2007

**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 06
Review Remand Order on the)	
Competitive Telecommunications)	ORDER GRANTING IN PART JOINT
Environment in Washington State)	CLECS' PETITION FOR
)	RECONSIDERATION OF ORDER 04;
)	GRANTING QWEST'S PETITION FOR
)	RECONSIDERATION OF ORDER 04;
)	MODIFYING INTERPRETIVE
)	STATEMENT
.....)	

1 **SYNOPSIS.** *In this Order, we reconsider our decision concerning the appropriate age of data to use in determining whether competing telecommunications companies have access to high-capacity loop and transport elements under the criteria in the FCC's Triennial Review Remand Order. We clarify that state commissions must resolve disputes about prospective wire center designations based on the most recent data available at the time an ILEC designates a wire center as non-impaired. We reverse our decision to use 2005 data and reinstate the finding in the initial order that 2003 ARMIS 43-08 data is the appropriate data to use in evaluating those wire centers Qwest and Verizon initially designated as non-impaired after the FCC released its Triennial Review Remand Order on February 4, 2005.*

2 *In addition to reconsidering and clarifying our decision on the age of data, we correct our discussion in Order 04 concerning the wire centers the Joint CLECs dispute. We correct the order to reflect that the Joint CLECs contest the designation of Qwest's Seattle Main/Mutual wire center as Tier 1 for high-capacity loops, and Qwest's Kent O'Brien as Tier 1, Qwest's Seattle Cherry as Tier 2 and Verizon's Bothell wire center as Tier 2 for high-capacity transport. After reviewing 2003 ARMIS 43-08 data for these wire centers, we find the designations appropriate.*

3 *We find that the effective date for the transition period and rates for three wire centers that Qwest later designated as non-impaired is July 8, 2005, the date of*

Qwest's designation. Finally, we find that Qwest did not improperly modify its ARMIS 43-08 data in its filings with this Commission. We modify the Interpretive Statement in this docket to reflect our interpretation of the Triennial Review Remand Order and resolution of disputes over Qwest's and Verizon's non-impairment designations.

SUMMARY

4 **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).¹ We focus our inquiry on 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.

5 **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. ffitich and Judith Krebs,

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"].

Assistant Attorneys General, Seattle, Washington, represent the Public Counsel Section of the Washington Office of the Attorney General (Public Counsel).

6 **BACKGROUND AND 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 competitive 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 unbundled network element (UNE) loops, high-capacity circuits and transport.² 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.³

7 In the TRRO, the FCC determined that if a wire center met certain criteria, competing carriers would not be “impaired” in providing service without access to unbundled high-capacity loops and transport elements.⁴ The FCC explained that these criteria are intended to “capture both actual and potential competition,” but “are not, nor are they required to be, error proof.”⁵ The FCC classified ILEC wire centers into three “tiers,” for purposes of determining CLEC unbundled access to high-capacity transport elements serving the wire center.⁶

8 The criteria for Tier 1, 2 and 3 wire center designation for high-capacity transport elements are based on the number of fiber-based collocators in a wire center or the number of business lines entering and leaving a wire center. A wire center must meet the criteria for both fiber-based collocators and business lines to be non-impaired for

² A glossary of terms used in this Order is attached as Appendix 1 to the order.

³ 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 here.

⁴ See Section 252(d)(2): “In determining what network elements should be made available for purposes of [Section 251(c)(3)], the Commission shall consider, at a minimum. Whether – (A) access to such network elements as are proprietary in nature is necessary; and (B) *the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.*” (Emphasis added).

⁵ TRRO, ¶ 88.

⁶ TRRO, ¶ 111.

high-capacity loops, while a wire center may meet either criteria for non-impairment for high-capacity transport.⁷ Tiers 1 and 2 indicate actual or potential competition such that the FCC determined that competitors are not impaired without unbundled access to high-capacity transport at that wire center at TELRIC⁸ prices.⁹ Wire centers meeting the FCC's criteria are referred to as "non-impaired" wire centers. 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.¹⁰

- 9 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 State of the Commission's interpretation of the wire center designation provisions of the TRRO and other matters. *See Order 02*, ¶ 6.
- 10 On April 20, 2006, Administrative Law Judge Ann E. Rendahl entered Order 03 resolving disputes over the appropriate data Qwest and Verizon must provide, and interpreting the TRRO and FCC rules.
- 11 On April 28 and May 5, Qwest and Verizon provided to the Commission and certain CLECs the additional data required by Order 03.
- 12 The Joint CLECs filed comments on the additional data on May 5, and continue to dispute the designation of four Qwest wire centers and one Verizon wire center. Verizon filed a response to the Joint CLECs' comments.

⁷ Wire centers designated as Tier 1 for transport UNEs have four or more fiber-based collocations, or 38,000 or more business lines, (*Id.*, ¶¶ 111-12) whereas wire centers designated as Tier 2 for transport UNEs have three or more fiber-based collocations or 24,000 or more business lines. *Id.*, ¶ 118. *See also Id.*, ¶¶ 174, 178, in which the FCC classifies 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.

⁸ 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).

⁹ *TRRO*, ¶¶ 111, 118, 174, 178.

¹⁰ *See* 47 C.F.R. §§ 51.319 (a) (4) and (5), (e) (3) (i) and (ii).

- 13 After considering petitions for review of the initial order filed by the Joint CLECs and Qwest, the Commission entered Order 04 on October 4, 2006, reversing the decision in the initial order concerning the appropriate age of data to use in determining non-impairment designations, and addressing other issues.
- 14 On October 16, 2006, the Joint CLECs filed a petition for reconsideration, clarification and rehearing. Qwest also filed a petition for reconsideration of Order 04. By notice issued October 27, 2006, the Commission allowed parties to file answers to the petitions, indicating it would enter an order on the petitions by December 15.
- 15 The Joint CLECs, Qwest and Verizon filed responses to the petitions for reconsideration.

MEMORANDUM

- 16 In this Order, we resolve petitions for reconsideration and clarification of decisions in Order 04, our final order concerning the non-impairment designations of certain Qwest and Verizon wire centers. First, the Joint CLECs seek clarification of the discussion in Order 04 of Qwest and Verizon wire centers for which they dispute a non-impairment designation. Second, the Joint CLECs and Qwest request that we reconsider our decision in Order 04 to evaluate non-impairment designations for contested wire centers using 2005 data. Third, the Joint CLECs request clarification or reconsideration of the effective date of three wire centers Qwest designated as non-impaired on July 8, 2005. Finally, the Joint CLECs argue that Qwest improperly modified the data provided in response to Orders 03 and 04.
- 17 In addition to resolving these disputes, we modify the interpretive statement issued in this docket. We issue the interpretive statement as a separate document, Appendix 2 to this Order, to reflect our interpretation of the TRRO consistent with this Order, and to update the list of Qwest and Verizon wire centers that meet the FCC's non-impairment criteria. We issue the modified interpretive statement separately under RCW 34.05.230 and WAC 480-07-920 to comply with the requirement in the Administrative Procedure Act to publish such statements in the Washington State Register.

A. Joint CLEC Position on Wire Center Designations

18 Order 04 finds that the Joint CLECs agreed to certain wire center designations using 2003 data although they continued to argue for the use of 2004 data.¹¹ The Order also finds that the Joint CLECs “dispute only Qwest’s non-impairment designations of the Kent O’Brien, Olympia Whitehall and Seattle Cherry wire centers.”¹² Based on these findings, we accepted Qwest’s and Verizon’s wire center designations for all other wire centers, but required Qwest to file 2005 data for the remaining three wire centers.

19 The Joint CLECs assert that the Order does not correctly describe their position and that they did not concede the designation of all but three Qwest wire centers. The Joint CLECs assert their pleadings challenge Qwest’s designation of four wire centers based on the age of business line data: Seattle Main/Mutual wire center as Tier 1 for high capacity loops, Kent O’Brien as Tier 1, Seattle Cherry as Tier 2 and Verizon’s Bothell wire center as Tier 2 for transport.¹³ The Joint CLECs also claim they dispute Qwest’s designation of the Olympia Whitehall wire center as Tier 1 for transport based on the number of fiber-based collocators, not business line data.¹⁴ The Joint CLECs request the Commission clarify or reconsider its order to properly reflect the Joint CLECs’ position.¹⁵

20 Neither Qwest nor Verizon address this issue.

21 We grant the Joint CLECs’ request for reconsideration or clarification on this issue to clarify the facts in this proceeding. After reviewing the Joint CLECs’ pleadings, we agree that the Joint CLECs continue to dispute the use of 2003 data for initial wire center designations, but, that if 2003 data were used, they would dispute the non-impairment designation of four wire centers based on the age of business line data:

¹¹ Order 04, ¶ 22.

¹² *Id.*

¹³ Joint CLEC Petition, ¶¶ 5-8.

¹⁴ After further discussion, Joint CLECs and Qwest now agree that the Olympia Whitehall wire center is properly classified as Tier 1 for transport UNEs based on the number of fiber-based collocators in the wire center. *See* November 3, 2006, letter to Carole J. Washburn, Docket UT-053025, from Lisa A Anderl; *see also* November 14, 2006, letter to Carole J. Washburn, Docket UT-053025, from Gregory J. Kopta. We therefore include the Olympia Whitehall wire center as Tier 1 for transport in the list of non-impaired wire centers attached to the modified interpretive statement.

¹⁵ Joint CLEC Petition, ¶ 8.

Qwest's Seattle Main/Mutual wire center as Tier 1 for high-capacity loops, and Qwest's Kent O'Brien wire center as Tier 1, Qwest's Seattle Cherry wire center as Tier 2 and Verizon's Bothell wire center as Tier 2 for high-capacity transport.

- 22 The FCC's non-impairment criteria for high-capacity transport and loop elements differ. A wire center meets the non-impairment criteria for high-capacity loops based on the number of fiber-based collocators *and* the number of business lines serving the wire center. A wire center meets the non-impairment criteria for high-capacity transport elements based on the number of fiber-based collocators *or* the number of business lines. Order 04 does not clearly distinguish these different criteria, leading to confusion about the basis for the Joint CLEC's position.
- 23 The only wire center that Qwest has identified as non-impaired for high capacity loops is the Seattle Main/Mutual wire center. The remaining wire centers that Qwest and Verizon identify as non-impaired are for high-capacity transport elements. Qwest and Verizon identify these wire centers as Tier 1 or Tier 2 for high capacity transport elements based on the number of fiber-based collocators or business line counts, while Qwest designates the Seattle Main/Mutual wire center as non-impaired based on both sets of data.¹⁶
- 24 We modify paragraph 22 of Order 04 to correctly reflect the Joint CLECs' position, by adding to the list of disputed wire centers Qwest's Seattle Main/Mutual wire center and Verizon's Bothell wire center. While we modify Order 04 to reflect that the Joint CLECs once disputed the designation of Qwest's Olympia Whitehall wire center based on the number of fiber-based collocators, we note that the Joint CLECs now concur in the designation of the wire center.¹⁷

B. Age of the Data

¹⁶ Qwest March 1, 2006, Response to Bench Request No. 1; Verizon's April 28, 2006, Supplemental Response to Bench Request No. 1.

¹⁷ See November 3, 2006, letter to Carole J. Washburn, Docket UT-053025, from Lisa A Anderl; see also November 14, 2006, letter to Carole J. Washburn, Docket UT-053025, from Gregory J. Kopta.

- 25 The primary dispute in this proceeding concerns the age or timing of the data, in particular the business line data, used to calculate whether a wire center meets the FCC's non-impairment criteria. As we explained in Order 04, the FCC chose business line counts as one of the wire center criteria, as they "are an objective set of data that incumbent [local exchange carriers] LECs [ILECs] already have created for other regulatory purposes," specifically identifying ARMIS 43-08 data as the source of business line data.¹⁸ 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, which is referred to as ARMIS 43-08 data.
- 26 The FCC released the TRRO on February 4, 2005, with an effective date of March 11, 2005. The TRRO was released after ILECs had collected 2004 business line data, but before the April 1 filing deadline. After the FCC issued the TRRO, the FCC's Wireline Competition Bureau requested that ILECs submit to the FCC lists of wire centers meeting the non-impairment criteria. Qwest and Verizon did so, satisfying the TRRO's non-impairment criteria using ARMIS 43-08 data for the calendar year ending December, 2003.¹⁹
- 27 In response to the Commission's Order 02 in this proceeding, Qwest and Verizon submitted ARMIS 43-08 data showing the number of access lines in wire centers as of December 2003. From their first comments on this data, the Joint CLECs have argued that using December 2004 ARMIS data would provide a more accurate picture of competition at the time the FCC released the TRRO. Qwest and Verizon have insisted that 2003 data is appropriate, as the FCC based its decision on non-impairment of wire centers using 2003 ARMIS data.
- 28 The initial order, Order 03, determined that it was appropriate to evaluate the ILECs' wire center designations based on 2003 ARMIS data. After the Joint CLECs and Qwest filed petitions for review, we reversed the decision in the initial order. In Order 04, we required the use of the most recent data, i.e., 2005 ARMIS data, in resolving the remaining disputed wire centers and future wire center disputes:

¹⁸ *TRRO*, ¶ 105.

¹⁹ Qwest March 14, 2006, Responses to Joint CLEC Exceptions, ¶¶ 4-5.

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. [Footnote omitted] This Commission has authority under state law [footnote omitted] to take actions “permitted or contemplated for a state commission under the federal telecommunications act of 1996” (the Act) [footnote omitted] and authority (which the FCC expressly recognizes) to resolve disputes over whether certain wire centers meet the factual criteria for non-impairment. [TRRO, ¶¶ 100, 234] 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.

Because these designations are permanent [footnote omitted] 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.²⁰

29 Both Qwest and the Joint CLECs ask us to reconsider this decision. The Joint CLECs assert the Commission should modify the order to require Qwest and Verizon to provide 2004 business line data for *all* wire centers, not just a few wire centers. The Joint CLECs assert that ILECs should rely on data that is current as of the date they designate a wire center as non-impaired.²¹ Specifically, the Joint CLECs assert that the ILECs should “provide business line counts consistent with ARMIS requirements as of March 11, 2005, or as close to that date as possible,” i.e., ARMIS data the ILECs have collected but not yet filed with the FCC.²² The Joint CLECs assert the ILECs likely have the information on a monthly basis during a calendar year even though the information is not yet filed with the FCC.²³

²⁰ Order 04, ¶¶ 20-21.

²¹ Joint CLEC Petition, ¶ 4.

²² Joint CLEC March 7, 2006, Exceptions, ¶ 5.

²³ *Id.*

30 Qwest and Verizon argue that the decision in the initial order to use December 2003 ARMIS data was correct. Qwest and Verizon assert the non-impairment designation should be based on the most recent data *available at the FCC* on the date the ILEC designates the wire center as non-impaired.²⁴ Qwest asserts that the Commission errs in applying data from a time period different than the date that Qwest designated the wire centers as non-impaired in its filing with the FCC. Qwest and Verizon assert the use of different data sets would run afoul of the FCC's decision that an impairment decision may not be changed.²⁵

31 After reviewing the petitions and the TRRO, we find it necessary to clarify our understanding of the role of state commissions in implementing the FCC's rules on non-impaired wire centers. First, we find the FCC established 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.²⁶ In practice, the ILECs have "designated" certain 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.²⁷ Both Qwest and the Joint CLECs agree that ILECs designate whether a wire center is non-impaired, not CLECs or state commissions.²⁸ We concur.

32 Second, the TRRO 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.²⁹ The role of state commissions in implementing the FCC's wire center non-impairment criteria, thus, is to resolve disputes between the ILECs and their competitors, providing a check on the ILECs' designation.

33 Third, state commissions must determine whether the ILECs relied upon the correct set of data and properly classified or designated the wire center as non-impaired. In

²⁴ Qwest Petition, ¶ 1; Verizon Answer at 2, 3.

²⁵ Qwest Petition, ¶¶ 2-9; Verizon Answer at 1; *see also* 47 C.F.R. §§ 51.319 (a) (4) and (5), (e) (3) (i) and (ii).

²⁶ It is interesting to note that the word "designate" is used only twice in the TRRO, and not in the context of a wire center being designated as non-impaired.

²⁷ Qwest March 14, 2006, Responses to Joint CLEC Exceptions, ¶¶ 4-5.

²⁸ Qwest Petition, ¶ 1; Joint CLEC Petition, ¶ 4.

²⁹ TRRO, ¶ 234.

particular, this requires state commissions to interpret the TRRO to determine whether ILECs used the appropriate ARMIS data to calculate the number of business lines serving a wire center. The FCC identified in the TRRO only the type of data carriers should use in determining whether wire centers meet the non-impairment criteria. We continue to find that the FCC did not mandate or require the use of data from a particular year when applying the criteria to particular wire centers.

34 We are persuaded, however, that our decision to use 2005 data may run afoul of the FCC's requirement that wire center designations are permanent. If a wire center meets the FCC's criteria at the time an ILEC designates the wire center, but does not meet the criteria when applying data from a later period of time, the wire center designation would change, contrary to the FCC's rules. Thus, we find that state commissions must evaluate the most current data available when the ILECs designated the wire center as non-impaired. Specifically, state commissions must consider the number of fiber-based collocators in the particular wire center on the date the ILEC designates the wire center as non-impaired, and the annual ARMIS 43-08 business line data available on the designation date.

35 Given this clarification, we strike paragraphs 20-21 of Order 04. While we continue to believe those paragraphs describe the preferable public policy, we are constrained by the FCC's decision.³⁰

36 We further clarify that we accept 2003 data as appropriate in evaluating the ILECs' initial wire center lists. After releasing the TRRO on February 4, 2005, the FCC asked Qwest and other ILECs to submit lists of wire centers meeting the FCC's criteria. The ILECs used the readily available 2003 ARMIS data in making their initial wire center list. While we recognize that the ILECs had presumably collected 2004 ARMIS data and were preparing the data for filing with the FCC by April 1, we find the ILECs reasonably relied on 2003 data given the circumstances at the time.

37 Going forward, however, we recognize that after December 31st of a given year, ILECs have annual ARMIS 43-08 available for that year. Therefore, to ensure that ILECs use the most recent available data when designating a wire center, we will

³⁰ Order 04, ¶¶ 20-21; *See supra.* ¶ 29.

evaluate wire centers designated as non-impaired between January 1 and April 1 using the ARMIS data to be filed on April 1. Applying such a standard will promote decisions based on the best information available, reflecting the most recent state of competition between competitive and incumbent carriers at the wire center level. Table 1, below, illustrates our decision:

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.

38 For the reasons discussed above, we grant both Qwest’s and the Joint CLECs’ petitions for reconsideration and reverse, in part, our decision in Order 04 on this issue. In addition, after reviewing the 2003 ARMIS data Qwest and Verizon filed in response to Order 02 and 03, we find Qwest’s designation of the Seattle Main/Mutual wire center as Tier 1 for high-capacity loops, Kent O’Brien wire center as Tier 1 for high-capacity transport, and Seattle Cherry wire center as Tier 2 for high-capacity transport, and Verizon’s designation of the Bothell wire center as Tier 2 for high-capacity transport to be correct. Accordingly, we modify the Interpretive Statement in this docket to reflect our understanding of the TRRO and these wire center designations.

C. Effective Date

39 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 TRRO.³¹ The FCC also provided that ILECs could begin charging higher rates for UNEs during the transition period.³² Where an ILEC designated 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.³³

³¹ *TRRO*, ¶¶ 141, 195.

³² *Id.*, ¶¶ 145, 198.

40 The Joint CLECs assert that on July 8, 2005, Qwest designated three wire centers as non-impaired for high-capacity transport elements – Seattle Atwater (Tier 1), Seattle Campus (Tier 1) and Seattle Duwamish (Tier 2). The Joint CLECs concede that the three wire centers meet the non-impairment criteria as of March 11, 2005, and do not contest the non-impairment designation of these wire centers.³⁴ However, the Joint CLECs ask us to clarify that the effective date for the three wire centers is July 8, 2005, not March 11, 2005. Specifically, the Joint CLECs assert that the transition period and higher transition rates for high-capacity transport UNEs serving these three wire centers should not begin until July 8, 2005.³⁵ The Joint CLECs rely on a finding in a recent order by the Utah Commission that is consistent with their request in this proceeding.³⁶ The Joint CLECs assert they first made this request in comments filed on March 21, 2006, but the Commission has not yet addressed the issue.³⁷

41 Qwest concedes that it designated the three wire centers as non-impaired on July 8, 2005.³⁸ Qwest argues, however, that the effective date for designating for these three wire centers should be March 11, 2005. Qwest asserts that “the facts supporting the wire center designations existed as of March 11, 2005, and the designations are appropriate as of that date.”³⁹ Qwest argues that delaying the effective date will penalize Qwest for taking the time to carefully evaluate whether its wire centers met the non-impairment criteria.⁴⁰

42 We grant the Joint CLECs’ request for clarification on this issue. The issue is ripe for consideration in a petition seeking clarification under WAC 480-07-835. The Joint CLECs do not wish to change the outcome of the order, but obtain resolution of the issue. The Joint CLECs properly addressed the issue in their initial comments, yet we have not addressed the issue in our orders.

43 We find Qwest’s position inconsistent on this issue. Qwest argues that the data used to evaluate a wire center designation should be the most current as of the date the

³³ *Id.*, ¶ 142, n.199, ¶ 196, n.519.

³⁴ Joint CLEC Petition, ¶ 9.

³⁵ *Id.*

³⁶ *Id.*, ¶ 10, citing *In re Investigation into Qwest Wire Center Data*, Utah PSC, Docket No. 06-049-40, Report and Order at 22-23 (Sept. 11, 2006).

³⁷ *Id.*, ¶ 9.

³⁸ Qwest Answer, ¶ 9.

³⁹ *Id.*

⁴⁰ *Id.*, ¶ 10.

ILEC designates the wire center, but now seeks to establish an effective date prior to the designation date. We are persuaded that the effective date for these wire centers for transition under the TRRO should be July 8, 2005. Qwest designated these wire centers as non-impaired five months after the FCC released the TRRO. It is appropriate, therefore, to apply the FCC's treatment for wire centers designated in the future. We recognize that this proceeding is not an arbitration proceeding under Section 252, but note that in a recent arbitration proceeding, the Commission found a one-year transition period to be appropriate for future wire center designations.⁴¹ We see no valid reason why the transition period for these three wire centers should begin prior to the date Qwest designated them as non-impaired.

D. Qwest Data

44 In response to Order 04, Qwest submitted 2005 business line data for three wire centers: Kent O'Brien, Seattle Cherry and Olympia Whitehall. The Joint CLECs object to this data, asserting Qwest did not provide ARMIS 43-08 data as required by the FCC and the Commission's orders, but instead provided modified data.⁴² The Joint CLECs assert they recently discovered in a similar proceeding in Utah that Qwest modified ARMIS 43-08 data by providing ratios, based on proprietary statewide average data, of dedicated lines that originate in one wire center and provide service to another wire center.⁴³

45 Qwest admits that it has modified the ARMIS 43-08 data, but asserts it used the same method in providing data to the Commission when providing data in April in response to Order 03 and in October in response to Order 04.⁴⁴ Qwest argues the modifications

⁴¹ *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.

⁴² Joint CLEC's October 30, 2006, Objections to Qwest Response to Order 04, ¶¶ 3-4. The Joint CLECs also assert that Qwest did not demonstrate that there were four fiber-based collocators in the Olympia Whitehall wire center. *Id.*, ¶¶ 5-7. As we discuss above, this issue has now been resolved.

⁴³ *Id.*, ¶ 3.

⁴⁴ Qwest November 1, 2006, Answer to Joint CLEC Objections, ¶¶ 1, 5, 6.

are necessary to correlate the “raw” ARMIS 43-08 data to specific wire centers.⁴⁵ Qwest also asserts that it explained its methods and calculations in these same filings.⁴⁶

46 In response to Order 03 and Order 04, Qwest provided ARMIS 43-08 data for certain wire centers by calculating a utilization or “fill-factor” to demonstrate actual usage of circuits or channels serving a wire center. Qwest provided the statewide average fill factors in its response to Bench Request No. 02.⁴⁷ In that response, Qwest explained:

[P]ursuant to FCC requirements for providing data for the ARMIS 43-08 report, Business Switched Access Line data is reported on a statewide level. Actual active channels on underlying DS1 facilities supporting products such as ISDN-PRI, Digital Switched Service (DSS) and UAS, which is a similar product to DSS, are known and reported by state.

When disaggregating the ARMIS 43-08 Business Switched Access Line data to the wire center level as required by the TRRO, average fill factors must be applied to the DS1 Facilities underlying ISDN-PRI, DSS and UAS services. As a result, to obtain active channel information at a wire center level, the statewide ARMIS quantities for those products are apportioned across the wire centers based on the underlying DS1s used to provide the ISDN-PRI, DSS and UAS services in each wire center. Once apportioned, Qwest applies a statewide average fill factor to those counts to derive the number of active channels by wire center.⁴⁸

47 The FCC provided that business lines should be counted as actual circuits in use.⁴⁹ In deriving the business line counts in the three exchanges, Qwest calculated a ratio based on statewide data of DSO and DS1 circuits to figure out the equivalent number of DSO channels actually used in each wire center.⁵⁰ For each circuit that does not

⁴⁵ *Id.*, ¶ 4.

⁴⁶ *Id.*, ¶ 6.

⁴⁷ Qwest April 28, 2006 Response to Bench Request No. 02, Confidential Attachment A.

⁴⁸ *Id.*, Response to Bench Request No. 02.

⁴⁹ Qwest November 1, 2006, Answer to Joint CLEC Objections, ¶ 6.; *see also* 47 C.F.R. § 51.5.

⁵⁰ Qwest’s November 1, 2006, Answer to Joint CLEC Objections, ¶ 6. A DSO channel is the equivalent of one copper-pair line providing voice grade service for one telephone call. A DS1 circuit provides the equivalent of 24 DSOs, or 24 channels for 24 separate calls.

originate and terminate in the same exchange, Qwest applied the ratio to existing DS1 circuits to get the exact number of DSO channels that originate from these wire centers. Qwest's assumptions appear reasonable, as applying 24 channels to each DS1 would miscalculate the actual number of DSO channels in use. Qwest applies a fill-factor, or ratio of facilities actually in use that is less than the 24 channels in a DS1.⁵¹ This method benefits, rather than harms the Joint CLECs by not overestimating the actual use of a circuit.

48 We deny the Joint CLECs' objection to Qwest's use of ARMIS data. We find it appropriate and not inconsistent with the TRRO for an ILEC to modify raw ARMIS data to provide information for a particular wire center. The Joint CLECs are correct that the FCC relies on ARMIS data because they are "an objective set of data that incumbent LECs already have created for other regulatory purposes."⁵² However, ARMIS data is provided on a statewide basis, not by wire center. Given that, Qwest must manipulate or modify the raw ARMIS data to provide meaningful information concerning specific wire centers. This may require the use of ratios or fill-factors to extrapolate data referring to the specific wire centers and to reflect the circuits actually in use. Contrary to the Joint CLECs' suggestion, we do not find Qwest's modification of the data a reason to reject Qwest's designation of wire centers, or to reverse prior findings about non-impairment of wire centers in this proceeding.

E. Interpretive Statement

49 As we discussed in Order 04, 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 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

⁵¹ Qwest's April 28, 2006 Response to Bench Request No. 02, Confidential Attachment A.

⁵² TRRO, ¶ 105.

- (C) does not substantially prevent implementation of the requirements of this section and the purposes of this part.

50 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 decisions in this Order further interpret the requirements for access and interconnection obligations for high-capacity loops and transport for local exchange carriers, are consistent with FCC orders and rules, and do not substantially prevent implementation of Section 251 or its purposes.

51 By this order, we modify the interpretive statement we issued on October 5, 2006, to reflect the interpretations in this Order of the FCC's decisions in the TRRO and FCC rules concerning non-impairment criteria for wire centers. We issue a modified interpretive statement incorporating the interpretations in orders of the TRRO and FCC rules concerning non-impairment criteria for wire centers, and modify the list of Qwest and Verizon wire centers that meet our interpretation of these criteria. The modified interpretive statement is attached to this Order as Appendix 2.

FINDINGS OF FACT

52 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:

53 (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.

54 (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.

- 55 (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.
- 56 (4) The FCC released its Triennial Review Remand Order on February 4, 2005,
with an effective date of March 11, 2005.
- 57 (5) 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 using 2003 ARMIS 43-08 data.
- 58 (6) Qwest identified three additional wire centers – Seattle Atwater, Seattle
Campus and Seattle Duwamish—as meeting the FCC's non-impairment
criteria on July 8, 2005.
- 59 (7) In response to Order 02 in this proceeding, Qwest and Verizon submitted to
the Commission data based on 2003 ARMIS 43-08 data reported to the FCC.
- 60 (8) The Joint CLECs dispute the non-impairment designation of four wire centers
based on 2003 ARMIS data: Qwest's Seattle Main/Mutual wire center as
Tier 1 for high-capacity loops based on 2003 ARMIS data and fiber-based
collocator data, and Qwest's Kent O'Brien wire center as Tier 1, Qwest's
Seattle Cherry wire center as Tier 2 and Verizon's Bothell wire center as
Tier 2 for high-capacity transport based on 2003 ARMIS data.
- 61 (9) The Joint CLECs concur in Qwest's designation of the Olympia Whitehall
wire center as Tier 1 for transport elements based on the number of fiber-based
collocators present in the wire center.
- 62 (10) In response to Orders 03 and 04, Qwest submitted ARMIS 43-08 data which
Qwest modified by providing ratios or fill factors, based on proprietary

statewide average data, of dedicated lines that originate in one wire center and provide service to another wire center.

CONCLUSIONS OF LAW

63 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:

- 64 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings.
- 65 (2) The FCC’s Triennial Review Remand Order, or TRRO, 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.
- 66 (3) The FCC established in the TRRO 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. A wire center must meet the criteria for both fiber-based collocators and business lines to be non-impaired for high-capacity loops, while a wire center may meet either criteria for non-impairment for high-capacity transport.
- 67 (4) 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.
- 68 (5) The FCC established a one-year transition period, beginning March 11, 2005, the effective date of the TRRO, during which competitive carriers would transition from using UNEs to alternative facilities and ILECs could begin charging higher rates for UNEs. Where an ILEC designates wire centers as non-impaired in the future, ILECs and competing carriers must negotiate or arbitrate appropriate transition plans under Section 252 of the Act.

- 69 (6) 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.
- 70 (7) The TRRO does not identify who, or which entity, will designate a wire center as non-impaired. In practice, the ILECs designate certain 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.
- 71 (8) The role of state commissions in implementing the FCC's wire center non-impairment criteria is to resolve disputes between the ILECs and their competitors, providing a check on the ILECs' designation of non-impaired wire centers.
- 72 (9) State commissions must evaluate the most current data available at the time an ILEC designates a wire center as non-impaired.
- 73 (10) Evaluating a wire center designation using data from a period of time after the ILEC designated the wire center may change the non-impairment status of the wire center, contrary to the FCC's rules.
- 74 (11) It is appropriate to use 2003 ARMIS data in evaluating the ILECs' initial wire center designations. 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.
- 75 (12) 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 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.

- 76 (13) Where Qwest designated wire centers as non-impaired on July 8, 2005, five months after the FCC released the TRRO, it is appropriate to apply the FCC's treatment for wire centers designated in the future.
- 77 (14) A one year transition period from July 8, 2005, for Qwest's Seattle Atwater, Seattle Campus and Seattle Duwamish wire centers is consistent with this Commission's recent decision in an arbitration proceeding in Docket UT-043013.
- 78 (15) Where the FCC requires that business lines be counted as actual circuits in use, 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.
- 79 (16) The Commission may issue interpretive statements "to advise the public of its current opinions." *RCW 34.05.320*.
- 80 (17) 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

THE COMMISSION ORDERS:

- 81 (1) The Joint CLECs' Petition for Reconsideration of Order 04 is granted, in part, consistent with this Order.
- 82 (2) Qwest Corporation's Petition for Reconsideration of Order 04 is granted, consistent with this Order.
- 83 (3) Paragraph 22 of Order 04 is modified to reflect that the Joint CLECs dispute the non-impairment designations of Qwest's Seattle Main/Mutual wire center as Tier 1 for high-capacity loops based on 2003 ARMIS data and the number

of fiber-based collocators, and Verizon's Bothell wire center as Tier 2 for high capacity transport elements based on 2003 ARMIS data.

- 84 (4) Paragraphs 20-21 of Order 04 are stricken.
- 85 (5) The Commission issues a modified interpretive statement concerning non-impairment criteria for wire centers under the Federal Communications Commission's Triennial Review Remand Order. The modified interpretive statement is attached as Appendix 2 to this Order and by this reference included herein.
- 86 (6) The Commission retains jurisdiction to effectuate the terms of this order.

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

[Service Date December 15, 2006]

Appendix 1

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 TRRO¹ and accompanying FCC rules² 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 collocators⁴ in a wire center and the number of business lines⁵ 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

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

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

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.

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

GLOSSARY OF TELECOMMUNICATIONS TERMS
Docket UT-053025

TERM	DESCRIPTION
Access	A local carrier must allow customers access to their preferred long-distance carrier. Customers pay an access charge to their local carrier for access to their long distance carrier and long distance carriers pay access charges to the local carrier to connect to the local carrier's network. <i>(From Newton's Telecom Dictionary, at pages 26-27.)</i>
Access line	A telephone line from a central office to the local premises. <i>See also local loop. (From Newton's Telecom Dictionary, at page 27.)</i>
ARMIS	Automated Reporting Management Information System. The FCC's database of telecommunication carriers' network, financial and service quality data. Carriers update the information annually on April 1.
Business line	A loop or line used for business purposes, i.e., not a residential line.
Central Office	A building where the local loops are connected to switches to allow connection to other customers; also referred to as a wire center where there are several switches functioning as a switch exchange. <i>(From Newton's Telecom Dictionary, at page 157.)</i>
Circuit	"The physical connection (or) path of channels, conductors and equipment between two given points through which an electric current may be established." <i>(From Newton's Telecom Dictionary, at page 167.)</i>
CLEC	Competitive local exchange company. A company competing with an incumbent local exchange company (ILEC) for local service customers; generally subject to limited regulation.
Collocation/ Collocator	Collocation occurs when a competing local carrier locates its switches within another local exchange carrier's central office. A collocator is a carrier that collocates its switches in another carrier's central office. <i>(From Newton's Telecom Dictionary, at page 182.)</i>
Dedicated transport	Facilities dedicated to a particular competitive carrier that the carrier uses for transmission between or among ILEC central offices and tandem switching offices, and to connect its local network to the ILEC's network. <i>(TRRO, ¶ 67)</i>
DS0 / Voicegrade	The digital representation of the capacity of an analog voice channel, i.e., the traditional copper pair loop, transmitting information at 64 kilobytes per second (kbps). <i>(TRO, n. 634)</i>

TERM	DESCRIPTION
DS1	The initial level of multiplexing in the time division hierarchy of the telephone network; a 1.544 megabytes per second (Mbps) signal that provides the equivalent of 24 64 kbps DSO channels . The same as a T1 facility. (<i>TRO, n. 634</i>)
DS3	A digital local loop having a total digital signal speed of 44.736 Mbps provided over various transmission media, including, but not limited to fiber optics, coaxial cable, or radio. DS3 loops can be channelized into 28 DS1 channels , or unchannelized to provide a continuous bit stream for data. (<i>TRO, n. 634</i>)
High-capacity	High-capacity refers to the ability of the facility to handle a large amount of traffic or information at a single time, e.g., DS1, DS3, OCn capacity.
ILEC	Incumbent local exchange company. A local exchange company in operation at the time the Act was enacted (August 1996).
Interconnection	Connection between facilities or equipment of a telecommunications carrier with a local exchange carrier's network under Section 251(c)(2).
Interconnection Agreement	An agreement between an ILEC and requesting telecommunications carrier (which may be a CLEC) addressing terms, conditions and prices for interconnection, services or network elements pursuant to Section 251.
Local exchange	A geographic area consisting of one or more central offices. (<i>From Newton's Telecom Dictionary, at page 301.</i>)
Loop	The local loop. The copper wire, fiber, or cable serving a particular customer, generally running from a central office to a residence or building.
Network element	A facility or equipment used in providing telecommunications services.
Non-impaired	A term relating to whether a competing carrier has access to unbundled network elements. Under Section 251(d)(2), an ILEC must provide unbundled access to an element if failure to provide the element would impair the carrier's ability to provide service. Under the TRRO, the FCC determined that competing carriers are not impaired under Section 251(d)(2) without unbundled access to high-capacity elements at a wire center if the wire center meets certain criteria. If a wire center meets the criteria, it is designated non-impaired , meaning competitors are not allowed unbundled access to high-capacity loops and transport in the wire center.

TERM	DESCRIPTION
OCn	OCn is an optical interface designed to work with a Synchronous Optical Network (SONET). OCn transmission facilities are deployed as SONET channels having a bandwidth of typically 155.52 Mbps (megabytes per second)(OC3) or higher. (<i>TRO, n. 631</i>).
Residential line	A loop or line connecting a residence; used generally for residential, rather than business, purposes.
Section 251(c)(3)	The section of the Act that requires ILECs to provide competing carriers with access to network elements on an unbundled or individual basis. The unbundled elements provided under this section are known as UNEs.
Switched access	The connection between a customer's phone and a long distance carrier's switch when making a local or long distance call over standard telephone lines. (<i>From Newton's Telecom Dictionary, at page 756.</i>)
TELRIC	Total Element Long Run Incremental Cost. A method of determining the cost, and prices for network elements using a forward-looking process, rather than the existing network of a carrier. Generally, the pricing methodology for UNEs.
TRO	The FCC's Triennial Review Order. August 2003 order addressing UNEs and the impairment standard for UNEs, vacated in part and remanded in part by the D.C. Circuit Court of Appeals in <i>USTA II v. FCC</i> .
TRRO	The FCC's Triennial Review Remand Order. March 2005 order entered in response to D.C. Circuit's <i>USTA II</i> decision: Eliminates local switching as a UNE as of March 11, 2006, and limits unbundling of high-capacity transport and loops.
Transport	Lines or connections used to transmit voice or data through a carrier's network. Transport media include copper wire, fiber optics, microwave, or satellite. (<i>From Newton's Telecom Dictionary, at page 815.</i>) See dedicated transport.
Trunk, Also trunked transport	A communication line between two switching systems. A single trunk, capable of carrying a single conversation, is referred to DS0.
Unbundled	A network element that is provided by itself, not in connection with or "bundled" with another network element. A means for a carrier to request particular services from an ILEC to customize the service the carrier provides, without having to accept a package of elements and services that the carrier must take as an all or nothing option.

TERM	DESCRIPTION
UNE	Unbundled network element. Generally a network element an ILEC must make available under Section 251(c)(3) of the Act.
UNE-P, also UNE-P line	Unbundled Network Element Platform, or a combination of local loops, switching and transport offered by the ILEC.
UNE-loop, or UNE-L	Unbundled network element loop, or a stand-alone loop provided without the combination of switching and transport provided via UNE-P.
Wire center	The location where a telephone company terminates and switches local lines, or loops. A wire center may have one or more class 5 central offices or exchanges. <i>(From Newton's Telecom Dictionary, at page 884.)</i>