



July 8, 2005

Ms. Carole Washburn  
Executive Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
1300 S. Evergreen Park Dr. SW  
Olympia, WA 98504

Re: Docket No. UT-053025  
An investigation regarding the status of competition and analysis of the impact of the FCC's Triennial Review Remand Order (TRRO) on the competitive environment

Dear Ms. Washburn:

On April 28, 2005 the Commission opened docket UT-053025 regarding an investigation of the impact of the FCC's Triennial Review Remand Order ("TRRO") on competition in Washington. Eschelon Telecom, Inc. (Eschelon) respectfully submits these comments regarding the appropriate scope and methodology of such an investigation.

The TRRO investigation will best serve Washington consumers if it is carefully focused on attainable goals. The Commission should determine the extent and method by which the TRRO is currently being implemented; set strict procedural ground rules for an effective investigation; and focus the investigative effort on the major areas of TRRO impact.

***I. The Commission Should Determine the Extent and Method by Which the TRRO is Being Implemented to Date.***

The first step in gauging the impact of the TRRO on competition is to investigate how the TRRO has been implemented since its enactment. The Commission should start from the base line of the TRRO rules themselves as it measures changes in competition post TRRO. How have the companies under consideration in Washington been implementing the language and intent of the TRRO rules? Without first making this determination, the Commission could achieve investigative results that would mask the causes of any competitive changes. For example, if the ILEC erroneously declared high capacity unbundled loops in certain wire centers off limits, competition would be negatively impacted in those wire centers due to ILEC behavior rather than the TRRO. On the other hand, if an ILEC has not yet taken advantage of provisions under the TRRO, the level of competition may not change, but the Commission runs the risk of concluding that the TRRO had no impact, when in fact its impacts have simply not yet materialized.

The Commission should make a review of ILECs' impaired/non-impaired wire center lists a key point of the investigation. As the Commission is aware, the TRRO provided a set of criteria that must exist at each wire center in order for certain unbundled facilities to be classified as "non-impaired." For example, unbundled DS1 loops will no longer be available (i.e. are "non-impaired") in wire centers with greater than 60,000 business lines and four or more fiber based collocators. At this point Qwest has made claims as to which wire center(s) meet this criteria (Seattle Main), but has offered up no verifiable evidence to CLECs that would confirm that the FCC's criteria are met. Further, if an ILEC determines that new wire centers meet the FCC criteria they will attempt to add them to the "non-impaired" list, though no process has been defined for their verification. Without a base line determination of the legitimacy of ILEC wire center lists, no meaningful comparison of pre- and post-TRRO competition can take place.

The methods by which an ILEC has implemented the TRRO "transition periods" for non-impaired UNEs will also impact changes in competition. Under the transition period, a CLEC may not order new non-impaired UNEs and must pay rates at 115 percent of the higher of UNE rates in existence as of June 14, 2004 and UNE rates established by the Commission since that date. In evaluating the TRRO impact on competition, the Commission should consider the manner in which the transition period rates are being applied.

## ***II. The Commission Should Set Strict Procedural Ground Rules for an Effective Investigation***

Once the Commission has determined the current state of compliance with and implementation of the TRRO, the Commission should set strict procedures for the remainder of its competitive investigation.

### ***A. The Commission Should First Determine the Goals of the Investigation***

Monitoring the competitive landscape could become merely an academic exercise if methods are not first put into place to react to any decline in competition that is discovered. Before undertaking the complex and time consuming task of collecting data regarding competition, the Commission should determine what actions it is able to take as a result of the investigation. One obvious subject under the Commission's jurisdiction is the area in which the Qwest has been granted competitive classification for certain services. If the investigation shows that competition is being hindered in the areas and for the products under which Qwest has been granted competitive classification, the Commission must be willing to re-examine those decisions. Without such a commitment, the effort involved in this process will not be well spent.

Focusing on the areas and products over which the Commission has some influence (i.e. the areas and products for which Qwest has been granted competitive classification) should also narrow the investigation, utilizing the time and resources of the Commission and telecommunications carriers in the state most effectively.

### ***B. The Commission Should Conduct Periodic Reviews as Part of the Investigation***

Once the Commission has defined the actions it is willing to take as a result of a continued investigation it is important to note that a single snapshot of competition will not tell the whole story of the impact of the TRRO. As ILEC implementation of the TRRO and the TRRO transition rules demonstrates, any investigation of competition must be placed in the context of the time in which the investigation occurred. While the TRRO certainly has raised costs to many CLECs for provisioning services to end users, the full impact of the TRRO will change with time. There are many reasons that the TRRO may have cumulative effects over time: ILECs may not yet have fully implemented the provisions of the TRRO; the transition period limit on rate increases will expire in 2006; the "non-impaired" wire centers list can be expanded over time; and CLECs may be slow to change their competitive strategies as they begin to fully understand the impacts of restricted provisioning options and higher wholesale prices.

The uncertainty faced by CLECs is magnified by the pending mergers of AT&T and MCI to SBC and Verizon. The FCC's conclusions in the TRO/TRRO were predicated on the belief that alternatives are available; both AT&T and MCI are two alternative suppliers of transport services. The future availability of these alternative services is in question as they merge with ILECs who have stated their intent to leverage the networks of the companies they are buying. These changes imply that a single review of the impact of the TRRO will not present the full story to the Commission. The Commission should therefore undertake periodic reviews until the full implementation of the TRRO has played out.

***C. The Commission Should Define the Markets and Constituencies Impacted by the TRRO and the Options Left Open to the Market Segments***

The more rigorous the methodology underlying the Commission's investigation, the more robust the results its results will be. To identify impacts on consumers of telecommunications as well as upon suppliers of those services, the Commission must define the relevant markets and then identify the different constituencies of end users and telecommunications suppliers within the markets. Of critical importance for assessing TRRO impacts is analysis of the methods by which suppliers can provide services within each market. By clearly defining the methods available to competitive carriers to provision services to end users, the Commission will be able to evaluate the TRRO's impact on the provisioning options of competitive carriers. The availability or non-availability of suppliers' provisioning options will help gauge the TRRO's impact on consumers' competitive choices in the markets under investigation.

***1. Distinctions within the Markets***

The original TRO and the arduous efforts it required of state commissions and telecommunications providers have borne some fruit in the development of commonly accepted classifications of end-users. It is now widely accepted that residential users have fundamentally different needs and are consequently served quite differently than enterprise customers. Small to medium business share some characteristics with both residential consumers and enterprise customers, but cannot be collapsed easily into either group and consequently merit separate consideration. For example, UNE-P and Qwest's commercial replacement, QPP, are likely to be

used for residential and small business customers, but not for enterprise customers. However, few residential customers if any will order the Centrex QPP and only the very smallest businesses will not have demands for features that are basically useless to residential consumers, such as hunting. Qwest differentiates QPP rates based on whether the end user is residential or business and thus clearly recognizes that these are two distinct markets. The Commission should further determine whether additional distinctions should be made within the three basic markets, such as between primary lines and additional lines, or between voice and data applications.

## **2. *Methods of Data Analysis***

When evaluating markets, to the extent possible, the Commission should view data at the level of the Qwest wire center. The wire center is where many restrictions from the TRRO are implemented. The Commission has also previously reviewed wire center data when investigating Qwest's requests for Competitive Classification. In addition, Qwest's unbundled loop is priced uniquely by deaveraged zones, which are groups of wire centers.

## **3. *Determination of Provisioning Options to the Markets***

Once the markets are defined and data gathering established, the Commission can proceed to the critical determination of the methods and extent of provisioning options to these markets. For example, Qwest claims that customers may be served via unbundled loops, UNE-P / QPP, resale, cable facilities, CLEC owned loops, third party provided loops, wireless, or VOIP riding over a high-speed connection. These theoretical possibilities may or may not actually be available to practically serve today's end user customers in each defined market.

Multiple methods exist by which the Commission can collect information regarding the actual state of provisioning options. Besides the traditional process of collecting line counts from carriers in the state, the Commission can also survey retail providers, wholesale providers and end user customers. End user customers can be asked about their view of competitive options such as cable, wireless, VOIP and WiMax -- alternatives Qwest has claimed are available to end users. Wholesale and retail providers can be asked about their offers to consumers, the extent of these offers, their view of their competitors, and any changes they have undertaken as a result of the TRRO.

### ***III. The Commission Should Structure Its Investigation on the Major Areas of TRRO Impact***

The TRRO affected three major means of CLEC access to wholesale facilities at rates set to mimic those of a competitive market: UNE-P, unbundled loops and transport.

#### ***A. UNE-P***

The FCC ended the availability of UNE-P as of March 11, 2006. Most CLECs in the Qwest territory have signed up for Qwest's commercial product called QPP. This product is functionally equivalent to UNE-P, but has higher rates for the switch port and an expiration date

of 2008. This increase in cost will certainly impact a CLEC's ability to use this method to access end user customers. Port rate increases reach 121% for residential customers and 467% for business customers by 2007. Since this Commission has previously relied upon competition utilizing UNE-P to give competitive classification to certain segments of the business market, the Commission should carefully monitor the demise of UNE-P and its impact on competition.

### ***B. Unbundled Loops***

The FCC also eliminated the availability of dark fiber loops to CLECs. In addition, the FCC has limited CLECs access to unbundled DS1 and DS3 loops by eliminating their availability in certain wire centers. Qwest currently claims that unbundled DS1 loops will no longer be available in the Seattle Main wire center and that unbundled DS3 loops will no longer be available in both the Seattle Main and Kent O'Brien wire centers. CLECs relying on these products in these markets must either exit the market or find an alternative means by which to reach its end users. Potential alternatives include special access or private line channel terminations, or in rare circumstances a CLEC's own facilities or an alternative supplier. Since private line facilities recently received competitive classification from this Commission, based on the availability of high capacity unbundled loops, the Commission should carefully monitor the impact of restrictions on high capacity loops on a CLECs ability to compete.

### ***C. Unbundled Transport***

The final major area of impact as a result of the TRRO is unbundled transport. The TRRO limited access to unbundled dark fiber, DS1 and DS3 transport facilities. In addition, the TRRO eliminated access to unbundled entrance facilities. First, the FCC placed caps on the purchase of unbundled DS1 and DS3 transport facilities between two Qwest wire centers. These caps apply to all transport routes in Qwest's territory. In addition, the FCC defined certain transport routes where unbundled dark fiber, DS1 and DS3 transport no longer need be provided. Qwest claims there are ten impacted wire centers. These ten wire centers include forty-five potential transport routes. Possible substitutes for CLECs include special access and private line facilities offered by Qwest, and third party or CLEC owned facilities. Again, since this Commission previously allowed for competitive classification of private line facilities on the basis of the availability of unbundled transport, the Commission should carefully monitor restrictions placed upon unbundled transport and its impact on a CLEC's ability to effectively compete.

## ***IV. Conclusions***

The most efficient approach for the Commission to take in this investigation is to determine how ILECs have implemented the TRRO and ensure that the provisions of the TRRO are being implemented both accurately and fairly. The Commission should set clear procedural ground rules for an effective investigation, such as determining what actions the Commission is willing to take as a result of their investigation, determining the period of such an investigation and defining the markets and constituencies over which the investigation should take place. The Commission should structure its investigation on the major areas impacted by the TRRO.

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A structured approach with clearly defined goals will best aid consumers in the state of Washington by ensuring that competition thrives. Only through actual competitive markets will consumers truly benefit through improved product offerings at lower cost.

Sincerely,

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