\- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Investigation into Qwest Wire Center Data	)))))))	DOCKET NO. 06-049-40 DPU Exhibit 1.0 Direct Testimony of Casey J. Coleman

DIVISION OF PUBLIC UTILITIES
DEPARTMENT OF COMMERCE

May 26, 2006

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I. IDENTIFICATION OF WITNESS

Q. PLEASE STATE YOUR NAME, EMPLOYER, AND BUSINESS ADDRESS.

A. My name is Casey J. Coleman. I am employed by the Division of Public Utilities for the State of Utah. My business address is 160 East 300 South Salt Lake City, UT 84114.

Q. BRIEFLY OUTLINE YOUR EMPLOYMENT BACKGROUND.

A. Before working for the Division of Public Utilities for the State of Utah, I was employed by a telecommunications consulting firm as a Financial Analyst. For approximately the last five years I have worked for the Division of Public Utilities as a Utility Analyst and Technical Consultant.

Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?

A. I received a Bachelor of Science degree from Weber State University in 1996 and a Masters of Business Administration from Utah State University in 2001.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE UTAH PUBLIC SERVICE COMMISSION?

A. Yes. I testified before the Commission as an expert witness in Docket Nos. 01-2383-01, 02-2266-02, 02-049-82, 03-049-49, 03-049-50, 05-053-01, and 05-2302-01.

II. SUMMARY

Q. PLEASE SUMMARIZE AND DESCRIBE THE PURPOSE OF YOUR TESTIMONY.

A. In early February, five "joint CLECs" filed with the Public Service Commission a letter asking for the Commission to look into the Qwest Wire Center Data for Utah. My testimony will outline the investigation that was undertaken by the Division to determine the number of business lines as contemplated by the FCC's TRRO order. I will also propose a methodology the Commission could adopt for adding additional wire centers to the "non-impaired" list. A brief discussion of the consolidation of the telecommunications market and how the mergers and acquisitions have affected the number of fiber-based collocators and potential future impacts from additional mergers is given.

III. TESTIMONY

Q. WAS THE TESTIMONY GIVEN BY MS. ALBERSHEIM AND MS. TORRENCE OUTLINING THE THRESHOLDS AND TESTS FOR A DESIGNATION OF NON IMPAIRMENT ACCURATE?

A. Yes. The Division agrees that there are two tests to determine if a wire center is non-impaired. The classification of non-impaired is dependent on the number of fiber-based collocators or the number of business lines for a wire center. If the number of fiber-based collocators or the number of business lines is achieved then that wire center meets the FCC's designation of non-impaired.

Q. DID THE FCC GIVE SOME GUIDANCE IN THE TRRO TO PROVIDE DIRECTION ON HOW THE BUSINESS LINES SHOULD BE COUNTED?

A. Yes. Paragraph 105 of the TRRO describes the methodology for counting business lines as follows:

> Moreover, as we define them, business line counts are an objective set of data that incumbent LECs already have created for other regulatory purposes. The BOC wire center data that we analyze in this Order is based on ARMIS 43-08 business lines, plus business UNE-P, plus UNE-loops. We adopt this definition of

> business lines because it fairly represents the business opportunities in a wire center, including business opportunities already being captured by competing carriers through the use of UNEs. Although it may provide a more complete picture to measure the number of business lines served by competing carriers entirely over competitive loop facilities in particular wire centers, such information is extremely difficult to obtain and verify. Conversely, by basing our definition in an ARMIS filing required of incumbent LECs, and adding UNE figures, which must also be reported, we can be confident in the accuracy of the thresholds, and a simplified ability to obtain the necessary information.

The FCC provided further direction on how to determine a Business Line as follows:[1]

> A business line is an 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 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 kbps-equivalent as one line. For example, a DS1 line corresponds to 24 64-kbps-equivalents, and therefore to 24 business lines.

Q. ARE BOTH QWEST AND THE JOINT CLECS USING THIS SAME DEFINITION?

A. Yes.

Q. IF BOTH PARTIES ARE USING THE SAME DEFINITION, WHY IS THERE DIFFERENCES IN THE NUMBER OF BUSINESS CUSTOMERS?

A. The difference between Qwest’s calculation of business lines and the Joint CLECs

[1] 47 C.F.R. § 51.5 Terms and Definitions, Business Line.

calculation, I think, hinges on the interpretation of 47 C.F.R. § 51.5 (3) where the FCC instructs companies to "account for ISDN and other digital access lines by counting each 64 kbps-equivalent as one line". In Qwest's Data Response #30 to the Joint CLECs Data Request Mr. Teitzel states:

> In ARMIS 43-08, Qwest reports the number of circuits attributed to DS1 and DS3s based on the actual channels used by the customer. The methodology dictated by FCC rule for counting DS1 and DS3 circuits under the TRRO is different. Rather then counting the actual number of circuits activated, the FCC rule requires that the count include the full capacity of the DS1 or DS3. Therefore, a DS1 circuit was counted as the equivalent of 24 business lines and a DS3 was counted as 672 business lines. Qwest removed the ARMIS count of DS1 and DS3, and replaced them with the FCC capacity amount to avoid double counting.

From the statement provided by Mr. Teitzel, it is clear that Qwest believes the correct approach to determine the number of business lines is to "adjust" the number of lines by the appropriate factor recommended by the FCC for both Qwest business customers as well as UNEs leased by CLECs. The Joint CLECs believe that the data received by the FCC in the 43-08 ARMIS report is the accurate reflection of business lines without adjusting for Qwest customer's digital lines and adding the appropriate number of UNEs.

Q. WHAT IS THE DIVISION'S RECOMMENDATION CONCERNING THE CORRECT METHOD TO USE TO COUNT BUSINESS LINES?

A. The Division recommends that the Commission should use the actual Qwest business lines reported in ARMIS 43-08 without adjusting for digital lines. As stated in Paragraph 105 in the TRRO, the FCC explicitly directs the count to be "based on ARMIS 43-08 lines". Nothing in the paragraph mentions adjusting the ARMIS data. Instead the FCC stated how they wanted to use "readily available data". The Division interprets the "readily available" to mean actual Qwest business lines.

Q. WHY DOES THE DIVISION BELIEVE THE ACTUAL ARMIS 43-08 DATA IS THE APPROPRIATE STARTING POINT FOR COUNTING BUSINESS LINES?

A. It seems reasonable that the FCC would want BOC's to use as the foundation for the calculation the information that was readily "known" which would be ILEC customers. After determining what business customers were served by BOCs, the FCC then instructed companies to add business UNE-P, plus UNE-loops. The Division believes the adjustment for digital lines as discussed in 47 C.F.R. § 51.5 (3) should be used when considering UNE loops that are being sold wholesale but adjusting business lines by a factor of 24 for DS1s or 672 for DS3s should not apply to ILEC customers.

Q. IS USING UNADJUSTED DATA FROM ARMIS 48-03 CONSISTENT WITH THE DIRECTION GIVEN BY THE FCC IN 47 C.F.R. § 51.5 TERMS AND DEFINITIONS, BUSINESS LINE?

A. Yes. In that paragraph the FCC stated that:

> The number of business lines in a wire center shall equal **<u>the sum of all incumbent LEC business switched access lines</u>**, plus the sum of all UNE loops connected to that wire center, including UNE loops provisioned in combination with other unbundled elements. (emphasis added)

Once again it appears that the FCC is recommending starting with the sum of all incumbent LEC business switched access lines, plus UNEs. This again gives the impression that the FCC wanted LECs to start with their actual business customers and then add the appropriate number of UNEs.

Q. IF THE FCC WANTED TO HAVE ACTUAL ILEC LINES WITHOUT ADJUSTING FOR DIGITAL LINES, WHY WOULD THEY HAVE INCLUDED PART (3) IN 47 C.F.R. § 51.5?

A. The Division believes part three was provided to give direction to companies when they were trying to determine the appropriate level to count for UNEs. As stated by the FCC it is difficult to determine the number of retail customers actually using the UNEs. An ILEC that is leasing lines to a CLEC has no way of knowing if the full number of digital lines are in use. Because of this difficulty the FCC created a way for companies to quickly determine the number of business lines by using a multiple for DS1 and DS3 lines.

Q. DOES THE DIVISION BELIEVE ACTUAL BUSINESS LINES SHOULD BE COUNTED WHEN LOOKING AT UNEs ?

A. NO. The Division believes that the FCC's direction was to include **all** UNEs regardless of whether those UNEs were business or residential. To further eliminate lines because they are not "switched access lines" or residential would be in opposition to what the FCC directed.

Q. IF THE COMMISSION ADOPTS THE DIVISION'S RECOMMENDATION FOR COUNTING BUSINESS LINES, HOW WILL IT IMPACT THE NON-IMPAIRED LIST SUBMITTED BY QWEST?

A. Adopting the Division's interpretation of the FCC's definition would cause the Salt Lake City Main wire center to fall below the 60,000 business lines required to meet the non-impaired status for DS1 loops. All of the other wire centers on the non-impaired list were meeting the thresholds because of the number of fiber based collocators.

Q. HAS ANY OTHER COMMISSIONS IN QWEST SERVICE TERRITORIES RULED ON THE PROPER METHOD TO COUNT BUSINESS LINES?

A. Yes. The method recommend by the Division is similar to what the Washington

Commission ruled in Docket NO. UT-053025 Order No. 3 paragraph 34 and 35. They stated that:

> The FCC's rule must be read consistently with the FCC's statements in the TRRO. To that end, the FCC requirements for calculating, or tallying, the total number of business lines serving a wire center are most reasonably applied in part to ILEC-owned switched access lines, and in part to UNE loops…Thus, Qwest must submit its business line counts to include actual business lines as reported in its ARMIS 43-08 data, without adjustment.

The Washington Commission further stated in paragraph 44 that:

> The Joint CLECs request that Qwest…exclude from the business line calculation UNE loops used to serve residential customers and provide non-switched services is denied…All UNE loops should be included in the business line calculation.

Q. WHAT IS THE DIVISION'S OPINION WITH THE COUNT OF FIBER BASED COLLOCATORS?

A. The Division believes that Qwest has provided a list that captures as accurately as possible the fiber based collocators in the State. Mr. Denney in his direct testimony on pages 9 and 10 criticizes Qwest for counting some CLECs as fiber-based collocators. He questions the validity of the results because some CLECs did not respond to the letter sent out by Qwest or the verification process seemed to be biased. The Division believes that the efforts Qwest undertook to get the accurate information was sufficient. They contacted CLECs to give them a chance to respond to their information. They did field reviews to authenticate what they believed to be accurate data. The Division realizes that Qwest has a financial incentive to get as many wire centers designated as non-impaired, but in the Division's review of the data provided by Qwest it appears that a fair representation was given. Therefore the Division believes that the classifications for Tier 1 and Tier 2 provided by Ms. Torrence in her Direct Testimony should be accepted. Allowing the tier classifications to be adjusted because of a lack of response from CLECs seems to be unfair to Qwest. If the issue was important enough to CLECs or if Qwest had erroneously designated a CLEC as a fiber-based collocator, one would conclude that CLECs would respond to that request. In this case the old adage “the squeaky wheel gets the grease” seems to apply. If Qwest had done something incorrectly the CLECs would make that known. They have had sufficient time to challenge the designations and the CLECs lack of response can be consider a “silent” assent.

One point of consideration that the Division has been trying to reconcile is how the consolidation happening in the Telecommunications industry could affect fiber-based collocators. Since the time the TRRO began, until the present, the Division has seen the number of fiber-based collocators decrease because of mergers between AT&T / SBC, MCI / Verizon, and Integra / Electric Lightwave Inc. In the TRRO the FCC established rules that make the designation of a wire center permanent without establishing any method to re-examine the data because of acquisitions. Currently, none of the wire centers in this Docket are affected by the mergers happening in the market. But the Division sees where this could become an issue down the road because many of the wire centers only have the required number of fiber-based collocators. If one or two companies merge it is possible where the number of fiber-based collocators could be reduced below the FCC defined threshold.

Q. MR. DENNEY DISCUSSES ON PAGE 3 OF HIS TESTIMONY THAT TWO WIRE CENTERS’ CLASSIFICATION SHOULD NOT BE EFFECTIVE UNTIL JULY 8, 2005. DOES THE DIVISION SUPPORT THIS POSITION?

A. The Division would support this changed time frame if Qwest is going to enforce a “true-up” to the FCC-mandated transitional rate ($1.00 per port for UNE switching, including UNE-P, 15% for DS1, DS3, and Dark Fiber loops and transport), retroactive to March 11, 2005 in those areas where the FCC has found a lack of impairment with respect to the affected UNEs."[2] It seems a little punitive to allow Qwest to collect a "true up" back to March 11, 2005 when the Salt Lake City West and Salt Lake City South wire centers did not even appear on the list of impaired wire centers until July 7, 2005. Because July 7, 2005 was the first time CLECs knew that the above stated wire centers were going to be affected, the "true up" should commence from that date.

Q. WHAT DOES THE DIVISION RECOMMEND FOR UPDATING THE WIRE CENTERS THAT SHOULD BE CLASSIFIED AS NON-IMPAIRED?

A. In Mr. Denney's Direct Testimony on Page 33 he discusses how Qwest's method for adding wire centers to the non-impaired list was devoid of any Commission review. In Ms. Albersheim's Response Testimony she provides a clearer understanding of how Qwest would propose adding wire centers to the non-impaired list. The Division recommends that the Commission adopt the process outlined by Qwest in Ms. Albersheim's Response Testimony with a couple of modifications. The first modification that the Division believes would be helpful to both the Division and CLECs is to have Qwest file the 43-08 ARMIS data with the Commission and Division when any wire center gets within 5,000 business lines of any of the thresholds. The Division would be able to begin reviewing the information in preparation for the change in designation for any wire center. This preliminary review would allow a much quicker "approval" of the wire center designation once Qwest files with the Commission. The second benefit that providing this information allows is that CLECs would be able to plan accordingly to a changing business environment. The Division does not believe 30 days may be sufficient time for CLECs to make evaluations of what course of action they want to pursue once a

[2] See Attachment 1which is a Letter from Qwest discussing the "true up"

wire center's status is changed. Getting the review done in advance, while providing a general notice that a wire center is approaching the threshold, seems to meet the desires of all parties involved. Qwest would get a quick approval of the wire center to be added and CLECs would get enough notice to make appropriate and informed business decisions. Because Qwest would be using the ARMIS data created for the FCC, the Division does not believe this is a huge burden to place on Qwest. In fact once the method to count business lines is determined by this Commission, the Division feels that counting the lines will become a perfunctory exercise.

If the Commission adopts the recommendation of the Division to require Qwest to provide preliminary notice of wire centers that are close to meeting the non-impaired standard. A second modification that the Division recommends is shortening the time frame to "challenge" a wire center to a five day time frame. This five day time frame is consistent with the "lighter" regulation the Commission has adopted with Price List Filings for Qwest. The Division does not see the need for 30 days to challenge the information if it is provided in advance of Qwest filing for the non-impaired designation. The Division anticipates that any challenges or issues would be handled pro-actively beforehand, making the challenge time moot. Five days does allow parties a reasonable time frame to challenge any wire center designation and provide the Division an opportunity to respond to the filing by Qwest.

IV. CONCLUSION

Q. WHAT IS THE DIVISIONS' RECOMMENDATION WITH THIS PROCEEDING?

A. The Division recommends that Qwest be required to use unadjusted ARMIS 43-08 data to determine the number of business lines plus all UNE loops. The Commission should adopt the tier designations provided by Qwest and implement the process outlined by Qwest for adding new wire centers to the list with the requirements that Qwest pre-file notice of which wire centers will be added to allow sufficient notice to the Division and to CLECs. If earlier notice is implemented then the Division recommends reducing to five days the time frame for challenging a wire center designation.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes it does.