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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Investigation into Qwest Wire Center Data	Docket No. 06-049-40 MEMORANDUM OF THE DIVISION OF PUBLIC UTILITIES
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**The following is a Post hearing memorandum of the Division of
Public Utilities (DPU) in the above docket.**

INTRODUCTION

The issues the DPU will address in this Post hearing memorandum is the methodology to be used to count the number of business lines in a wire center in determining if that wire center is impaired and some comments on how future information should be provided to CLECs in future requests to make an office non impaired. The issues surrounding the number of fiber collocators in the Provo and Ogden Main offices which were a focus in the hearings has been solved.

Besides the Telecommunications Act of 1996 and the FCC Order and rules the State's Telecommunications Act in 54-8b provides the Commission with some guidance that may help in making its decision in this case. 54-8b-1.1

provides some legislative declarations that may aid the PSC in reaching its decision. These include: (1) encourage the development of competition as a means of providing wider customer choices for Public Telecommunication services throughout the State; (2) allow flexible and reduced regulation for telecommunications corporations and public telecommunications services as competition develops; (3) encourage competition by facilitating the sale of essential telecommunications facilities and services on a reasonably unbundled bases.

These declarations tell the DPU that whatever decision is made it should encourage competition. Further, any decision should promote ease of regulation by developing an expedited way of making future decisions when future requests are made to declare an office non impaired. The Commission must make its decision within a reasonable interpretation of the 1996 Federal act and the FCC's rules and orders.

DPU PROPOSAL ON NUMBER OF BUSINESS LINES IN A WIRE CENTER

The most controversial issue in this docket from the DPUs perspective is whether or not the Salt Lake Main wire center has more then 60,000 business access lines.

The DPU's proposal on how to count the number of business lines in a wire center is neither supportive of Qwest or the CLEC's position but is the position adopted by the vast majority of states who have addressed this issue thus far.¹ It is the position most consistent with the FCC order in the TRRO and is consistent

¹ See p. 5 Sur Rebuttal testimony of Douglas Denney.

with the policy objectives of the state Act. The DPU proposal consists of the following elements:

1. The ARMIS data is publicly and readily available. It should be used to determine impairment. It should not be adjusted to reflect the full capacity of Qwest's DS1 and DS3 circuit. It should instead reflect the actual circuits in use. Referring to the table in Mr. Denney's testimony referred to above ARMIS data should be "as is."
2. All UNE lines whether those UNE's are residential or business or non-switched should be counted in the number of business lines to be added to the ARMIS data in determining impairment. Referring to Mr. Denney's table on P. 5 the DPU supports that residential UNE loops would be included, that non-switched UNE loops would be included and that you would use the full capacity of the CLEC's DS1 and DS3 loops.

Paragraph 105 of the TRRO and 47 CFR 51.5 provide the general guidance on how to determine the number of business lines in a wire center. Paragraph 105 of the TRRO provides in part:

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 on 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 center, 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:

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 lines 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.

47 CFR 51.5 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. (emphasis added)

The DPU believes that its interpretation of these paragraphs is consistent with its recommendation. It provides an easily administered program of readily available information. Neither Qwest's proposal nor the CLEC's proposal meets those objectives. The DPU's proposal gives a reasonable representation of competition in the wire center so that an informed impairment decision can be made.

Taking the full capacity of Qwest DS1 and DS3 rather than what is actually being used in the wire center takes the information away from what is readily

available and puts the potential manipulation of the data in the hands of Qwest. On the CLEC side Qwest only can verify the number of UNEs sold and has no way of readily determining if that UNE is being used for a residence or a business. Further Qwest has no ability to determine to what extent a DS1 or DS3 is being used by the CLEC. The only readily available information is to use the full capacity of those loops.

It is no wonder that Qwest is insisting on not using their actual business line count in this proceeding because their interpretation of the FCC's rules allows them to argue that the Salt Lake Main wire center is a non impaired wire center even though that wire center does not meet the 60,000 business line count to determine non impaired status for a DS1 loop.

At the time of the hearing only one Qwest state has reached at least an initial decision on these issues. In Washington in UT 053025 paragraph 34 and 35 it was stated:

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 party 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.

As the DPU understands it once a wire center is determined to be non impaired that determination is final and cannot be subsequently changed.

Therefore, it is important to correctly make this initial decision. Not granting non impaired status to the Salt Lake Main wire center today does not in any way restrict Qwest from re submitting its business line count for that office in the future in order to reach non impaired status when that office is over 60,000 business access lines.

FUTURE REQUESTS FOR UPDATING INFORMATION

In order to assist the CLEC's in planning their transition from impaired to non impaired status both the DPU and the CLEC's have recommended that Qwest be required to give advanced notice of when they believe an office is within 5000 access of being non impaired. The effect on the business decisions CLEC's need to make when an office changes are significant and planning is required. In order to keep competition developing in a wire center once it has been determined to be non impaired all efforts should be made to assist the CLEC's in that transition.

Qwest argues that the FCC does not require advanced notice and further that no Qwest state requires this advanced notice. Neither argument is compelling. First, it appears that Utah is the first Commission to decide this case after a hearing. No other state has had an opportunity to address this issue. Second, even though the FCC did not explicitly require this notice nor did it prohibit what is being proposed by the DPU and CLECs. The FCC has given the states a role in this process and when it sees a need to add to the process it should not be reluctant to do so when not prohibited by the FCC. Therefore, the

DPU supports an advance notice mechanism to assist the CLEC's in planning this transition.

RESPECTFULLY SUBMITTED, this _____ day of July, 2006.

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **MEMORANDUM BY THE DIVISION OF PUBLIC UTILITIES (DPU) ADDRESSING SOME OF THE ISSUES RAISED IN THE TRRO DOCKET** was sent by electronic mail, to the following on July _____, 2006:

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