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June 11, 2018

By Email and Federal Express

Ms. Julie Orchard  
Utah Public Service Commission  
Heber M. Wells Bldg., 4th Floor  
160 East 300 South  
Salt Lake City, UT 84111

Re: TRRO/Request for Commission Review and Approval of Wire Center Lists

Dear Ms. Orchard:

March 11, 2006, approximately one month from now, is the default date established in the FCC's TRRO<sup>1</sup> on which high capacity (DS1 and DS3) loops and/or transport will no longer be available as unbundled network elements ("UNEs") in multiple wire centers in Utah.<sup>2</sup> Before then, the Commission should address a key issue arising from the TRRO's impairment analysis: the need for a process allowing all affected parties – regulators, competitors, and ILECs – to examine, understand, and verify the underlying wire center data on which continued access to high capacity UNEs turns.

The Washington Utilities and Transportation Commission ("WUTC") recently dealt with the issue in a manner that could provide this Commission a relatively easy and efficient solution.<sup>3</sup> For the reasons provided in this letter, Covad Communications Company, Eschelon Telecom of Colorado, Inc., Integra Telecom of Utah, Inc., McLeodUSA Telecommunications Services, Inc., and XO Communications Services, Inc. ("Joint CLECs") respectfully request that the Commission adopt an approach similar to that of the WUTC, including:

<sup>1</sup> *In re Unbundled Access to Network Elements*, FCC 04-290, WC Docket No. 04-313 and CC Docket No. 01-338, Order on Remand (rel. Feb. 4, 2005) ("TRRO").

<sup>2</sup> While the actual date may be later than March 11, 2006 for CLECs that have yet to finalize TRO/TRRO amendments or agreements with Qwest, the deadline is nonetheless rapidly approaching.

<sup>3</sup> See description below. The oral decision will be reflected in a written order that will be posted on the WUTC website (Docket No. UT-053025) at [www.wutc.wa.gov](http://www.wutc.wa.gov).

- Development of a list of non-impaired wire centers and a process for updating that list when additional wire centers become eligible for addition to the list. (*See* CLEC’s proposed process in **Attachment A.**)
- Prompt entry of a protective order and a further order requiring Qwest Communications (“Qwest”) to provide certain wire center data (listed in **Attachment B**) to CLECs and the Division pursuant to the protective agreement.
  - Qwest has indicated that the data is proprietary carrier information pursuant to 47 U.S.C. §222, so Qwest cannot provide it to other CLECs without an order to do so. Section 222 allows Qwest to provide such information when required by law. If the Commission orders Qwest to provide the information subject to an appropriate protective order, therefore, Qwest can provide the information to CLECs and staff. Qwest routinely does so in other contexts. (*See* examples in **Attachment C**).
- If necessary, expeditious opening of an investigative or other docket, if no existing open docket is available for addressing this issue.

**Non-Impaired Wire Centers, the FCC Default Process, and the Advantages and Necessity of a Commission Process to Investigate Wire Center Data**

In the TRRO, the FCC determined impairment for unbundled access to high-capacity loops and transport on a wire center basis, using as criteria the number of business lines and fiber-based collocators in wire centers.<sup>4</sup> A CLEC must “undertake a reasonably diligent inquiry” into whether high capacity loops and transport meet these criteria, and then must self certify to the ILEC that the CLEC is entitled to unbundled access.<sup>5</sup> The FCC said that ILECs must “immediately process” the UNE order and then may “subsequently” bring a dispute before a state commission or other authority if it contests the CLEC’s access to the UNE.<sup>6</sup> If the ILEC, in this case Qwest, prevails in the dispute, Qwest is protected because it may back bill for the time period when it should have been allowed to bill a higher rate. Qwest provides in its template TRRO amendment, however, that Qwest will process such orders *only if* the wire center is not on Qwest’s own list of non-impaired wire centers.<sup>7</sup> Qwest recently confirmed that Qwest will not accept orders that are on its wire center list, even if a CLEC disagrees with the list,<sup>8</sup> despite the language of the TRRO. Qwest has not provided sufficient data, however, for CLECs to verify Qwest’s unilaterally-prepared lists. Evidence that the wire center lists need independent review

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<sup>4</sup> *See, e.g.*, TRRO, ¶¶ 146, 155, 166, 174, 178, 182, 195.

<sup>5</sup> TRRO ¶ 234.

<sup>6</sup> TRRO ¶ 234.

<sup>7</sup> *See, e.g.*, Qwest TRRO Amendment ¶¶2.8 & 2.8.1.

<sup>8</sup> Washington TRRO workshop (statements by Qwest attorney Ms. Lisa Anderl), Feb. 1, 2006 (Docket No. UT-053025).

includes instances to date when Qwest has already had data errors in the information it has distributed to CLECs. Qwest's proposal would improperly shift the burden to CLECs to bring disputes to the Commission before Qwest will process orders, instead of Qwest's raising a dispute with the Commission after processing an order per the FCC default process. The Joint CLECs believe that Qwest is wrong and that CLECs are entitled to the default process described by the FCC. Qwest obviously disagrees. CLECs offer the following compromise to attempt to avoid, or at least significantly narrow, this dispute. A Commission process is needed to implement the compromise, because the compromise hinges largely on obtaining a Commission order to provide the data pursuant to a protective agreement to alleviate Qwest's concerns about confidentiality/Section 222 compliance.

### **Joint CLEC Offer to Compromise**

As a compromise, the Joint CLECs are willing to consult a Qwest wire center list provided that, after party review of the underlying data (listed in Attachment B), the Commission approves the list. If the Commission will agree to order Qwest to provide the underlying data subject to an appropriate protective order, to develop a Commission-approved initial list of non-impaired wire centers, and to implement a process for updating and approving the lists, many potential disputes will be avoided. The earlier these Commission orders are issued, the earlier the parties can attempt to reach agreement or at least narrow the issues. After reviewing the underlying data, CLECs may agree that some or all of the wire centers belong on the list, so there will be no dispute, or fewer disputes, for the Commission to resolve.

In Washington, the WUTC recently approved an ALJ finding that: "CLEC access to accurate and verifiable information that forms the basis of self-certification would ensure more accurate self-certifications and fewer disputes."<sup>9</sup> The ALJ indicated that it would be "more efficient" for the Commission to develop the list in one proceeding than for each CLEC to request verifying information from the ILEC, even when the ILEC will agree to provide that information.<sup>10</sup> The ALJ further found that: "It is crucial to all parties . . . to have a central list of all ineligible wire centers, as well as pertinent information about eligible wire centers that is accurate, verified, and made available to the public."<sup>11</sup> The ALJ said that it "makes sense . . . to develop and maintain an accurate and up-to-date list" of wire centers and to maintain that list on the WUTC website.<sup>12</sup> The WUTC adopted the ALJ's recommendation to consider developing lists of eligible and ineligible wire centers for both Verizon and Qwest, as well as a process for

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<sup>9</sup> Arbitrator's Report and Decision, Order No. 17, Docket No. UT-043013, July 8, 2005 ("Verizon WA ALJ Arbitration Order"), ¶105. See <http://www.wutc.wa.gov/rms2.nsf/vw2005OpenDocket/9D2ACD4D768DABE888257084007B7673>

<sup>10</sup> Verizon WA ALJ Arbitration Order, ¶117.

<sup>11</sup> Verizon WA ALJ Arbitration Order, ¶117.

<sup>12</sup> Verizon WA ALJ Arbitration Order, ¶116.

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updating the lists, in a separate docket.<sup>13</sup> In the separate docket,<sup>14</sup> the WUTC has since agreed to order Qwest and Verizon to provide confidential data similar to that described in Attachments A and B to CLECs and staff pursuant to an appropriate protective order (similar to the one described in Attachment A).<sup>15</sup> The ALJ indicated in the workshop that the WUTC will also address a process for updates to the Commission's wire center list. CLECs ask the Commission to similarly develop an approved wire center list to gain the same efficiencies that the WUTC found in engaging in a one-time review to avoid multiple case-by-case disputes.

### **Request for Commission Action**

For the reasons stated, the Joint CLECs ask the Commission to order Qwest to provide the underlying data subject to an appropriate protective order, to develop a Commission-approved initial list of non-impaired wire centers after party review and discussion of that data, and to implement a process for updating and approving the lists.

Very truly yours,

Davis Wright Tremaine LLP

Gregory J. Kopta

Enclosures

cc: Attached Service List

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<sup>13</sup> WUTC Docket No. UT-043013, September 22, 2005 (Order No. 18 ¶¶12 & 19) (affirming Verizon ALJ Arbitration Order No. 17, ¶¶106, 116-117). Both are available at: [www.wutc.wa.gov](http://www.wutc.wa.gov) (in "docket lookup" enter 043013; click on Verizon Northwest Inc.; click on "orders" and go to Order Nos. 17 and 18).

<sup>14</sup>WUTC Docket No. UT-053025; TRRO Workshop in Washington on Feb. 1, 2006 and continued by telephone on February 6, 2006.

<sup>15</sup> The oral decision will be reflected in a written order that will be posted on the WUTC website (Docket No. UT-053025) at [www.wutc.wa.gov](http://www.wutc.wa.gov). For the protective order, see [http://www.wutc.wa.gov/rms2.nsf/0/7ED3BB3AD74613AA882571110068E363/\\$file/Order%2BNo.%2B01%2B-%2BProtective%2BOrder.pdf](http://www.wutc.wa.gov/rms2.nsf/0/7ED3BB3AD74613AA882571110068E363/$file/Order%2BNo.%2B01%2B-%2BProtective%2BOrder.pdf)