

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Investigation into)
Qwest Wire Center Data) **DOCKET NO. 06-049-40**
)

**SURREBUTTAL TESTIMONY OF
DOUGLAS DENNEY**

PUBLIC VERSION

**ON BEHALF OF ESCHELON TELECOM, INC., AND
JOINT CLECS, INCLUDING COVAD COMMUNICATIONS
CORPORATION AND XO COMMUNICATIONS SERVICES, INC.**

JUNE 5, 2006

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I. INTRODUCTION

3

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

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A. My name is Douglas Denney. I work at 730 2nd Avenue South, Suite 900 in

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Minneapolis, Minnesota.

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Q. DID YOU FILE REBUTTAL TESTIMONY IN THIS DOCKET ON APRIL

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26, 2006?

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A. Yes.

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Q. WHAT IS THE PURPOSE OF THIS TESTIMONY?

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A. The purpose of this testimony is to reply to issues raised by Qwest in its response

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testimony filed on May 24, 2006. I also respond to issues raised by DPU /

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Department of Commerce witness, Casey Coleman in his direct testimony filed on

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May 26, 2006. In addition, I review Qwest's 2004 line count data and

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demonstrate that, as with the 2003 data, if properly counted, does not support

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Qwest's claims of "non-impaired" status for DS1 loops in the Salt Lake City

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Main wire center.

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Q. PLEASE SUMMARIZE YOUR TESTIMONY

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A. Qwest's response testimony failed to provide any additional evidence or

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information that would cause the Joint CLECs to update the positions taken in

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rebuttal testimony.

1 Qwest failed to provide evidence or sufficient rationale to justify why it ignored
 2 its own field verification process when establishing the number of fiber-based
 3 collocators in the Ogden Main and Provo wire centers.

4 Qwest provided no additional rationale as to why the Commission should rely
 5 upon Qwest’s methodology for counting switched business lines. Qwest’s
 6 adjustment to its ARMIS data is clearly inappropriate and if proper adjustments
 7 are made, with either 2003 or 2004 data, Salt Lake Main does not qualify for
 8 “non-impaired” status for DS1 loops. The DPU confirms this fact in its
 9 testimony. In addition, Qwest offers no rationale as to why it should be able to
 10 retroactively declare wire centers “non-impaired” as it has done with Salt Lake
 11 West and Salt Lake South. Table 7 below summarizes the parties’ conclusions
 12 regarding the “non-impairment” status of Qwest’s wire centers.

13 **Table 7: Summary of Parties’ Proposed Wire Center Designation**

Wire Center	CLLI(8)	Wire Center Designation		
		Qwest	Joint CLECs	DPU
Murray	MRRYUTMA	T1	T1	T1
Ogden Main	OGDNUTMA	T1	T2	T1
Provo	PROVUTMA	T1	T2	T1
Salt Lake Main	SLKCUTMA	T1, DS1 & DS3 Loops	T1, DS3 Loops	T1, DS3 Loops
Salt Lake West	SLKCUTWE	T1	T2 from 3.11.05 to 7.7.05, T1 as of 7.8.05	T2 from 3.11.05 to 7.7.05, T1 as of 7.8.05
Salt Lake South	SLKCUTSO	T1	T1 as of 7.8.05	T1 as of 7.8.05

14
 15 Another issue raised in the case is the process for adding wire centers to the “non-
 16 impaired” list going forward. The process recommended by Qwest and the DPU
 17 will result in unnecessary and potentially prolonged disputes. When Qwest
 18 proposes an update to the “non-impaired” status of a wire center, Qwest should

1 provide all supporting information along with that update so that CLECs and the
2 Commission can begin an immediate review of Qwest's claims. A filing without
3 sufficient data should be considered incomplete and should not be approved by
4 the Commission. Qwest proposes to prolong the process by filing only the names
5 of the updated wire centers and then force the CLECs to object before the
6 underlying data is provided. The DPU allows for only five days of review of
7 Qwest's supporting information. Even with some advance verification, as
8 proposed by the DPU, five days is not sufficient for review.

9 Qwest also proposes short, unsupported time frames to transition impacted
10 circuits from UNEs to alternative services. By refusing to provide advanced
11 notice of wire centers that are close to reaching "non-impaired" status and
12 allowing for only a ninety (90) day transition period away from impacted UNEs,
13 Qwest is unnecessarily adding to the risk already inherent in the CLECs'
14 business.

15 Finally, Qwest is asking this Commission to forego jurisdiction over the transition
16 of UNEs and allow Qwest to impose charges from its Federal Interstate Tariff to
17 convert impacted UNEs to private line services. Qwest's proposed method for
18 converting circuits is for the benefit of Qwest, not CLECs or CLECs' end user
19 customers, and thus Qwest should not be allowed to charge its proposed fee. This
20 Commission has jurisdiction over the transition of UNEs, and if it determines that
21 a fee is appropriate, the Commission should authorize Qwest to apply the charge
22 previously approved by this Commission for a similar transition from private lines
23 to UNEs.

1 **Q. BEFORE WE GET INTO THE SUBSTANCE OF YOUR TESTIMONY,**
2 **PLEASE DESCRIBE HOW IT IS ORGANIZED.**

3 A. My testimony is divided into six sections. Following Section I's introduction and
4 summary, Section II focuses on fiber-based collocation and responds to the
5 response testimony of Ms. Torrence.¹ This section explains that Qwest did not
6 provide the necessary explanation and/or information regarding the fiber-based
7 collocations in dispute in two Qwest offices (Ogden Main and Provo). Section III
8 focuses on the switched business line count data and responds to the testimony of
9 Mr. Teitzel.² This section demonstrates that the Salt Lake Main wire center does
10 not qualify for "non-impaired" status for DS1 loops. Section IV responds to the
11 testimony of Ms. Albersheim³ and explains why Qwest's proposal for making
12 updates to the wire center list is inappropriate. Section V responds to the
13 testimony of Ms. Million⁴ regarding the appropriate NRCs for converting from
14 UNEs to private line circuits. Section VI concludes my testimony.

15 **Q. ARE THERE ANY EXHIBITS TO YOUR TESTIMONY?**

16 A. Yes, I have one exhibit to this testimony.

17 **Exhibit DD-08:** Contains portions of Qwest's highly confidential line 2004 line
18 count data that Qwest filed as response to this Commission's motion to compel.
19 Included are Highly Confidential Attachments A, C and D to Qwest's first
20 supplemental response to Joint CLEC Data Request 01-033 and Highly

¹ Response Testimony of Rachel Torrence on behalf of Qwest Corporation, Docket No. 06-049-40 ("Torrence Response"), May 24, 2006.

² Response Testimony of David L. Teitzel on behalf of Qwest Corporation, Docket No. 06-049-40 ("Teitzel Response"), May 24, 2006.

³ Response Testimony of Renée Albersheim on behalf of Qwest Corporation, Docket No. 06-049-40 ("Albersheim Response"), May 24, 2006.

⁴ Response Testimony of Teresa K. Million on behalf of Qwest Corporation, Docket No. 06-049-40 ("Million Response"), May 24, 2006.

1 Confidential Attachment B to Qwest’s second supplemental response to Joint
 2 CLEC Data Request 01-033.

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4 **Q. DO YOU HAVE ANY UPDATES TO THE TABLES IN YOUR**
 5 **REBUTTAL TESTIMONY?**

6 A. Yes. Table 6 in my direct testimony summarized state commission decisions on
 7 line counts. Since filing my direct testimony in Utah, I learned of two additional
 8 state decisions relating to the counting of switched business lines, California and
 9 Georgia, and I have added them to the table.

10 **Table 8: Update to Table 6 in Direct Testimony**
 11 **Summary of State Commission Switched Business Line Count Decisions**

State	RBOC	Docket	Decision Date	Vintage of Data	ARMIS 43-08	Residential UNE Loops	Non-Switched UNE Loops	CLEC High Cap Loop Count
		CLEC Position		Dec-04	As Is	Exclude	Exclude	Used Capacity
		AT&T (SBC) Position		Dec-03	As Is	Include	Include	Full Capacity
CA	ATT	Application 05-07-024	27-Jan-06	X	As Is	Include	Include	Full Capacity
IL	ATT	Docket 05-0042	2-Nov-05	N/A	As Is	Include	Include	N/A
IN	ATT	Case No. 42857	11-Jan-06	N/A	As Is	Include	Include	N/A
MI	ATT	Case No. U-14447	20-Sep-05	Dec-04	N/A	Exclude	N/A	N/A
OH	ATT	Case No. 05-887-TP-UNC	9-Nov-05	N/A	N/A	Include	Include	N/A
TX	ATT	PUC Docket No. 31303	7-Apr-06	Dec-03	As Is	Include	Include	Full Capacity
		Bell South		Dec-04	Adjusted	Include	Include	Full Capacity
FL	BS	Docket No. 041269-TP	2-Mar-06	N/A	Adjusted	Include	Include	Full Capacity
GA	BS	Dockte No. 19341-U	2-Mar-06	N/A	Adjusted	Include	Include	Full Capacity
NC	BS	Docket No. P-55 SUB 1549	1-Mar-06	Dec-04	As Is	Exclude	N/A	Used Capacity
SC	BS	Docket No. 2004-316-C	10-Mar-06	N/A	Adjusted	Include	Include	Full Capacity
		Qwest Position		Dec-03	Adjusted	Include	Include	Full Capacity
WA	Q	Docket UT-053025	20-Apr-06	Dec-03	As Is	Include	Include	Full Capacity
		Verizon Position		Dec-03	As Is	Include	Include	Full Capacity
WA	V	Docket UT-053025	20-Apr-06	Dec-03	As Is	Include	Include	Full Capacity

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1 An “X” in the table above indicates that the issue has not yet been litigated in the
2 state.⁵

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II. FIBER-BASED COLLOCATION

5 **Q. PLEASE SUMMARIZE THE DISPUTE REGARDING FIBER-BASED**
6 **COLLOCATORS IN UTAH.**

7 A. The relevant dispute regarding the number of fiber-based collocators involves two
8 wire centers in Utah, Ogden Main and Provo. In both of these offices, the dispute
9 surrounds whether a single carrier, [*** **Begin Confidential**] [End
10 **Confidential** ***], should be counted as a fiber-based collocator.

11 This carrier has not confirmed to Qwest or the Joint CLECs that it is a fiber-based
12 collocator and Qwest’s field verification failed confirm that this carrier is a fiber
13 based collocator.

14 Qwest has claimed that, “[i]f information was missing from a verification
15 worksheet, the available information was further investigated, and, as I previously
16 stated, corroborated with other data.”⁶ However, Qwest has failed to explain its
17 justification for ignoring its field verifications, other than to say it relied on other
18 data. The Joint CLECs invited Qwest to provide any additional information upon

⁵ The California decision was part of an AT&T (previously SBC) arbitration regarding TRO/TRRO issues, but did not include an actual review of the AT&T line count data. As a result the proper vintage of the data has not yet been litigated.

⁶ *Torrence Response*, page 10, lines 20 – 22

1 which it relied,⁷ but Qwest has failed to do so. There are multiple actions Qwest
2 could have taken, including a clear explanation as to why Qwest made the
3 determination it did, follow up verification with the carrier in question, or a
4 follow up field verification regarding the missing information. Qwest took none
5 of these actions.

6 **Q. HAVE THE JOINT CLECS ATTEMPTED TO VERIFY QWEST’S FIBER-**
7 **BASED COLLOCATION DATA USED TO SUPPORT “NON-**
8 **IMPAIRMENT” CLAIMS FOR WIRE CENTERS IN UTAH?**

9 A. Yes. Because CLECs do not have independent information with regard to fiber
10 based collocations, the CLECs have relied upon and reviewed the data provided
11 by Qwest. The Joint CLECs reviewed the claims made by Qwest, asked for and
12 reviewed this additional information that would help substantiate these claims.
13 The Joint CLECs also attempted to contact various carriers in order to verify their
14 status as fiber-based collocators. Based upon this information, we were able to
15 verify Qwest’s claims for most wire centers on Qwest’s list in Utah. In my
16 rebuttal testimony I described the areas where the Joint CLECs were unable to
17 verify Qwest’s claims.⁸ Qwest had the opportunity to explain its position
18 regarding the disputed wire centers, but did not provide any additional
19 explanation or information that would allow the Joint CLECs to verify the two
20 offices in dispute.

⁷ Rebuttal Testimony of Douglas Denney on Behalf of Eschelon Telecom, Inc., and Joint CLECs, Including Covad Communications Corporation And XO Communications Services, Inc., Docket 06-049-40, April 26, 2006 (“*Denney Rebuttal*”), page 16, lines 1 – 3.

⁸ *Denney Rebuttal*, page 11.

1 **Q. WHAT ARE QWEST’S CRITICISMS OF THE JOINT CLECS’**
2 **VERIFICATION PROCESS?**

3 A. Qwest made two general criticisms of the Joint CLECs’ attempts to verify the
4 fiber-based collocations. First, Qwest complains that the Joint CLECs did not
5 blindly trust the information that Qwest provided with its direct testimony.
6 Second Qwest claims that the Joint CLECs could have easily independently
7 verified the fiber-based collocators in Qwest’s wire centers.

8 *Qwest’s background information was essential in the Joint CLECs’ review of*
9 *Qwest’s fiber based collocation data*

10 Ms. Torrence states that “Qwest did not provide any additional information to
11 what it had previously provided, but rather, merely provided back-up documents
12 for the information that was already included in my testimony.”⁹ However, this
13 back up material was crucial for examining Qwest’s fiber-based collocation
14 claims. Although critical of some aspects of Qwest’s verification process,¹⁰ the
15 Joint CLECs relied extensively upon the information provided by Qwest, as the
16 Joint CLECs do not have any other independent source of information regarding
17 fiber-based collocators in Qwest’s wire centers. Qwest’s wire center designations
18 have a potentially significant financial impact upon CLECs, thus it is only prudent
19 to review Qwest’s claims closely. Although Ms. Torrence states: “The
20 information provided on these worksheets, once corroborated by other data,
21 substantiated the existence of fiber-based collocators that Qwest used in

⁹ *Torrence Response*, page 4, lines 6 - 8.

1 determining which wire centers are non-impaired,...”¹¹ the Joint CLECs found
2 inconsistency in the “background” data Qwest provided. Qwest apparently (and
3 mistakenly) believes that its assurances, without background information, should
4 be good enough for the CLECs.

5 ***It is unreasonable to expect the Joint CLECs to perform an independent field***
6 ***verification when Qwest was unable to verify on its own***

7 Ms. Torrence apparently believes that this information is self-evident without
8 access to carrier names, ordering and billing records, and Qwest’s central offices.
9 “Joint CLECs could have easily independently obtained the information about the
10 existence and number of fiber-based collocators...”¹² Ms. Torrence provides no
11 suggestions as to how the Joint CLECs could have performed this allegedly easy,
12 independent verification other than to suggest CLECs’ visit Qwest’s central
13 offices. She claims that the Joint CLECs could “have conducted their own
14 physical verifications of the number of fiber-based collocators in Qwest’s wire
15 centers...”¹³ This is ironic, since the only two offices in dispute involve fiber-
16 based collocators that Qwest was unable to verify when Qwest performed its own
17 field verification. The Joint CLECs have no more opportunity than Qwest to
18 “access those carriers’ networks”¹⁴ to verify whether they are fiber-based
19 collocators. Further, though CLECs have access to their own collocation cages

¹⁰ See *Denney Rebuttal*, pages 9 – 12.

¹¹ *Torrence Response*, page 4, line 19 - 22

¹² *Torrence Response*, page 5, lines 1 – 2.

¹³ *Torrence Direct*, page 3, lines 20 – 21.

1 and can make some observations regarding carriers located near the CLEC,
2 CLECs do not have the ability to wander through Qwest's offices taking
3 inventory of equipment. Qwest's SGAT in Utah contains the following language
4 restricting a CLEC's access to Qwest's wire center:

5 CLEC shall be restricted to corridors, stairways, and elevators that provide
6 direct access to CLEC's space, or to the nearest restroom facility from
7 CLEC's designated space, and such direct access will be outlined during
8 CLEC's orientation meeting. Access shall not be permitted to any other
9 portion of the building.¹⁵

10 Qwest's SGAT additionally explains, "The access control process includes but is
11 not limited to the requirement that all CLEC approved personnel are subject to
12 trespass violations if they are found outside of designated and approved areas or if
13 they provide access to unauthorized individuals."¹⁶

14 As a result, while it is unlikely that the CLEC conducting a field verification
15 would be able to verify the status of a fiber-based collocater that Qwest was
16 unable to verify through its own field verification, Qwest forbids CLECs from
17 doing so.

18 **Q. DO YOU AGREE WITH THE CONCLUSIONS REACHED BY THE**
19 **DIVISION OF PUBLIC UTILITIES WITH RESPECT TO THESE TWO**
20 **WIRE CENTERS?**

¹⁴ *Torrence Direct*, page 5, line 20.

¹⁵ *Statement Of Generally Available Terms And Conditions For Interconnection, Unbundled Network Elements, Ancillary Services, And Resale Of Telecommunication Services Provided By Qwest Corporation In The State Of Utah*, Seventh Revision, October 31, 2002, section 8.2.1.20.

¹⁶ *Id.*, section 8.2.1.18.

1 A. No. The DPU recommends that this Commission accept Qwest's Tier
2 designations for these two wire centers based upon two incorrect conclusions.

3 First, the DPU recommends accepting Qwest's list, in part because, "They did
4 field reviews to authenticate what they believed to be accurate data."¹⁷ As
5 discussed previously, for the two wire centers in question, the field verifications
6 were inconclusive, thus leading to the CLEC's dispute.

7 Second, the DPU incorrectly observes:

8 If the issue was important enough to CLECs or if Qwest had erroneously
9 designated a CLEC as a fiber-based collocator, one would conclude that
10 CLECs would respond to that request. In this case the old adage "the
11 squeaky wheel gets the grease" seems to apply. If Qwest had done
12 something incorrectly the CLECs would make that known. They have had
13 sufficient time to challenge the designations and the CLECs lack of
14 response can be consider a "silent" assent.¹⁸ [Coleman 8: 176-181]

15 This is not true as the fiber-based collocators in Qwest's offices are not
16 necessarily traditional CLECs. For example, AT&T and MCI are now owned by
17 RBOCs and operate under a different set of incentives than CLECs such as
18 Covad, Eschelon, and XO. The DPU appears to be assuming that every fiber-
19 based collocator uses UNEs and thus has an incentive to respond to Qwest's
20 inquiry. The FCC's rationale for looking at fiber-based collocations in a wire
21 center is that these carriers potentially offer transport alternatives to CLECs.¹⁹ If

¹⁷ Direct Testimony of Casey J. Coleman on Behalf of the Division of Public Utilities Department of Commerce, Docket No. 06-049-40, ("Coleman Direct"), page 7, lines 169 – 170.

¹⁸ Coleman Direct, page 8, lines 176 – 181.

¹⁹ In the Matter of Review of Unbundled Access to Network Elements, Review of Section 251 Unbundling

1 this is actually the case, then a fiber-based collocater would want to declare itself
2 as such because if Qwest is able to reach “non-impairment” status then the cost of
3 transport alternatives will rise, increasing the likelihood that a transport
4 competitor of Qwest can win CLEC business.

5 In addition, CLECs are small in comparison to Qwest and do not have large
6 regulatory departments. It is difficult to review, track and respond to every notice
7 Qwest sends. In the month of March, when Qwest sent its initial notice to CLECs
8 asking for verification of their fiber-based collocation status, Qwest sent 97 other
9 notices to CLECs via email. March was not unusual. It is possible that these
10 particular notices from Qwest were lost in the haystack. Qwest could have
11 attempted a more direct method of communicating with carriers that were
12 unresponsive to Qwest’s initial requests.

13 **Q. ARE THERE ANY ADDITIONAL DISPUTES REGARDING FIBER-**
14 **BASED COLLOCATION AND QWEST’S TIER DESIGNATION OF**
15 **WIRE CENTERS IN UTAH?**

16 A. Yes. The final dispute is not technically a fiber-based collocation dispute, but is
17 raised in the response testimony of Ms. Torrence, and thus I will respond to it
18 here. This dispute involves the effective date of the Tier 1 status for two Utah
19 wire centers. For these two wire centers Qwest did not provide notice to CLECs
20 that they met the Tier 1 status until July 8, 2005. Despite this, Qwest apparently

Obligations of Incumbent Local Exchange Carriers, Order on Remand, CC Docket No. 01-338, WC Docket No. 04-313, 20 FCC Rcd 2533, (2004) (“*Triennial Review Remand Order*” or “*TRRO*”) ¶96.

1 wishes to treat these wire centers as though they were Tier 1, effective back to
2 March 11, 2005.²⁰

3 Ms. Torrence states, “Mr. Denney claims that one wire center should remain a
4 Tier 1 wire center, but only after August 7, 2005, or subsequent to the date of
5 Qwest filing with the FCC. In doing so, however, Mr. Denney ignores the fact
6 that the fiber-based collocations for that particular wire center were all operational
7 as of March 11, 2005.”^{21, 22}

8 I did not ignore the fact these wire centers met the FCC criteria on March 11,
9 2005, but that point is irrelevant. The relevant point is that Qwest made no claims
10 with regard to these wire centers and CLECs had no information that would lead
11 them to believe that these wire centers were Tier 1. Qwest cannot retroactively
12 make claims about the Tier status of wire centers. If this were the case, what
13 would stop Qwest from delaying the Tier designation of wire centers, claiming
14 retroactive status and as a result severely disrupting CLEC business? Qwest is
15 proposing that CLECs play a game of roulette with respect to ordering UNEs by
16 attempting to create a situation where a CLEC would not know whether it was
17 entitled to the circuit at UNE prices until well after the fact.

18 The Division of Public Utilities summarizes this dispute: “It seems a little
19 punitive to allow Qwest to collect a ‘true up’ back to March 11, 2005 when the

²⁰ See *Denney Rebuttal*, pages 13 – 14.

²¹ *Torrence Response*, page 13, lines 12 – 21.

²² Note that there are two wire centers in dispute with regard to the effective date, Salt Lake West and Salt Lake South. Qwest originally counted Salt Lake West as Tier 2 and thus it should have Tier 2 status from March 11, 2005 through July 7, 2005. Salt Lake South was not on Qwest’s initial list at all and thus would

1 Salt Lake City West and Salt Lake City South wire centers did not even appear on
2 the list of impaired wire centers until July 7, 2005. Because July 7, 2005 was the
3 first time CLECs knew that the above stated wire centers were going to be
4 affected, the ‘true up’ should commence from that date.’²³

5

6 **III. SWITCHED BUSINESS LINE COUNTS**

7 **Q. WHAT ARE THE AREAS OF DISPUTE REGARDING THE PROPER**
8 **METHODOLOGY FOR COUNTING SWITCHED BUSINESS LINES?**

9 A. There are three general areas of dispute regarding the methodology for counting
10 switched business lines. These are the appropriate vintage of the line count data,
11 the proper methodology for counting Qwest’s switched business lines, and the
12 proper methodology for counting CLEC switched business lines.

13 **Q. PLEASE DESCRIBE THE ISSUE SURROUNDING THE VINTAGE OF**
14 **THE LINE COUNT DATA AND THE POSITIONS OF THE PARTIES.**

15 The issue is whether the line count data relied upon should be reflective of the
16 date for which Qwest seeks a change in a wire center’s “non-impaired” status.
17 Qwest seeks to rely upon line count data more than a year prior to the effective
18 date of the *TRRO*.²⁴ Mr. Teitzel notes, “the FCC’s order mandates that Qwest
19 rely on official ARMIS data in determining access line counts, which establishes
20 a clear time parameter for line counts used in non-impairment determinations and

be considered Tier 3 from March 11, 2005 through July 7, 2005.

²³ *Coleman Direct*, page 9, lines 201 – 205.

²⁴ *Teitzel Response*, page 4

1 which compelled Qwest to utilized December 2003 data, the most current and
2 official ARMIS data available when Qwest was required to produce its wire
3 center non-impairment list.”²⁵ What Qwest ignores is that the FCC, when
4 discussing ARMIS data, cites to 2004 ARMIS rules. The TRRO reads “The BOC
5 wire center data that we analyze in this Order is based on ARMIS 43-08 business
6 lines,” and footnote 303 specifically refers to December 2004 ARMIS data.²⁶

7 ARMIS data is typically filed in April each year. Apparently Qwest believes that
8 because it was a few weeks away from making its “official” ARMIS filing, the
9 FCC intended for Qwest to rely upon data more than a year removed from the
10 effective date of the *TRRO*.

11 The Joint CLECs believe that the line count data should be reflective of the time
12 period for which Qwest seeks “non-impairment” status of a wire center. Since
13 Qwest seeks “non-impaired” status for Salt Lake Main as of the effective date of
14 the *TRRO*, March 11, 2005, the line count data should reflect this time period as
15 closely as possible. The DPU does not appear to take a position on this issue,
16 perhaps because even with Qwest’s outdated line counts, the DPU determined that
17 Salt Lake Main does not qualify for “non-impaired” status for DS1 loops.

18

²⁵ *Teitzel Response*, page 4, lines 14 – 19.

²⁶ TRRO ¶ 105. Footnote 303 to Paragraph 105 begins “See Industry Analysis and Technology Division, Wireline Competition Bureau, FCC, *FCC Report 43-08 Report Definition* (Dec. 2004)...” (emphasis added).

1 **Q. QWEST WAS CRITICAL OF YOUR USE OF PUBLICLY AVAILABLE**
2 **DATA TO EVALUATE MORE CURRENT LINE COUNTS. ARE**
3 **QWEST’S CRITICISMS VALID?**

4 A. Many of the shortcomings Mr. Teitzel mentioned regarding my use of ICONN
5 data are valid.²⁷ This is precisely why the Joint CLECs requested Qwest’s actual
6 line count data be contemporaneous with the implementation of the *TRRO*.²⁸ As I
7 stated in my Rebuttal Testimony, the ICONN “data is only used to demonstrate
8 the importance of reviewing data contemporaneous with the TRRO. ...it is
9 crucial to review data that actually reflects the existing state of affairs as of the
10 date the FCC requested Qwest provide it.”²⁹ I disagree with Mr. Teitzel,
11 however, when he states that I misused the ICONN data and that my “calculations
12 are not meaningful.”³⁰ Without access to Qwest’s actual line count data, the
13 ICONN data is useful in demonstrating a factual basis for doubting Qwest’s line
14 count data and explaining the need for updated actual counts. It is incumbent
15 upon CLECs to perform a “reasonably diligent inquiry.”³¹ Without access to
16 Qwest’s actual line count information, it is absolutely reasonable to make
17 inferences based on the only public information that is available.

18

²⁷ *Teitzel Response*, pages 10 – 12.

²⁸ See *Joint CLEC Motion to Compel Qwest to Respond to Data Requests*, May 2, 2006.

²⁹ *Denney Rebuttal*, page 21, lines 6 – 10.

³⁰ *Teitzel Response*, page 12, lines 4 and 9.

³¹ *TRRO*, ¶234

1 **Q. DID YOU EVALUATE QWEST’S SWITCHED BUSINESS LINE COUNT**
2 **DATA CORRESPONDING WITH THE EFFECTIVE DATE OF THE**
3 **TRRO?**

4 A. Yes. Based on a review of the line count data Qwest provided, the Salt Lake City
5 Main wire center should be considered “non-impaired” for DS3 loops, but not for
6 DS1 loops.³² Qwest provided December 2004 switched line counts as a
7 supplemental response to Joint CLEC data requests 01-031 and 01-033 as a result
8 of this Commission’s motion to compel the production of this data.³³ In response
9 to this request, Qwest provided line count data for the Salt Lake City Main wire
10 center as well as the Midvale wire center.³⁴

11 Correcting the line count data Qwest provided to reflect actual ARMIS data
12 results in line counts for Salt Lake City Main below the DS1 Loop “non-
13 impairment” threshold of 60,000 switched business lines and for Midvale below
14 the Tier 2 “non-impairment” threshold of 24,000 switched business lines.

15 Correcting the line count data Qwest provided to reflect actual switched CLEC
16 lines in use rather than the full capacity of these lines also reduces Salt Lake City
17 Main below 60,000 lines and Midvale below 24,000.

18 Highly Confidential Table 9 below contains the results of the two adjustments

³² The Joint CLECs previously agreed that this wire center should be classified as Tier 1.

³³ See Highly Confidential Exhibit DD-08.

³⁴ Qwest included data for Midvale because the “use of December 2004 data causes the Midvale wire center to move from Tier 3 to Tier 2 non-impairment status.” See Highly Confidential Exhibit DD-08, Qwest’s Supplemental Response 01-031S1 to part A. Qwest’s current position with regard to Midvale is unclear. Qwest has made no indication, other than to include Midvale in the data response, that it seeks to add Midvale to the “non-impaired” list.

1 mentioned as well as the combined impact.

2 **Highly Confidential Table 9**

3 **Corrections to Qwest's December 2004 Line Count Data**

4 ***** Begin Highly Confidential**

5 [REDACTED]

6 **[End Highly Confidential ***]**

7 Because Qwest has taken the position that line counts can only be produced on an
8 annual basis, going forward, Qwest should be prohibited from attempting to make
9 updates to its wire center list, based on line counts, utilizing any data other than
10 end of year data.

11 **Q. PLEASE DESCRIBE THE ISSUE INVOLVING THE PROPER**
12 **METHODOLOGY FOR COUNTING ARMIS DATA AND EACH**
13 **PARTIES POSITION ON THIS ISSUE.**

14 A. Instead of relying directly upon its ARMIS line counts, Qwest manipulates the
15 ARMIS data by counting the full capacity of its switched services, rather than the
16 actual number of lines served by these services.³⁵ The Joint CLECs and the DPU

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³⁵ *Teitzel Response*, pages 13 – 14.

1 reject Qwest's methodology and instead believe the wire center specific ARMIS
2 data should be used without adjustment for full capacity.³⁶

3 Allowing Qwest to count total capacity rather than actual lines served provides
4 Qwest the incentives to manipulate its service offerings in order to obtain "non-
5 impaired" status in a wire center. For example, suppose Qwest has 100
6 businesses, each purchasing four business lines. Under the current ARMIS
7 methodology this would be counted as 400 business lines (4×100). If Qwest's
8 methodology for counting ARMIS business lines is adopted, Qwest could choose
9 to serve each business with a DS1 loop. Each business would still have four
10 active voice channels on that DS1 loop, but Qwest would now be able to count
11 2,400 business lines (24×100), an increase of 2,000 lines. Under Qwest's
12 methodology Qwest would have the opportunity to reach "non-impaired" status in
13 its wire centers without a change in demand in those wire centers. This clearly
14 was not the intent of the FCC.

15 Further, it is important to remember why the FCC directed us to count business
16 lines in the first place. The FCC's basis for using line counts as a proxy for
17 impairment rests on the assumption that line counts provide a good indication of
18 the potential for deploying facilities profitably.³⁷ Unused capacity generates no
19 revenue and clearly cannot be an indicator of economic opportunity.

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³⁶ *Coleman Direct*, page 6, lines 96 – 101.

³⁷ *TRRO*, ¶168.

1 **Q. MR. TEITZEL IS CRITICAL OF YOUR CORRECTED ARMIS LINE**
2 **COUNTS, IS HIS CRITICISM VALID?**

3 A. No. Mr. Teitzel states that, “even if Mr. Denney were correct in attempting to
4 count actual ‘in service’ digital business channels in his count of switched
5 business lines, the value he elected to use does not capture actual digital business
6 channels in service associated with the Salt Lake City Main wire center.” If any
7 problem exists in correcting Qwest’s line counts to reflect the ARMIS line count
8 methodology, the problem lies in the data provided by Qwest. I relied upon data
9 Qwest provided in response to the Joint CLEC Data Request 01-030 (d). This
10 question stated, “If the methodology used to determine the line counts in (c)
11 above differ from the methodology used to determine switched business line
12 counts for ARMIS 43-08, describe the differences and any data that would allow
13 the Commission or participants to reconcile this data...”³⁸ Qwest’s claim is that
14 the ARMIS line counts Qwest provided in response to JCDR 01-030(d) are
15 counted in the wire center where they are switched, rather than the wire center
16 where the customer resides. First, based on information Qwest supplied in
17 Washington, the impacts of this claim are small and do not appear bias the line
18 counts either upward or downward. Second, if Qwest believes the data it
19 provided is incorrect, then Qwest should correct the data so that it accurately
20 reflects switched business lines by wire center.

³⁸ See Exhibit DD-01, JCDR 01-030 part (d).

1 **Q. PLEASE DESCRIBE THE ISSUES SURROUNDING THE PROPER**
2 **COUNT OF CLEC SWITCHED BUSINESS LINES AND SUMMARIZE**
3 **EACH PARTY'S POSITION.**

4 A. There are three areas of dispute involving the proper counting of CLEC switched
5 business lines; these are: (1) whether the CLEC switched business line counts
6 should include residential loops; (2) whether the CLEC switched business line
7 counts should include non-switched lines; (3) whether the switched business line
8 counts should include CLEC capacity that is not being purchased by end user
9 customers.

10 Qwest reads the part of the FCC's switched business line count definition that
11 refers to CLEC line counts in isolation of the rule as a whole and with out regard
12 for what is being counted.³⁹ The Joint CLECs believe that the FCC's intent and
13 the clear meaning of the rule when read as a whole, is to count switched business
14 lines. This means that residential lines, non-switched lines and un-used capacity
15 should not be included in the CLEC counts. The DPU agrees with Qwest with
16 regard to CLEC line counts.⁴⁰

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³⁹ *Teitzel Response*, pages 15 – 17.

⁴⁰ *Coleman Direct*, page 6, lines 133 – 138.

1 **Q. PLEASE SUMMARIZE THE PARTIES' POSITIONS IN THE AREAS OF**
2 **DISPUTE REGARDING THE PROPER METHODOLOGY FOR**
3 **COUNTING SWITCHED BUSINESS LINES FOR THE**
4 **DETERMINATION OF "NON-IMPAIRED" STATUS OF QWEST WIRE**
5 **CENTERS.**

6 A. Table 10 below summarizes the issues in dispute and each party's position in this
7 case.

8 **Table 10: Summary of Each Party's Position**

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	Joint CLECs	Qwest	DPU
Vintage of Data	Dec-04	Dec-03	X
ARMIS 43-08	Actual	Capacity	Actual
CLEC Switched Business Line Counts			
Include Residential UNE Loops?	Exclude	Include	Include
Include non-Switched UNE Loops?	Exclude	Include	Include
Include CLEC High Cap Spare Capacity?	Exclude	Include	Include

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IV. UPDATES TO QWEST'S WIRE CENTER LIST

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**Q. PLEASE SUMMARIZE AND COMPARE EACH PARTY'S PROPOSAL
FOR MAKING UPDATES TO THE WIRE CENTER LIST.**

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A. The proposed process for updating the "non-impaired" status of Qwest's wire centers in Utah has six components: (1) list of potential candidates for the wire center list; (2) Qwest's notice to CLECs; (3) CLECs' opportunity to respond to Qwest; (4) the effective date of wire center updates; (5) blocking CLEC UNE orders; and (6) the appropriate transition period.

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(1) List of Potential Candidates for the Wire Center List

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Both the Joint CLECs and the DPU support some type of list containing potential candidates for Qwest's "non-impaired" wire center list. The Joint CLECs proposed that if a wire center reaches 5,000 switched business lines or one fiber-based collocator of meeting a threshold, it be included on a list of potential additions to the wire center list.⁴¹

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The DPU proposes that Qwest file its ARMIS 43-08 with the DPU and the Commission when a wire center reaches 5,000 lines of a threshold.⁴² The Joint CLECs support this aspect of the DPU's proposal, however, two clarifications to the DPU proposal are necessary. First, the Joint CLECs need to be aware of the wire centers that are close to meeting the threshold. I was unclear whether under the DPU proposal, Qwest's advanced filings of potential "non-impaired" wire

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⁴¹ Denney Rebuttal, page 37, lines 12- 14.

1 centers would be made available to CLECs. If the list is only made available to
2 the DPU and Commission it would defeat the purpose of the Joint CLEC
3 proposal, which is to allow for informed business planning. In addition, it is
4 imperative that the Joint CLECs have the opportunity to review Qwest's line
5 count and fiber-based collocation information, before any additional are made to
6 the wire center list. The Joint CLECs do not need to review this information for
7 potential wire centers, but require review, as part of its reasonably diligent
8 inquiry, when Qwest proposes to add wire centers to the non-impaired list.
9 Performing a preliminary review of data, may expedite final review to some
10 degree, but not in its entirety. Qwest needs to pass the "non-impairment" test at
11 the point in time that it files for "non-impairment" status. At that time the most
12 recent line count and fiber-based collocation data should be used. Presumably
13 this information would have changed from preliminary data, or else Qwest would
14 have filed for "non-impairment" status previously. As a result, the new
15 information will need to be verified.

16 Qwest opposes providing notice because reaching "5,000 lines or one fiber
17 collocator does not mean that a change in the impairment classification for that
18 wire center is imminent."⁴³ In addition, Qwest argues that "advanced notification
19 could allow a CLEC to attempt to "game" the system by changing its business
20 plans so that the wire center would be unlikely to meet the threshold."⁴⁴

⁴² *Coleman Direct*, page 9, lines 213 – 216.

⁴³ *Albersheim Response*, page 10.

⁴⁴ *Id.*

1 Certainly a wire center could fall within 5,000 lines or one fiber-based collocator
2 without ever being considered “non-impaired,” but it must pass through one or
3 both of these thresholds in order to reach “non-impaired” status, and thus the
4 measure provides meaningful information that a CLEC may consider. If a CLEC
5 chooses to “game” the system, then it is a game that only Qwest can win. If all
6 CLECs collectively refuse to enter a market, or curtail their growth in a market,
7 then Qwest is the company that wins by thwarting competition. However, this
8 type of gaming is unlikely. First, CLECs don’t share their business plans with
9 each other, as we compete, not only with Qwest, but also with other CLECs – thus
10 as a group CLECs could not, and would not, collectively agree on where they will
11 compete with Qwest. Further, it is not at all obvious that every CLEC would
12 choose not to establish a fiber-based collocation in order to allow other CLECs to
13 retain access to UNEs. The FCC’s use of fiber-based collocators is designed to
14 measure impairment. If a wire center can support competition without UNEs,
15 CLECs seeing that opportunity will deploy facilities and see benefit in the fact
16 that doing so denies its competitors access to UNEs.

17 The importance of advanced notification of potential “non-impaired” wire centers
18 is so that CLECs can make informed decisions regarding how they enter a market
19 and the type of products they provide. Qwest would prefer a CLEC operate
20 blindly, where tomorrow, without warning, the CLECs cost of purchasing loops
21 could triple, making even the best business plans obsolete. Qwest’s aversion to
22 providing advanced notice, combined with its very short transition periods
23 unnecessarily increases the risk of an already risky business.

1 (2) *Qwest Notice to CLECs*

2 Qwest proposes that it file any new wire centers for the wire center list with the
3 Commission and provide notice to CLECs through the Change Management
4 Process.⁴⁵ Qwest's proposal falls short in one key aspect. Qwest cannot be
5 allowed simply to provide a list to the Commission and CLECs, but should be
6 required to provide information in support of that list.⁴⁶ Qwest should be required
7 to provide this information to both the Commission and CLECs that are involved,
8 or wish to be involved, in reviewing Qwest's wire centers. Without supporting
9 information it is difficult for me to see how CLECs could agree to Qwest's list.
10 In other words, without supporting information, CLECs would be forced to
11 challenge Qwest's list each time it makes a change. This would unnecessarily
12 prolong the implementation of updates to the wire center list. Providing the
13 required information when Qwest makes its filing will facilitate updates and
14 potentially eliminate, or at least reduce, disputes.

15 In my rebuttal testimony I recommended that Qwest notify CLECs at least five
16 days in advance of making a filing with the Commission to updates its wire center
17 list.⁴⁷ Qwest apparently misunderstands this request for five days notice.⁴⁸ As

⁴⁵ *Albersheim Response*, page 4.

⁴⁶ The required information should include information similar to what Qwest has provided in this case. Line count data should be consistent with the Commission's order in this case. Detailed data, including any calculations Qwest made to underlying line count data should be provided. In addition, CLEC specific data should be provided in a masked format so that CLECs have the opportunity to verify the correct use of their line count data. For fiber-based collocations Qwest should provide the names of the fiber-based collocators; any correspondence with those collocators that attempts to verify the fiber-based collocation status, including identification of any disputes; the results of any field verification that Qwest performed, and other relevant information Qwest relied upon to make its determination.

⁴⁷ *Denney Rebuttal*, page 35, lines 17 – 20.

⁴⁸ *Albersheim Response*, page 9.

1 stated, the Joint CLECs require that Qwest file supporting data along with its
2 proposed additions to the “non-impaired” wire center list. Since this supporting
3 data contains both Qwest and CLEC proprietary information, the Joint CLECs
4 recommend that Qwest provide advanced notice that it is going to file this
5 information. As stated in my rebuttal testimony, Qwest routinely provides such
6 notice to give parties the opportunity to object to having this information
7 released.⁴⁹

8 ***(3) CLECs Opportunity to Respond to Qwest’s Notice***

9 Qwest proposes that CLECs have 30 days to object to Qwest’s additions to the
10 wire center list.⁵⁰ This time is sufficient as long as Qwest provides the underlying
11 supporting data with its wire center list. Thirty days is sufficient time to review
12 Qwest’s data, request additional information, if necessary, and indicate to the
13 Commission whether the CLECs agree with Qwest’s additions.

14 The DPU suggests that the CLECs have only five days to object.⁵¹ This time is
15 not sufficient and would force the CLECs to object in all cases because they
16 would not have had sufficient time to review Qwest’s data. CLECs may have
17 questions about the data Qwest provides that can be resolved, without the CLECs
18 having to formally dispute Qwest’s filing. It is in all parties’ interest to attempt to
19 resolve disputes before bringing them to the Commission. Verifying the fiber-
20 based collocation data can be a time consuming process, especially as Qwest

⁴⁹ *Denney Rebuttal*, page 35, line 19 through page 36, line 2.

⁵⁰ *Albersheim Response*, page 4.

⁵¹ *Coleman Direct*, page 10, lines 239 – 241.

1 counts carriers as fiber-based collocators without the carriers' explicit consent.
2 As a result, close examination of the fiber-based collocation data is required and
3 this may include attempting to verify with each carrier whether it is a fiber-based
4 collocator. Based on my experience, this does not happen quickly. Verifying
5 carrier specific line count data can also be time consuming. Qwest's loop bills do
6 not include on the bill the wire center where the loop is being purchased. As a
7 result it is not a simple task to verify historical wire center specific line counts.
8 Further, CLECs are small companies that often do not have the redundancy that
9 larger companies can afford. Under a five day response window, an employee
10 vacation could easily forfeit a CLEC's opportunity to object to Qwest's filing.
11 For these reasons, the Commission should provide 30 days to review Qwest's
12 filing, along with underlying data for updates to the "non-impaired" wire center
13 list.

14 ***(4) Effective Date of Wire Center Updates***

15 Qwest proposes that additions to the "non-impaired" wire center list
16 become effective 30 days after Qwest's notifies CLECs that the impairment status
17 has changed.⁵² If a CLEC disputes Qwest filing and it is eventually determined
18 that Qwest's filing was accurate, Qwest requests that it be able to back bill
19 CLECs to the proposed effective date. The Joint CLECs believe the effective data
20 should be established by the Commission when it approves Qwest's wire center

⁵² *Albersheim Response*, page 4. At *Albersheim Response*, page 8, contradicts the thirty day effective date by stating that if Qwest has filed to have a wire center added to the "non-impaired" list, the "CLEC would then be on notice that its authorization to place such an order is in dispute pending a decision by this Commission on the status of the wire center." Qwest should clarify its position. I am operating under the assumption that Qwest will allow CLECs to place UNE orders until a wire center is approved by the

1 list. Circumstances specific to Qwest's filing may arise that would warrant an
2 effective date different from a strict thirty day time frame proposed by Qwest.
3 For example, Qwest may fail to provide underlying support for its wire center
4 updates, which make review of Qwest's filing difficult, if not impossible. In this
5 scenario the Commission should have the ability to delay the effective date of
6 Qwest's proposed updates, until after CLECs have had the opportunity to review
7 Qwest's supporting information. Otherwise, under Qwest's proposal, Qwest may
8 as well claim every wire center in Utah "non-impaired" in hopes that some will
9 stick. If Qwest does not have to supply the underlying supporting information in
10 advance, and a wire center, if it qualifies, goes on the list thirty days after Qwest
11 claims it to be "non-impaired" then Qwest has no incentive to be selective in what
12 it files. Qwest could file all the wire centers in Utah, without supporting data,
13 with no consequence. If the effective date of wire center updates is set by the
14 Commission, then Qwest will have the incentives to provide accurate supporting
15 documentation along with its filing in order to ensure prompt implementation of
16 updates to its wire center list. Likewise, if CLECs unreasonably delay Qwest's
17 implementation of its wire center updates by raising spurious issues, the
18 Commission could set the effective date retroactive to 30 days after Qwest's
19 filing. Allowing the Commission the ability to set the effective date, based on the
20 facts specific to Qwest's filing, provides all parties incentives to work together to
21 limit disputes.

22

Commission. Disputes regarding the approval process are discussed below.

1 ***(5) Blocking CLEC UNE orders***

2 Qwest claims that the method Qwest imposes for blocking orders is irrelevant and
3 that “all that the parties must agree to is when orders may be rejected.”⁵³ The
4 Joint CLECs disagree, as the devil is in the details. The method that Qwest
5 implements to block orders is not just a change to Qwest’s systems, but impacts
6 CLEC processes and CLEC systems. The Joint CLECs ask Qwest to work with
7 the CLECs, and obtain CLEC agreement, before changes are made to block
8 orders. Qwest’s unwillingness to agree to this is troublesome.

9 This request is not made so that the Joint CLECs can avoid the implementation of
10 the *TRRO*, but simply a request that CLECs be partners in the methods
11 implemented to block orders. The Joint CLECs agree to abide by a Commission
12 approved wire center list. As part of this agreement, Joint CLECs agree to be
13 mindful of and not order UNEs in wire centers on a Commission approved list. If
14 however, the CLEC errantly places an order on the Commission approved wire
15 center list, Qwest should notify the CLEC that it disputes the CLEC’s right to
16 place this order, and if Qwest is correct, the CLEC is obligated pay non-UNE
17 rates, for the circuit from the date the circuit was ordered. Qwest does not need to
18 “file separate proceedings before this Commission with each CLEC”⁵⁴ for each
19 dispute, as the CLECs agree that orders for “non-impaired” UNEs should not be
20 placed. In fact, it is in the CLEC’s interest to work with Qwest to have a process
21 in place. Because the cost alternative arrangements is significantly greater than

⁵³ *Albersheim Response*, page 6.

⁵⁴ *Albersheim Response*, page 8.

1 the cost of UNEs, it is in CLECs' interest to develop a workable solution so that
2 when a CLEC places orders for what the CLEC believes will be a UNE rate, it is
3 not eventually charged some higher rate.

4 ***(6) Appropriate Transition Period***

5 Qwest proposes that the CLEC transition from UNEs to alternative arrangements
6 within 90 days after the effective date of a new wire center.⁵⁵ It is unclear, but it
7 appears Qwest will charge UNE rates for the impacted circuits during the 90 day
8 transition period, though a CLEC could not place new UNE orders.

9 The Joint CLECs propose a one year transition period, as laid out in the *TRRO*.
10 As described in the *TRRO* and my rebuttal testimony, during the transition period,
11 CLECs would no longer be able to order UNE circuits and would pay 115% of
12 the UNE rate to Qwest.⁵⁶

13 As mentioned above, Qwest's proposed short transition period, combined with its
14 refusal to provide advanced notice of wire centers close to meeting "non-
15 impaired" status, adds unnecessarily to the uncertainty surrounding the rates and
16 availability of certain unbundled network elements.

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⁵⁵ *Albersheim Response*, page 11. Qwest actually states that the transition begins 30 days after Qwest's notice to CLECs and lasts 90 days. Because Qwest proposes that its wire center designation become effective 30 days after Qwest's notice, I assumed that Qwest's 90 day transition runs from the effective date of the updated wire centers.

⁵⁶ See *Denney Rebuttal*, page 38, lines 1 – 3 and *TRRO*, ¶5.

1 **Q. PLEASE SUMMARIZE THE PARTIES' POSITIONS IN THE AREAS OF**
 2 **DISPUTE REGARDING UPDATES TO QWEST'S LIST OF "NON-**
 3 **IMPAIRED" WIRE CENTERS IN UTAH.**

4 A. Table 11 below summarizes the issues described above and each party's position
 5 in this case.

6 **Table 11: Summary of Positions on Wire Center Updates**

Issue	Joint CLECs	Qwest	DPU
Advanced notice of "non-impaired" wire center candidates	within 5,000 lines or 1 fiber-based collocator	no advanced warning	within 5,000 lines
Filing of wire center updates should include	list of wire centers and supporting data	list of wire centers only	list of wire centers and supporting data
Time to file response to Qwest's wire center updates	30 days	30 days	5 days
Effective date of new wire centers	as ordered by Commission	30 days after notice	5 days after notice
Blocking of CLEC UNE orders	OK, with approval from CLEC	OK if wire center is on Commission list	X
Transition period and transition rate	1 year at 115% of UNE rate	90 days, rate unclear	X

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9 **V. NON-RECURRING CHARGES**

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Q. PLEASE SUMMARIZE THE PARTIES' POSITIONS WITH REGARD TO
THE APPROPRIATE NON-RECURRING CHARGES THAT SHOULD
APPLY TO THE TRANSITION OF UNE TO PRIVATE LINE
FACILITIES.

15 A. There are two main issues with respect to non-recurring charges for the transition
 16 of facilities. The first issue is one of jurisdiction. Qwest is asking this

1 Commission to declare that it does not have jurisdiction over the transition
2 process. The Joint CLECs' position is that this Commission has jurisdiction over
3 the transition of UNEs to private line circuits. Qwest claims that "assigning a
4 TELRIC rate for the nonrecurring charge associated with a tariffed interstate
5 private line service would be both an inappropriate application of TELRIC rates
6 and outside the scope of this Commission's jurisdiction."⁵⁷ However, the
7 transition away from UNEs is under a state Commission's jurisdiction. Section
8 252, including its cost provisions and its provisions giving authority to the
9 Commission to decide these, applies to conversions away from UNEs. In the
10 Verizon arbitration in Washington, for example, the ALJ found that "the
11 Commission specifically provided that the parties address through the Section 252
12 process the transition away from provisioning elements on an unbundled basis
13 that the FCC has determined are no longer required to be unbundled."⁵⁸

14 The second issue involves the appropriate rate that should apply to the transition
15 of these lines. Qwest's position is that the rate should come from its Federal
16 Interstate Access Tariff, and that the appropriate rate is the \$50 Design Change
17 Charge. The Joint CLECs believe that they should not be charged, for what is in
18 essence a change in the name of a circuit for the benefit of Qwest. If this
19 Commission nonetheless determines that a charge is appropriate, then the Joint
20 CLECs would recommend the use of rates set by this Commission, for a similar
21 transition – the NRC for changing private line circuits to UNEs.

⁵⁷ *Million Response*, page 10, lines 4 – 6.

⁵⁸ Verizon WA ALJ Arbitration Order, ¶105, citing *Triennial Review Order*, ¶¶ 700, 701; *Triennial Review*

1 Qwest attempts to justify its charge in several ways, none of which are
2 convincing. Qwest claims that although the circuit serving the end user customer
3 will not change, “it is the nature of the CLEC’s product that is changing.”⁵⁹ Qwest
4 claims that the conversion is “necessary”⁶⁰ and without charging CLECs for this
5 conversion, “the cost burden would be unfairly shifted to Qwest and its end-user
6 customers.”⁶¹ In addition Qwest implies that Qwest’s preferred method of
7 conversion is required by FCC rules.⁶² Qwest’s claims are without merit. The
8 product purchased by the CLEC is changing in price only, and the conversion
9 process that Qwest chooses to perform is for the Qwest’s benefit, not the benefit
10 of CLECs or CLECs’ end-user customers. Qwest’s talk of a cost burden on
11 Qwest’s end user customers makes no sense. Qwest is significantly raising the
12 wholesale rates for impacted circuits. The monthly increases in rates surpass the
13 \$50 charge Qwest proposes. Qwest has made no mention of how it plans on
14 passing on the increased revenues from higher wholesale prices to its end user
15 customers.

16 Additional evidence that Qwest is able to accomplish conversions via a simple
17 rate change appears in Qwest’s Interconnection Agreement Amendment relating
18 to the FCC *Omaha Forbearance Order*. The *Omaha Forbearance Order*⁶³

Remand Order, ¶ 142 n.399, ¶ 198 n.524, ¶ 228 n.630, ¶ 233.)

(<http://www.wutc.wa.gov/rms2.nsf/vw2005OpenDocket/9D2ACD4D768DABE888257084007B7673>)

⁵⁹ *Million Response*, page 2, lines 16 – 17.

⁶⁰ *Million Response*, page 4, line 9.

⁶¹ *Million Response*, page 4, line 17.

⁶² *Million Response*, page 5.

⁶³ *Memorandum Opinion and Order on the Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160(c) in the Omaha Metropolitan Statistical Area*, FCC 05-170, WC Docket No. 04-233, effective September 16, 2005, (“*Omaha Forbearance Order*”).

1 removed Qwest's obligations to provide UNEs in certain Nebraska wire centers.
2 Qwest has implemented a conversion process for DS0 unbundled loops whereby
3 there is simply a rate change.⁶⁴ Clearly a method could be developed to adjust
4 rates without changing circuit IDs. Further, Qwest should not be able to impose
5 unnecessary costs on its competitors to make changes to circuit IDs for the
6 convenience of Qwest at the inconvenience of CLECs and CLECs' end user
7 customers.

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9

VI. CONCLUSION

10 **Q. WHAT ARE YOUR RECOMMENDATIONS TO THE UTAH**
11 **COMMISSION?**

12 A. I recommend that the Commission adopt the proposals set forth by the Joint
13 CLECs, summarized in tables 9, 10 and 11. In addition this Commission should
14 confirm that it has jurisdiction over the transition from UNEs to private line
15 circuits. If the Commission determines that a rate is justified for these
16 conversions, then the Commission should adopt rates it has previously approved
17 rates for similar conversions from private line to UNE circuits.

18 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

19 A. Yes.

⁶⁴ This comes from a Qwest proposed Interconnection agreement titled, *Omaha Forbearance Order Amendment to the Interconnection Agreement between Qwest Corporation and COMPANY for the State of Nebraska*, downloaded from Qwest's website on May 18, 2006, (<http://www.qwest.com/wholesale/downloads/2006/060426/OFOICAamendment4-18-06.doc>)