

Alex M. Duarte
QWEST
421 SW Oak Street, Room 810
Portland, OR 97204
(503) 242-5623
(503) 242-8589 (facsimile)
Alex.Duarte@qwest.com

Attorney for Qwest Corporation

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of QWEST CORPORATION Petition for Commission Approval of 2008 Additions to Non-Impaired Wire Center List	Docket No. 08-049-29 QWEST'S MOTION TO LEAVE TO FILE COMMENTS TO ORDER ON REQUEST FOR REVIEW AND STAYING AUGUST 11, 2008 REPORT AND ORDER APPROVING TIER 2 DESIGNATION OF QWEST'S DRAPER WIRE CENTER, AND TO JOINT CLECs' MOTION TO VACATE AUGUST 11, 2008 ORDER
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Qwest Corporation ("Qwest") hereby respectfully seeks leave to file these comments to the Commission's August 18, 2008 Report and Order on Request for Review and Staying August 11, 2008 Report and Order Approving Tier 2 Designation of Qwest's Draper Wire Center ("Stay Order"), and to the August 13, 2008 motion of Integra Telecom of Utah, Inc. ("Integra") and XO Communications Services, Inc. ("Joint CLECs" or "CLECs") to vacate or alternatively, for review or rehearing of the Commission's August 11, 2008 Report and Order ("Original Order").

At the outset, Qwest notes that it does *not* seek a reversal of the Commission's Stay Order. The Commission has stayed its Original Order and ruled that the Joint CLECs should have additional time to complete their review and reach agreement with Qwest on the line counts for the Draper wire center, and thus Qwest will certainly abide by the Commission's Stay Order. However, Qwest seeks leave to file these comments because it had been intending to file a

response to the Joint CLECs' August 13th motion, on various grounds, prior to the Commission's August 18th Stay Order, and further, because Qwest believes that this background is important in the context of both the Joint CLECs' motion and the Commission's Stay Order.

In any event, the Joint CLECs' August 11, 2008 "objections" to Qwest's petition were *not timely*, and thus the Commission's Original Order approving the Tier 2 non-impairment for the Draper wire center was correct. Since the CLEC objections were not timely, Qwest had intended to ask the Commission to set certain limits and conditions to any further review of the line counts if the Commission granted the Joint CLECs' motion to vacate or review or rehear the Original Order.

More specifically, Qwest now respectfully requests that, since the Commission has ordered additional time for the Joint CLECs to complete their review on the line count issue, the Commission should also establish the limits and conditions to any such review that Qwest seeks here. These conditions include setting an *August 7, 2008* or *August 11, 2008 effective date* for the non-impairment designation of the Draper wire center if and when the Commission ultimately determines that the Draper wire center is non-impaired at the Tier 2 level.

ARGUMENT

I. The Joint CLECs' objections were untimely

In their motion, the CLECs state that they filed a letter electronically on August 8, 2008 in which they "objected" to Qwest's non-impaired wire center petition on grounds they purportedly had been unable to "verify the accuracy" of the line counts on which Qwest's petition is based. However, there are several key facts the Joint CLECs did not mention.

First, the Joint CLECs' "objections" were untimely. The CLECs correctly noted that the settlement agreement which the Commission approved in Docket No. 06-049-40, and which it used in Docket No. 07-049-30, sets forth the process for future non-impaired wire center

dockets. They also correctly noted that the settlement agreement provides that parties have 30 days to review the data underlying any Qwest petition to designate additional wire centers as non-impaired and to lodge any objections. The Joint CLECs also correctly noted that Qwest filed its petition on June 20, 2008, and that the Commission entered a protective order governing disclosure of the highly-confidential data on which Qwest's petition is based on July 3, 2008. However, the CLECs otherwise had their facts wrong.

For example, although Qwest does not quarrel with the Joint CLECs that "Integra representatives promptly executed the protective order" (July 3, 2008), their statements that Integra "did not receive data from Qwest until *July 9, 2008*" (emphasis added), and thus they "had until *August 8, 2008* to review the Qwest data and to file any objection" (emphasis added), were both incorrect.

To the contrary, the pertinent facts are that Integra (but only Integra) signed the protective order on Thursday, July 3, 2008 (the day before the 4th of July holiday). (Indeed, Integra was the *only CLEC* in Utah to sign the protective order and/or to ask for, and receive, highly-confidential data.) Upon return from the holiday break, Qwest promptly provided Integra with the highly-confidential data the following Monday, July 7, 2008, via overnight mail, and Integra received the data on **Tuesday, July 8, 2008, at 9:42 a.m.** See Exhibit A (UPS Tracking Shipment documents). Accordingly, Integra's deadline to file any objections was **August 7, 2008**. Thus, Integra's "objections" were simply untimely.¹ A deadline is a deadline, and the Joint CLECs, who agreed to the process that the parties are using for this docket, should be

¹ The Stay Order notes that the Joint CLECs filed their objections on August 11, 2008. Thus, the filing appears to be four days late. See <http://www.psc.state.ut.us/utilities/telecom/telecomindx/0804929indx.html>. Regardless, even if the objections were deemed filed on August 8th, they were still untimely.

required to abide by such deadline. Moreover, neither Integra nor XO (nor any other CLEC) ever requested from Qwest an extension of the 30-day period in which to file any objections.

Finally, the Division of Public Utilities (“Division”) reviewed Qwest’s data during the applicable time period and filed a memorandum on July 30, 2008 recommending that the Commission grant Tier 2 status for the Draper wire center based on the number of lines in that wire center. The Division noted that in reviewing Qwest’s data, it appeared that Qwest appropriately followed the process of counting (1) the number of lines as reported by ARMIS, and (2) Voice Grade Equivalents for UNE loops and EELs. The Division’s review showed that the Draper wire center is above the 24,000 business line threshold for a Tier 2 designation.

Accordingly, although Qwest is not seeking reversal of the Commission’s Stay Order, it does note that the Joint CLECs’ objections were untimely and that, by the time the Joint CLECs filed their objections, the Division had already reviewed Qwest’s business line data and recommended approval of Qwest’s Tier 2 non-impairment petition for the Draper wire center. As such, the Commission’s August 11, 2008 Original Order was reasonable and appropriate.

II. XO’s claim that it has been unable to verify the accuracy of the data is not credible

Second, although XO also filed objections, it did *not sign the protective order*, and thus it never asked for nor received any highly-confidential data. XO, as one of the two “Joint CLECs” bringing the motion, cannot credibly claim that “*they* [the Joint CLECs- i.e., XO and Integra] objected to the petition on the grounds that *they* have been unable to verify the accuracy of the line counts on which the petition is based.” Joint CLECs’ Motion, pp. 1-2. (Emphasis added.) In short, XO should not even have any standing to object. As such, Qwest respectfully requests that the Commission make clear that XO does not have the right to conduct any “additional review” of the line counts, and thus that any additional review be limited solely to Integra.

III. There should not be any delay as a result of additional review of the line counts

Third, the CLECs do not provide any specific bases for their objections, and thus the objections have the appearance of merely being a “fishing expedition” that would likely result in delay and additional work for the Commission, the Division and Qwest. There is even less excuse for XO to join in essentially blind objections to Qwest’s data, with a claim it cannot verify such data, when it has not even looked at, or requested, any of the data.

The concern that Qwest has here is that the Joint CLECs’ last-minute and untimely “form” objections will likely result in delay and additional work for all involved. This is evidenced by the fact that the CLECs are not even prepared to discuss these issues until some time in *September*. Indeed, Qwest has been advised by the Joint CLECs that their representative is not even available to discuss these “objections” with Qwest until “during the *week after Labor Day*.” See Exhibit B (emails of August 8 and August 11, 2008). (Emphasis added.)

In Docket No. 07-049-30 (the docket for 2007 additions to Qwest’s non-impaired wire center list), which involved the Midvale and Orem wire centers, the Joint CLECs promptly objected to the data for the Orem wire center. The Commission thereafter required the parties to work together to reconcile any disputes they had regarding the Orem wire center business line data.² Ultimately, the disputes between Qwest and the Joint CLECs were relatively negligible, and thus Qwest and the CLECs eventually filed a stipulation of non-impairment for the Orem wire center. The Commission then approved the parties’ stipulation and found the Orem wire

² The Joint CLECs did not object to Qwest’s non-impairment designation for the Midvale wire center, and thus on October 1, 2007, the Commission approved Qwest’s petition for non-impairment of that wire center. The Commission established a non-impairment effective date of *September 7, 2007*, which was 30 days after its July 31, 2007 approval of the settlement agreement in Docket 06-049-40 (the original *TRRO* non-impaired wire center docket), plus an additional week to accommodate the parties’ schedule. See Report and Order of October 1, 2007 (“Midvale Order”), pp. 2-5, 6; see also Commission Report and Order of November 20, 2007, pp. 2-5.

center to be non-impaired at the Tier 2 level. See Commission Report and Order of November 20, 2007 (“Orem Order”).

However, in the Orem Order, the Commission also determined the “effective date” of non-impairment to be the date of the order (*November 20, 2007*), instead of the effective date requested by Qwest (September 7, 2007), which would have been the effective date had there been no objections.³ The Commission reasoned that both the Joint CLECs and the Division agreed that additional investigation would be appropriate for the Orem wire center, and that they could not agree to the proposed non-impairment until the investigation was complete. Thus a later effective date was appropriate in that case. Orem Order, p. 10.

Here, however, it is not clear that there is any real basis for the CLECs to object to Qwest’s line counts for the Draper wire center. Instead, it appears that these untimely “objections” are more likely an attempt to embark on a fishing expedition, with a review of data that would simply delay the implementation of non-impairment. Since the CLECs were ultimately successful in getting a much later “effective date” of non-impairment for the Orem wire center (November 20, 2007) last year in Docket No. 07-049-30, it can be reasonably concluded that the untimely and non-substantive “objections” here were made simply to cause a similar delay in the implementation of Tier 2 non-impairment for the Draper wire center, perhaps to October or November 2008. If the Commission once again sets the “effective date” based on the date of any subsequent *order (a couple of months from now)* instead of the Original Order’s August 11, 2008 effective date, or an effective date of August 7, 2008 (30 days after Integra’s receipt of the data), the Commission would simply be encouraging CLECs to file unsubstantiated

³ As stated (in fn. 2), September 7, 2007 was also the effective date for the Tier 2 non-impairment of the Midvale wire center in that docket. See Midvale Order, pp. 3, 4, 7; see also Orem Order, p. 5.

objections each time Qwest files for non-impairment.⁴ The Commission should not countenance any such delays.

IV. Any additional review should be very limited and subject to certain conditions

Finally, as stated, now that the Commission has stayed its Original Order, Qwest is not seeking to reverse the Commission's Stay Order. Qwest will abide by the Stay Order and will work with Integra (and XO, if the Commission requires it) on the additional review of business line counts. However, Qwest respectfully submits that any additional review should be very limited and that any such data review should be subject to the following conditions.

First, if the Commission ultimately approves Qwest's petition and designates the Draper wire center as non-impaired, Qwest respectfully submits that the "effective date" of such approval should be either **August 7, 2008** (30 days after Integra received the highly-confidential data on July 8, 2008, per the settlement agreement approved in Docket No. 06-049-40) *or* **August 11, 2008** (the effective date the Commission established in its Original Order).⁵ Any other (later) effective date would have the practical effect of rewarding the Joint CLECs for their untimeliness, delays and lack of follow-up on these issues. This would also have the effect of

⁴ Here, the Commission made August 11, 2008, the date of the Original Order, the effective date of the Draper wire center non-impairment. Qwest does not quibble with that date, especially since the Commission's Original Order was issued promptly after the 30th day after Qwest provided Integra with confidential data. Qwest notes, however, that the settlement agreement approved in Docket No. 06-049-40 provides that if there are no objections, the effective date will be 30 days after the "Filing Date" (the date that Qwest provides its confidential data to both the Commission and the Joint CLECs who asked for it) "unless the Commission orders otherwise." See Report and Order Approving Settlement Agreement of July 31, 2007 in Docket No. 06-049-40, and Settlement Agreement, § V.F.2. Here, 30 days after the "Filing Date" is August 7, 2008. Qwest also notes that in its Midvale Order in Docket No. 07-049-30, the Commission established an effective date of September 7, 2007 (30 days after approval of the settlement agreement in Docket No. 06-049-40, plus an additional week the parties agreed to), even though the order was issued on October 1, 2007.

⁵ As stated, Qwest would not object to the Original Order's August 11, 2008 effective date once the Commission lifts the stay of the Original Order. Nevertheless, Qwest believes that August 7, 2008 is a more appropriate effective date, especially to remain consistent with the settlement agreement approved in Docket No. 06-049-40 and the Midvale Order.

giving CLECs an incentive to file objections for the mere sake of objecting with the goal of delaying non-impairment decisions in future dockets.

Further, as stated, Qwest believes any additional review should be limited to working only with *Integra* to resolve any discrepancies regarding only *Integra data*, since Integra was the only CLEC that signed a protective order and requested any highly-confidential data.⁶ Any additional review should not include evaluating the data for other CLECs in the wire center. The Commission should not be led down the path of following the review process that was used last year in Docket No. 07-049-30. In that proceeding, the Division was required to obtain business line information from all CLECs operating in the Orem wire center, and the data for all the CLECs (that responded to the data requests) was reconciled by Qwest and the Division. This would be (as it was last year) a very cumbersome and time-consuming procedure that would significantly delay the implementation of non-impairment—and would provide an incentive for Integra and other CLECs to file unwarranted objections in the future.

REQUEST FOR PREHEARING CONFERENCE

Finally, Qwest respectfully requests that the Commission schedule a prehearing conference in the very near future so that it can give the parties guidance about the scope of the additional data review and time frames for such data review. Qwest further respectfully requests such prehearing conference soon so that, assuming the Commission finds the Draper wire center to be non-impaired as Qwest's petition sets forth, the Commission can promptly lift the stay and make its Original Order, with an effective date of either August 7, 2008 or August 11, 2008, effective again.

⁶ Qwest has proposed to the Joint CLECs' counsel that Integra (or Integra and XO, if the Commission so orders) provide Qwest with "Circuit ID" information (or if the CLEC does not use a Circuit ID, then a Billing Telephone Number) for Qwest to begin to conduct the review, analysis and reconciliation, and thus reconcile such

CONCLUSION

Thus, Qwest respectfully submits that any additional data analysis that the Commission allows as a result of the Stay Order should be very limited and should be subject to the conditions that Qwest has discussed above, including an *August 7, 2008 or August 11, 2008* non-impairment effective date for the Draper wire center when the Commission lifts the Stay Order.

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Respectfully submitted,

QWEST CORPORATION

By _____

Alex M. Duarte

QWEST

421 SW Oak Street, Room 810

Portland, OR 97204

(503) 242-5623

(503) 242-8589 (facsimile)

Alex.Duarte@qwest.com

Attorney for Qwest Corporation

data with its own records. Qwest could then let the CLEC know if there are any problems or discrepancies so that the parties could try to resolve any data issues. This is a process that was used last year in Docket No. 07-049-30.