

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Investigation into
Qwest Wire Center Data)
) DOCKET NO. 06-049-40
)
)
 ORDER DENYING MOTIONS FOR
 REVIEW, REHEARING, OR
)
 RECONSIDERATION AND ORDER ON
)
 MOTION FOR CLARIFICATION
)

ISSUED: November 3, 2006

SYNOPSIS

The Commission denies motions for reconsideration filed by Qwest Corporation (“Qwest”) and Covad Communications Company; Eschelon Telecom of Utah, Inc.; Integra Telecom of Utah, Inc.; McLeodUSA Telecommunications Services, Inc.; and XO Communications Services, Inc. The Commission clarifies that its Report and Order of September 11, 2006, intended that Qwest may not reject unbundled network element (“UNE”) orders made by a competitive local exchange carrier (“CLEC”) for any wire center, including those previously approved as non-impaired for certain UNEs, so long as that CLEC has self-certified, based on reasonable inquiry, that, to the best of its knowledge, it is entitled to unbundled access to the requested network elements at the wire center in question.

By The Commission:

On September 11, 2006, the Commission issued its Report and Order in this docket resolving various issues related to the designation of incumbent local exchange carrier (“ILEC”) wire centers as non-impaired for certain unbundled network elements (“UNEs”) in accordance with the Federal Communications Commission’s (“FCC”) Triennial Review Remand Order¹.

¹*In the Matter of Review of Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand, CC Docket NO. 01-338, WC Docket No. 04-313, 20 FCC Rcd 2533 (rel. Feb. 4, 2005) (“TRRO”).*

On October 11, 2006, Covad Communications Company; Eschelon Telecom of Utah, Inc.; Integra Telecom of Utah, Inc.; McLeodUSA Telecommunications Services, Inc.; and XO Communications Services, Inc. (hereinafter jointly referred to as “Joint CLECs”) filed a Petition for Review, Reconsideration, or Rehearing of Report and Order (“Joint CLEC Motion for Reconsideration”) seeking Commission reconsideration of its decision regarding the following issues: (1) the vintage of the ARMIS data used; (2) the length of the transition period for newly designated wire centers; and (3) whether Qwest Corporation (“Qwest”) should be authorized to charge for converting affected high capacity UNEs in the designated wire centers to Qwest special access services.

Also on October 11, 2006, Qwest filed its Motion for Review, Rehearing and/or Reconsideration and for Clarification, of Certain Portions of the Commission’s September 11, 2006, Report and Order (“Qwest Motion for Reconsideration” and “Qwest Motion for Clarification”, respectively). Qwest’s Motion for Reconsideration seeks reconsideration of the following issues: (1) the Commission’s decision regarding the appropriate method of counting business lines, and (2) if the Commission does not reconsider its decision regarding the first issue above, its decision not to count actual Qwest retail digital business lines based on the wire center from which they originate rather than on the ARMIS report filed by Qwest. Qwest’s Motion for Clarification seeks clarification of the Commission’s decision requiring the parties to follow the process laid out at paragraph 234 of the *TRRO* regarding future UNE requests and ILEC responses to such requests. Qwest’s interprets this decision as applying only to wire centers that have not yet been approved by the Commission as non-impaired for the requested UNEs.

On October 26, 2006, the Joint CLECs filed their Response to Qwest Motion for Review, Rehearing and/or Reconsideration arguing the Commission had rightly decided those issues challenged by Qwest and should therefore deny Qwest's Motion for Reconsideration. In addition, the Joint CLECs challenged Qwest's interpretation of the Commission's Report and Order relating to rejection of CLEC requests for UNEs.

Also on October 26, 2006, Qwest filed its Response to the Joint CLEC's Motion for Review, Reconsideration, Rehearing of Report and Order arguing the Commission had rightly decided those issues challenged by the Joint CLECs and should therefore deny the Joint CLECs' Motion for Reconsideration.

Having reviewed the parties' filings, we are satisfied that our decisions regarding the issues submitted for reconsideration are reasonably based upon the evidence of record in accordance with applicable law and regulations. We therefore deny the Joint CLECs Motion for Reconsideration and the Qwest Motion for Reconsideration.

With respect to Qwest's Motion for Clarification, we clarify that, contrary to Qwest's interpretation, our Report and Order requires that the process set forth by the FCC in paragraph 234 of the *TRRO* be applied equally for UNE requests at all wire centers, including those that have previously been approved as non-impaired. In reaching our decision in the Report and Order, we found the FCC's approach to be reasonable and adopted it as our own. The *TRRO* does not limit the process specified in paragraph 234 to requests for UNEs at impaired wire centers, and we see no reason to add such a limitation in these proceedings.

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The FCC's ruling implicitly recognizes that good-faith mistakes may be made in requesting or provisioning certain UNEs. In order to minimize mistakes by CLECs, the FCC requires CLECs to undertake a reasonable inquiry to determine whether they are entitled to the UNEs they intend to request and then to self-certify their entitlement when requesting those UNEs. In requiring ILECs to immediately process such self-certified requests, the FCC recognized that the best way to deal with any CLEC self-certification errors was to first provision the UNE and then permit the ILEC to challenge the requirement for said provision after the fact.

Our Report and Order also implicitly recognized that adopting Qwest's position on this issue, or adopting Qwest's interpretation of our Report and Order, would open the UNE request process to the possibility that Qwest may mistakenly refuse to provision requested UNEs, thereby causing harm to the requesting CLEC and its customers pending resolution of the parties' dispute. By requiring Qwest to first provide the UNE upon self-certified request and then challenge said request, we ensure that customers are served pending resolution of the dispute.

Wherefore, based upon the foregoing information, and for good cause appearing, we enter this Order dismissing Qwest's Motion for Reconsideration and the Joint CLECs' Motion for Reconsideration and clarifying the applicability of the process we require parties to follow in requesting and provisioning UNEs.

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Dated at Salt Lake City, Utah, this 3rd day of November, 2006.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard

Commission Secretary

G#51167