

- 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 MOTION TO STRIKE
)
)

ISSUED: June 9, 2006

For The Commission:

On June 8, 2006, Covad Communications Company; Eschelon Telecom of Utah, Inc.; Integra Telecom of Utah, Inc.; McLeodUSA Telecommunications Services, Inc.; and XO Communications Services, Inc. (“Joint CLECs”) filed a Motion to Strike Portions of Qwest Surrebuttal Testimony and Exhibits (“Motion”) seeking Commission order striking lines 158 through 177 of the June 5, 2006, Surrebuttal Testimony of David L. Teitzel filed by Qwest Corporation (“Qwest”), as well as Highly Confidential Exhibit DLT-2 accompanying said testimony. Joint CLECs allege Qwest failed to provide the information contained in the challenged testimony and exhibit either in response to Joint CLECs’ data requests for Qwest line counts or in any prior testimony or exhibits, thereby depriving Joint CLECs of the opportunity to evaluate or effectively respond to these latest business line count calculations.

On June 9, 2006, Qwest filed its Response to the Joint CLECs’ Motion (“Response”) arguing the Motion is without merit and should be denied.

In support of their Motion, Joint CLECs point out that Qwest’s responses to Joint CLECs’ data request numbers 30 and 31, which specifically requested Qwest to describe any

deviation from the methodology used to determine switched business line counts for ARMIS 43-08 reporting, did not include any calculation or description of an adjustment for services provided out of the Salt Lake Main wire center using digital business channels allegedly associated with service in a different wire center. According to Joint CLECs, the challenged Surrebuttal Testimony advocates such an approach for the first time in this proceeding. In addition, Joint CLECs argue the challenged testimony and attached exhibit purport, also for the first time in this docket, to quantify this adjustment, resulting in new business line counts for the Salt Lake Main wire center.

Joint CLECs argue the challenged portions of the subject Surrebuttal Testimony and exhibit constitute a new proposal filed just one week prior to scheduled hearings. Joint CLECs also claim Qwest has provided no information on these new line count calculations that would enable Joint CLECs, the Division of Public Utilities (“Division”), or the Commission to determine their accuracy, despite Joint CLECs’ long-standing request for such information. Since Joint CLECs will have no opportunity to effectively respond to this testimony, they seek to have said testimony and its accompanying exhibit stricken from the record. Alternatively, Joint CLECs seek Commission order requiring Qwest to provide all information supporting its most recent business line count, including an explanation of how using the same methodology would affect the business line counts in the Salt Lake Main wire center using Qwest’s 2004 ARMIS data. Finally, Joint CLECs request, if necessary based on the amount of time Qwest takes to provide said information, the Commission continue the hearing currently scheduled to convene

on June 13, 2006, or hold the record open until Joint CLECs have had the opportunity to evaluate and effectively respond to that information.

Qwest, on the other hand, argues that it has fully responded to Joint CLECs' data requests by providing the access line details behind the specific access line counts that Qwest provided to the Federal Communications Commission ("FCC") in its initial filing identifying non-impaired wire centers in Utah. Qwest notes its testimony and data request responses have consistently explained that it did not adjust the ARMIS 43-08 data to reflect "in service" digital business channels because it instead attributed full DS0 capacity to business DS1 and DS3 services originating from a particular wire center. Qwest then argues that it only undertook the calculations referred to in the challenged testimony and exhibit because the Division had advocated such an approach in its pre-filed testimony and had reached a conclusion with which Qwest does not agree.

We agree with Qwest. The challenged Surrebuttal Testimony raises no new issues and merely presents new assertions to refute Division testimony filed on May 26, 2006. The issue of adjusting access line data using actual "in service" digital business channels was first raised by Joint CLECs' filing of the Rebuttal Testimony of Mr. Douglas Denney on April 26, 2006. On May 24, 2006, Qwest filed Mr. Teitzel's Response Testimony in which he, among other things, argued Mr. Denney's adjustment does not comport with FCC guidance and does not capture actual digital business channels in service associated with the Salt Lake Main wire center. Mr. Teitzel concluded by noting a more appropriate way to quantify "in service" digital business channels, if the Commission were to adopt this approach, would be to apply the

statewide ratio of in-service digital business channels to the number of DS1 and DS3 digital business switched facilities in the Salt Lake Main wire center.

On May 26, 2006, the Division filed the Direct Testimony of Casey J. Coleman in which Mr. Coleman concluded Qwest's business line count should reflect actual ARMIS 43-08 business lines in service adjusted for the full DS0-level capacity of all channels in wholesale digital DS1 and DS3 services. Mr. Coleman testified calculation of line count under this method results in the Salt Lake Main wire center falling below the 60,000 business line threshold required to qualify for non-impaired status for DS1 loops.

On June 5, 2006, Qwest filed Mr. Teitzel's Surrebuttal Testimony in which he repeated his Rebuttal Testimony to argue that Mr. Coleman, like Mr. Denney, uses an ARMIS business digital lines in service value that does not capture Qwest's actual digital business channels in service. The challenged testimony and exhibit refute the Division's conclusion by showing that, using Qwest's concept of "actual DS0 channels in service", the Salt Lake Main wire center would continue to satisfy the FCC's 60,000 line threshold even under the "in service" adjustment method advocated by the Division.

We conclude the challenged testimony and exhibit reasonably respond to matters raised in prior Joint CLEC and Division testimony and raise no new matter. We therefore determine not to strike the challenged testimony and exhibit. Nor do we require Qwest, as requested by Joint CLECs, to provide any additional information in discovery at this time. Qwest's testimony makes clear that it does not support the Division's and Joint CLECs' "in service" adjustment method and that it has only provided its "new" business line count to refute

the Division's conclusion arrived at using this method. Joint CLECs will have ample opportunity at hearing to question and challenge Qwest's calculations, as well as the data behind those calculations. If, at the close of scheduled proceedings, Joint CLECs believe leaving the record open or continuing the hearing would be appropriate, they will of course have the opportunity to make such a request.

Therefore, based upon the foregoing information, and for good cause appearing, the Administrative Law Judge enters this ORDER denying the Joint CLECs' Motion to Strike.

DATED at Salt Lake City, Utah, this 9th day of June, 2006.

/s/ Steven F. Goodwill
Administrative Law Judge

Attest:

/s/ Julie Orchard
Commission Secretary
G#49360