BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Investigation into Qwest Wire Center Data	Docket No. 06-049-40 QWEST'S RESPONSE TO THE JOINT CLECs' MOTION FOR REVIEW, RECONSIDERATION, OR REHEARING OF REPORT AND ORDER

Pursuant to Utah Code Ann. § 63-46b-129(2)(a) and Utah Admin Code R746-100-11(F), Qwest Corporation ("Qwest") respectfully responds to the motion for review, reconsideration, or rehearing of the Commission's September 11, 2006 Report and Order that Covad Communications Company, Eschelon Telecom of Utah, Inc., Integra Telecom of Utah, Inc., McLeodUSA Telecommunications Services, Inc., and XO Communications Services, Inc. (collectively "the Joint CLECs") filed on October 11, 2006.

INTRODUCTION AND SUMMARY

The Joint CLECs file a motion for review and reconsideration of the Commission's recent September 11, 2006 Report and Order in this docket. They claim that the Commission should revisit and reconsider three rulings from order. These three issues pertain to (1) the Commission's ruling that December 2003 ARMIS data (as reported to the FCC in April 2004) is the appropriate vintage of data for counting business lines, (2) the Commission's decision to specify a 90-day transition for future non-impaired wire center list updates, and (3) the Commission's ruling to authorize Qwest to impose a charge for converting UNEs to alternative services. For the reasons set forth below, the Commission's rulings on these three issues were reasonable, appropriate and correctly decided, and thus there is no legal or factual basis or merit to the Joint CLECs' motion for reconsideration. As such, Qwest respectfully submits that the Commission should refuse to review or alter these three rulings, and thus that is should deny the Joint CLECs' motion for reconsideration in its entirety.

ARGUMENT

I. THE COMMISSION'S DECISION TO USE DECEMBER 2003 ARMIS DATA FOR THE INITIAL DESIGNATION OF NON-IMPAIRED WIRE CENTERS WAS APPROPRIATE AND THUS SHOULD NOT BE RECONSIDERED

In their motion for reconsideration, the Joint CLECs argue that the Commission should revisit the issue regarding the vintage of data to be used for the initial non-impaired wire center list. (Joint CLEC Motion, pp. 2-4.) Specifically, they argue that ARMIS data for calendar year *2004* is "the closest" to the March 11, 2005 effective date of the *TRRO*, and thus that the Commission should reverse its ruling finding that December 2003 (as reflected in Qwest's 2004 ARMIS 43-08 Report to the FCC) was the appropriate vintage of data. The Joint CLECs do so on two grounds: (1) "the Washington Commission reached the opposite conclusion in its final order" and (2) staffs in Colorado and Arizona have advocated the use of 2004 data. However, the Joint CLECs' arguments are misleading, and even if they were not, there is no reason for the Commission to revisit this issue.

First, although the Joint CLECs correctly quote from the Washington Commission's recent order that reversed *in part* the ALJ's Initial Order, the Joint CLECs fail to mention that such ruling required Qwest to submit such *2005* data only for the three disputed wire centers, which the CLECs themselves did not advocate.[1] Indeed, because the Washington Commission incorrectly applied the wrong vintage of data (2005 instead of 2003), and then did so in an inconsistent manner (only three wire centers), Qwest has recently filed a motion for reconsideration of that final order. In fact, the Joint CLECs themselves have filed a motion for reconsideration because of the Washington Commission's inconsistent treatment of that issue.

[1] *In the Matter of the Investigation Concerning the Status of Competition and Impact of the FCC's Triennial Review Remand Order on the Competitive Telecommunications Environment in Washington State*, WUTC, Docket UT-053025, Order No. 4 (October 5, 2006), ¶¶ 22-24.

Further, the Washington Commission simply got it wrong, unlike this Commission. In fact, the Washington Commission originally got it right, but, for an inexplicable reason, the Commission reversed the Initial ALJ Order. The Washington Commission did so despite that, for the reasons Qwest set forth in its briefs, and for the reasons that this Commission found, "it is reasonable that Qwest used its 2004 ARMIS 43-08 data to create its initial non-impairment list." Order, p. 14. As this Commission correctly found, the FCC Wireline Carrier Bureau requested the non-impairment list in early February 2005 and Qwest provided the list to the FCC in March 2005 [actually February 18, 2005] and Qwest's 2004 ARMIS 43-08 data was not filed with the FCC until April 2005. *Id*. More importantly, and as this Commission correctly noted, the FCC decided to require ILECs to base their business line counts on ARMIS information because such information has "already [been] created for other regulatory purposes" [fn. omitted] and is "readily confirmable by competitors [fn. omitted]." *Id*., pp. 14-15. Thus, this Commission correctly found that there was "no reason to change the list simply because newer data has become available over the past eighteen months." *Id*., p. 15. (Emphasis added.) Qwest also notes that the Commission's decision on this issue is consistent with the decisions of the *vast majority* of state commissions that have addressed this issue.[2]

Finally, the mere fact that two commission staffs in Qwest's region have advocated a similar argument is irrelevant, and certainly not persuasive, for the same reasons set forth above. Indeed, the Department of Public Utilities here, which has similar functions to commission staffs in other states, did not support the Joint CLECs' position. Moreover, the state commissions in those states have not adopted the staff recommendations. In short, this Commission should not give any weight to these staff positions simply because two staffs agree with the Joint CLECs,

[2] Qwest has already shown why the two outlier North Carolina and Michigan commission decisions should be entitled to no weight on this issue. (Qwest Opening Brief, p. 15, fn. 18; Qwest Reply Brief, p. 12, fns. 12, 13.)

especially since this Commission, and the vast majority of commissions, have correctly agreed with Qwest's position.

Accordingly, this Commission correctly found the use of 2003 ARMIS data, filed in April 2004, to be the appropriate vintage of data for the initial non-impaired wire center designation. The Commission appropriately made this decision, and there is no basis to revisit the issue. The Commission should therefore deny the Joint CLECs' motion for reconsideration on this issue in its entirety.

II. THE COMMISSION'S DECISION TO SPECIFY A 90-DAY TRANSITION PERIOD FOR FUTURE WIRE CENTER CLASSIFICATIONS WAS APPROPRIATE AND THUS SHOULD NOT BE RECONSIDERED

The Joint CLECs also argue that the record does not support the Commission's appropriate conclusion to establish the 90-day transition period for future wire center classifications. (Joint CLEC Motion, pp. 4-6.) The Joint CLECs do so on grounds that Qwest "provided no evidence" to support its 90-day transition period proposal. (*Id*., p. 5.) They further complain that Qwest provided no evidence on the time a CLEC needs to perform tasks necessary to an orderly transition. They further argue that the record evidence (and analogous findings) in the *TRRO* supports their proposal. (Id., pp. 5-6.)

However, the Joint CLECs protest too much. The evidence, as well as the *TRRO* itself and common sense, make clear that the FCC's transition applies only to the initial wire center designations. This is so because the FCC understood the initial transition would have a more significant impact on CLECs, especially given the large number of wire centers (and thus the large number of embedded services requiring conversion) that would be involved. (Tr., pp. 13-14, 102-103.)[3] It is patently clear, however (and the CLECs do not dispute it), that subsequent

[3] The Joint CLECs fail to point to anything in the *TRRO* that indicates that the 12- and 18-month transition periods apply to wire center updates (as opposed to the initial wire center designations at issue here). Nor do they cite to any state commission order that has agreed with its proposal.

additions to the list of non-impaired wire centers will involve a much smaller subset of services, as they are likely to involve only one or two wire centers at a time. (*Id*.) Thus, the evidence showed it would not take nearly as long to convert impacted services, and thus, the "transition period" for future non-impaired wire center designations should be much shorter. Accordingly, Qwest's proposed 90-day transition period is reasonable and sufficient. (See Exhibit Qwest 1, p. 15; Qwest 1R, pp. 3-4; Qwest 1SR, p. 4; Tr., pp. 17-18.) Further, Qwest notes that the Joint CLECs do not cite to any state commission order that has agreed with its position on this issue.

Finally, it appears that the real motivation behind a longer transition period is the Joint CLECs' attempts to avoid paying the tariffed rate upon the effective date of wire center reclassification. However, if CLECs were to be permitted to continue paying UNE rates during any transition, *they would essentially be improperly incented to delay the transition of services until the end of that transition period*, which is presumably why they seek a longer transition period here. However, once a wire center is reclassified, Qwest should be permitted to receive the benefits of reclassification that the FCC intended. (Tr., pp. 13, 16-17; see also p. 24.)[4]

As this Commission correctly found, the FCC recognized that the initial list of non-impaired wire centers could be so large and constitute such a major change in the way CLECs procure necessary services and facilities that a lengthy transition was appropriate. Order, p. 33. However, this Commission further correctly noted that future updates should impact fewer wire centers, and thus that a 90-day transition period will provide CLECs adequate opportunity to make business decisions regarding alternative facilities and services. *Id*. The Joint CLECs do not provide any reason to revisit this Commission's decision, and there is no error, or reason to warrant the Commission to revisit this issue. In short, this Commission's determination of a 90-

[4] Further, as Qwest demonstrated, the issue of a CLEC needing to perform tasks necessary to an orderly transition is not for Qwest to decide. Each CLEC is in the best position to evaluate its own business alternative; Qwest is simply not in a position to do so on a CLEC's behalf. (Tr., p. 22.).

day transition period is appropriate and should be affirmed, and thus the Commission should deny the Joint CLECs' motion on this issue in its entirety.

III. THE COMMISSION'S DECISION TO AUTHORIZE QWEST TO IMPOSE A CHARGE FOR CONVERTING UNEs TO ALTERNATIVE SERVICES WAS APPROPRIATE AND THUS SHOULD NOT BE RECONSIDERED

Finally, the Joint CLECs argue that the Commission should not authorize Qwest to impose a charge for converting UNEs to an alternative Qwest service, and thus the Commission should reconsider its decision on this issue. (Joint CLEC Motion, pp. 6-8.) The primary basis for the Joint CLECs' argument is that the Colorado and Arizona staffs (again) disagree that Qwest is entitled to any such charge (or argue the charge should be nominal), and their continued argument that the "CLECs derive no benefit from converting a circuit from a UNE to a special access service" (and conversely, that Qwest "enjoys revenues" from the same circuit as a private line service. (*Id*., p. 7.) There is simply no merit to the Joint CLECs' argument, however.

First, the fact that other state commissions have advocated no charge, or a very nominal one, is irrelevant and not persuasive. As the Commission correctly found, Qwest is entitled to levy a nonrecurring charge to recoup its costs when a CLEC requests conversion of a UNE to a private line. Order, p. 36. It is irrelevant that other staffs want to deny Qwest an opportunity to recoup its costs. If there is a cost, Qwest should be able to recover it; it is as simple as that.

Moreover, despite hyperbole about "no benefit to CLECs," or about "Qwest enjoying revenues" or of the conversion "benefiting Qwest," the bottom line is that this charge is appropriate because it is for a service that *CLECs request*.[5] It does not matter that the reason they request an alternative service is that they are no longer entitled to the services as UNEs (or

[5] First, *but for* the conversion, Qwest would not have to incur the costs of performing the associated tasks. (See Exhibit Qwest 4, pp. 2-3.) Obviously, if Qwest were to perform the activities associated with a conversion, but were not allowed to charge the CLEC for such activities, the cost burden would be unfairly shifted to Qwest and its customers, thereby disadvantaging Qwest in a market the FCC has determined to be competitive. Thus, to the extent Qwest incurs costs to facilitate a CLEC's conversion from a UNE to a private line service, Qwest should be entitled to assess an appropriate charge. (See Exhibit Qwest 4R, pp. 4-5.)

conversely, that they once were entitled to them as UNEs). Nor is it relevant that Qwest may recover more "revenue" from a tariffed service. The issue is whether there is a cost to Qwest for such conversions (and this Commission has clearly and correctly found there is a cost), and if so, whether Qwest should be able to recover such cost (again, the Commission has clearly and correctly ruled that Qwest can recover it).

Further still, the fact that the Joint CLECs believe that Qwest can recover its costs from the higher revenue of a tariffed service is both wrong and irrelevant. The tariffed monthly recurring charge is investment based and recovers the cost of the continual use of the facility, while the nonrecurring charge is expense based and recovers the cost of the initial conversion. The recurring charge has already been found to be just and reasonable for the purpose it was intended. Thus, it would be inappropriate to force Qwest to use the recurring charge to recover nonrecurring costs not contemplated in the recurring rate; to do so would not allow Qwest to be made whole for its costs to provide the service or facility at issue.

Finally, if the CLECs do not believe that Qwest is trying to recover an appropriate amount, the time to address that issue is in the next phase of the case, which has to do with the appropriate rate based on the cost information that Qwest recently submitted (and to which the Joint CLECs will have an opportunity to respond). That is the appropriate forum to discuss the Joint CLECs' apparent opposition to the amount of Qwest's proposed charge.

In short, the Joint CLECs provide no good reason for this Commission to reconsider its decision to allow Qwest an opportunity to recover its cists for conversions. The Commission should therefore deny the Joint CLECs' motion for reconsideration on this issue in its entirety.

CONCLUSION

For all of the reasons set forth above, Qwest respectfully submits that the Commission should deny the Joint CLECs' motion for review, reconsideration, or rehearing of the Commission's September 11, 2006 Report and Order in its entirety.

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Respectfully submitted,

QWEST CORPORATION

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

Melissa Thompson
1801 California Street
Denver, CO 80202
(303) 383-6728
(303) 383-8512 (facsimile)
Melissa.Thompason@qwest.com

Attorneys for Qwest Corporation