

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 OPENING POST-HEARING
BRIEF

Pursuant to the procedural schedule that the parties agreed upon at the June 13, 2006 evidentiary hearing in this proceeding, Qwest Corporation ("Qwest") respectfully submits its opening post-hearing brief.

INTRODUCTION AND SUMMARY

Early last year, the Federal Communications Commission ("FCC") issued its Triennial Review Remand Order ("*TRRO*"). In the *TRRO*, the FCC established rules for determining non-impairment of wire centers which are used to determine requirements for providing unbundled high-capacity (DS1/DS3/dark fiber) loops and unbundled high-capacity (DS1/DS3/dark fiber) interoffice transport. The FCC intended the unbundling rules established in the *TRRO* to be largely self-effectuating and implemented through negotiations between ILECs and CLECs. The FCC also required Qwest to provide a list of wire centers that met the *TRRO*'s requirements and the FCC's associated rules for every state in its ILEC region, including Utah.

Based on the FCC's *TRRO* mandates and the FCC's associated implementation rules, including the *TRRO*'s three-tier structure for wire center non-impairment based on the count of "business lines" or "fiber-based collocators" at a given wire center, Qwest has shown that one Utah wire center (Salt Lake City Main) meets the FCC's non-impairment criteria for non-impairment for DS1 and DS3 unbundled loops. Qwest has also shown that six Utah wire centers (Murray, Ogden Main, Provo, Salt Lake City Main, Salt Lake City South and Salt Lake City West) meet the FCC's non-impairment criteria for DS1 and DS3 interoffice transport.

Although the Joint CLECs (and to a lesser extent, the Division of Public Utilities (“DPU”)) dispute that the Salt Lake City Main wire center meets the “Tier 1” 60,000 business line threshold, such arguments are based on flawed analysis and flawed data, including inappropriate adjustments to Qwest’s business line counts. The Joint CLECs also advocate the wrong vintage of data, contrary to the *TRRO*’s guidelines and the conclusions of the vast majority of state commissions that have addressed this issue. However, Qwest has shown that it has met the 60,000 business line Tier 1 threshold for that wire center. This conclusion is based on Qwest’s correctly following the *TRRO* and FCC requirements for counting “business lines” and “fiber-based collocators” in paragraphs 102 and 105 of the *TRRO* and the FCC’s associated implementation rules. Not surprisingly, the majority of state commissions have agreed with the positions that Qwest has taken on most of the disputed issues here. Accordingly, despite Joint CLEC concerns about Qwest’s counting of business lines or the process to identify and investigate fiber-based collocators in Qwest wire centers, Qwest has shown that it has met the FCC *TRRO* requirements for all of the wire centers it has identified.

In addition, the Joint CLECs (and to a lesser extent, the DPU) dispute that two Utah wire centers (Salt Lake City South and Salt Lake City West) should be deemed non-impaired as of the March 11, 2005 *TRRO* effective date based on the presence of at least four fiber-based collocators at those wire centers as of that March 11, 2005 effective date. Instead, they advocate a July 2005 date. However, Qwest showed that March 11, 2005 is the appropriate effective date for the non-impairment of these two wire centers.

Further still, Qwest has proposed a simple, straightforward, expeditious and common sense (in short, a self-effectuating) process for the updating of non-impaired wire centers in the future. Although the Joint CLECs (and to a lesser extent, the DPU) raise concerns about that process, Qwest’s proposed process follows the FCC’s intent for a self-effectuating process

designed to remove unbundling obligations over time. Thus, if and when updates to the non-impaired wire center list are required, Qwest intends to update the wire center list using the same FCC counting methodology that Qwest has employed here. Accordingly, the Commission should reject the Joint CLECs' unprecedented and administratively burdensome proposals, such as (1) advance notice of wire centers approaching a non-impairment threshold (based on a wire center being within 5,000 business lines or one fiber-based collocator of a threshold), (2) five-day prior notice of Qwest filing for future wire center classifications, (3) the effective date of an update, and (4) the length of a transition period.

Finally, Qwest showed that it is entitled to recover its reasonable costs for the work it must perform for the conversion of a unbundled network element ("UNE") circuit to an alternative Qwest service or facility, such as private line or special access circuits, at those wire centers that have been deemed non-impaired. As such, Qwest is entitled to, and thus intends to, charge its existing tariffed Design Change charge which best approximates the cost that Qwest will incur when performing these conversion work activities as a direct result of a CLEC choosing to remain on Qwest's network instead of seeking a non-Qwest alternative.

For all of these reasons, Qwest respectfully submits that the Commission should adopt Qwest's positions in this docket. Therefore, Qwest respectfully submits that the Commission should declare the wire centers that Qwest presents here to be non-impaired pursuant to the guidelines and standards in the *TRRO* and the FCC's associated implementation rules.

BRIEF PROCEDURAL HISTORY AND BACKGROUND

On February 16, 2006, a group of CLECs (the "Joint CLECs") requested that the Commission open an investigation to (1) order Utah ILECs like Qwest to provide underlying data subject to an appropriate protective order, (2) develop a Commission-approved initial list of "non-impaired" wire centers pursuant to the Federal Communications Commission's ("FCC's")

Triennial Review Remand Order (“*TRRO*”),¹ after party review and discussion of that data, and (3) implement a process of updating and approving the lists. Qwest responded on March 1, 2006, largely agreeing that this investigation is necessary, and further submitting that the primary purpose of the docket should be to establish the number of business lines and fiber collocators in Utah wire centers pursuant to the *TRRO*. Qwest also requested that the Commission issue an order compelling Qwest to produce certain CLEC-specific wire center data under the appropriate protective order so that Qwest could respond to the inquiries necessary for such investigation.

On March 2, 2006, the Commission issued a notice of procedural conference for March 9, 2006. At that March 9th conference, the Commission then set a procedural schedule for this case, which was reflected in its March 13, 2006 scheduling order. The Commission also issued a protective order on March 14, 2006.

Thereafter, Qwest filed its direct testimony on March 24, 2006. Specifically, Qwest filed the direct testimony of (1) Renee Albersheim (Exhibit (“Ex.”) Qwest 1), who testified about the background and structure of the *TRRO* generally, and Qwest’s process for updating its wire center list in the future, (2) David Teitzel (Ex. Qwest 2), who testified about Qwest’s interpretation of the FCC’s *TRRO* methodology for counting business lines, (3) Rachel Torrence (Ex. Qwest 3), who testified about Qwest’s identification of fiber-based collocators, and (4) Teresa Million (Ex. Qwest 4), who testified about the nonrecurring charge (“NRC”) that Qwest seeks to impose on CLECs for the conversion of UNEs to alternative Qwest services. All but Ms. Million submitted exhibits as well, including confidential and highly-confidential exhibits. (Exs. Qwest 1.1-1.3 (Albersheim), 2.1 (Teitzel) and 3.1-3.4 (Torrence).)

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, (2004) (“*Triennial Review Remand Order*” or “*TRRO*”).

On August 20, 2006, the Joint CLECs filed an unopposed motion to slightly modify the scheduling order, which the Commission granted that same day. Thereafter, on April 26, 2006, the Joint CLECs filed the rebuttal testimony of Douglas Denney of Eschelon Telecom (Ex. Eschelon 1), with numerous exhibits (Exs. Eschelon 1.1-1.7). The Joint CLECs also filed a motion to compel on May 3, 2006 seeking certain Qwest business line data based on Qwest's December 2004 ARMIS 43-08 Report data, which Qwest opposed on May 12, 2006. The Commission then granted the motion to compel on May 19, 2006, and Qwest timely provided its supplemental data request responses to the Joint CLECs a few days later.

In the meantime, on May 24, 2006, Qwest filed its response testimony of Ms. Albersheim (Ex. Qwest 1R), Mr. Teitzel (Ex. 2R), Ms. Torrence (Ex. 3R) and Ms. Million (Ex. 4R), along with several exhibits (Exs. 3R.1, 3R.2, 4R.1 and 4R.2), including confidential and highly-confidential exhibits. Pursuant to the Commission's May 25, 2006 order modifying the schedule, the Division of Public Utilities ("DPU") was permitted to file its direct testimony of Casey J. Coleman on May 26, 2006, which the DPU did.

Both Qwest and the Joint CLECs then filed surrebuttal testimony on June 5, 2006. Specifically, Qwest filed surrebuttal testimony of Ms. Albersheim (Ex. Qwest 1SR), Mr. Teitzel (Ex. Qwest 2SR) and Ms. Torrence (Ex. Qwest 3SR) to the DPU's direct testimony, based on Qwest's understanding of the purpose of the surrebuttal testimony. Qwest also filed Highly-Confidential Exhibit 2SR.1. The Joint CLECs, however, filed surrebuttal testimony to *both* the DPU's direct testimony *and* to *Qwest's May 24, 2006 response testimony*. (Ex. Eschelon 1SR.) The Joint CLECs also filed an unsuccessful motion to strike portions of Qwest's surrebuttal testimony, which Qwest opposed on June 8, 2006, and which the Commission denied on June 9, 2006. The parties also filed their joint issues matrix on June 9, 2006.

The case went to a one-day evidentiary hearing on June 13, 2006 before the Honorable Steven Goodwill, Administrative Law Judge for the Commission. All witnesses were given an opportunity to provide oral surrebuttal, in addition to being subject to cross-examination. In addition, Judge Goodwill also granted a Joint CLEC request for additional “back-up documentation” from Qwest regarding Qwest’s investigation of a certain carrier that it had identified as a fiber-based collocater at the Provo and Ogden Main wire centers, which documentation Qwest then filed on June 16, 2006. Judge Goodwill also permitted the Joint CLECs to file supplemental surrebuttal testimony on this issue, which they did on June 23, 2006.

At the end of the hearing, the parties agreed to a post-hearing briefing schedule of July 14, 2006 for simultaneous opening briefs and July 28, 2006 for simultaneous response briefs.

BACKGROUND OF TRRO AND TRRO ANALYTICAL FRAMEWORK

I. Pre-TRRO (TRO and USTA II)

In 2001, the FCC initiated a proceeding to review its policies on unbundling under the Telecommunications Act of 1996 (“the Act”).² The FCC sought “comment on how best to update its rules and make them more ‘granular’ to reflect competitive conditions in different markets.”³ The FCC’s intent was to ensure that its unbundling rules were faithful to the requirements of the Act, but at the same time that such rules reflected changes in the telecommunications marketplace and advances in technology. (Ex. Qwest 1 (Direct Testimony of Renee Albersheim) (hereafter “Qwest 1”), pp. 4-5.)⁴ Upon completion of the Triennial

² *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Notice of Proposed Rulemaking, 16 FCC Rcd 22781 (2001) (“*Triennial Review NPRM*”).

³ http://www.fcc.gov/wcb/cpd/triennial_review/.

⁴ *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, at 2 (2004).

Review, the FCC published its Triennial Review Order (“*TRO*”) in October 2003.⁵ The *TRO* revised the FCC’s list of unbundled network elements (“*UNEs*”) and removed unbundling requirements for broadband services in order to encourage investment in broadband facilities. The *TRO* also established a significant role for state commissions to determine impairment in markets for dedicated transport and mass market switching. (*Id.*, p. 5.)

The *TRO* was then appealed to the D.C. Circuit Court of Appeals. The D.C. Circuit upheld a number of the *TRO*’s rules, but vacated and remanded the FCC’s findings of nationwide impairment for mass market switching and dedicated transport. It also vacated the FCC’s delegation of authority to state commissions to conduct granular impairment analysis as the *TRO* had established. *United States Telecom Ass’n v. FCC*, 359 F.3d 554 (2004) (“*USTA I*”). The *USTA II* court determined that the FCC did not properly relate the possibility of competitive deployment of facilities in one market to the actual deployment of facilities in similar geographic markets. *Id.* at 575. (Qwest 1, pp. 5-6.) Accordingly, in August 2004, the FCC issued an Interim Order and Notice of Proposed Rulemaking (“*NPRM*”) eliminating a number of sections of the *TRO*, and sought comment on a response to *USTA II*. After receiving such comments, the FCC issued the *TRRO* on February 4, 2005. (*Id.*, p. 6.)

II. The *TRRO*

A. *TRRO* background, definitions and FCC implementation rules

Relevant to this proceeding, the *TRRO* clarified ILEC obligations to provide unbundled access to dedicated interoffice transport and high-capacity loops. The *TRRO* also clarified the FCC’s “impairment” standard. Impairment is now evaluated as it relates to the capabilities of a

⁵ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 19 FCC Rcd 16978, 17145 (2003) (“*Triennial Review Order*” or “*TRO*”).

“reasonably efficient competitor.” *TRRO*, at ¶ 24. Using this standard, the *TRRO* established route-by-route unbundling requirements for dedicated interoffice transport depending on the number of “business lines”⁶ and “fiber-based collocators”⁷ in particular wire centers. For DS1 and DS3 loops, the FCC used a methodology similar to its treatment of high-capacity transport. That is, the FCC established a wire center-by-wire center unbundling requirement to determine whether a wire center is subject to actual or potential competition based on the number of business lines and fiber-based collocators in that wire center. (Qwest 1, pp. 6-7.)

The FCC in its *TRRO* also required ILECs like Qwest, as part of a transition plan, to file a list of “non-impaired” wire centers as of the *TRRO*’s effective date. See *TRRO*, ¶¶ 142-145, 195-198. (Qwest 1, p. 7; Qwest 1.1 (February 4, 2005 letter from the FCC to Qwest).) Qwest thus filed a list of non-impaired wire centers in February 2005, and amended the list in July 2005. (Qwest 1, p. 7; Ex.. Qwest 1.2 (list of non-impaired wire centers in Utah).)⁸

B. TRRO wire center tier structure

The *TRRO* created a three-tier structure to classify wire centers based on their potential to support competitive transport and high-capacity loop deployment. The FCC generally described the likelihood of actual and potential competitive deployment at these tiers of wire centers as follows: (1) “Tier 1” wire centers are those with the *highest likelihood* for actual and potential competitive deployment, including wholesale opportunities; (2) “Tier 2” wire centers also show a *very significant but lesser likelihood* of actual and potential competitive deployment, and

⁶ 47 CFR § 51.5 defines a “business line” as follows: “A business line is an incumbent LEC-owned switched access line used to serve a business customer, whether by the incumbent LEC itself or by a competitive LEC that leases the line from the incumbent LEC.”

⁷ 47 CFR § 51.5 defines a “fiber-based collocator” as follows: “A fiber-based collocator is any carrier, unaffiliated with the incumbent LEC, that maintains a collocation arrangement in an incumbent LEC wire center, with active electrical power supply, and operates a fiber-optic cable or comparable transmission facility that (1) terminates at a collocation arrangement within the wire center; (2) leaves the incumbent LEC wire center premises; and (3) is owned by a party other than the incumbent LEC or any affiliate of the incumbent LEC, except as set forth in this paragraph.”

⁸ Qwest submitted a revised list correcting a typographical error in the CLLI code of one Colorado wire center in August 2005, but the wire centers listed did not change. (Qwest 1, p. 7, fn. 8.)

(3) “Tier 3” wire centers are those that show a *generally low likelihood* of supporting actual or potential competitive transport deployment. *TRRO*, at ¶ 111. (Qwest 1, pp. 8-9.)

C. **TRRO non-impairment thresholds**

1. **High-capacity interoffice transport**

As for non-impairment for specific levels of high-capacity transport, the FCC determined there is no impairment for DS1 interoffice transport between Tier 1 wire centers, and thus ILECs such as Qwest are not obligated to provide unbundled DS1 interoffice transport on routes connecting two Tier 1 wire centers. 47 CFR § 51.319(e)(2)(ii)(a). (Qwest 1, p. 10.) With respect to DS3 interoffice transport, the FCC concluded that there is no impairment for DS3 interoffice transport on routes connecting wire centers where *both* of the wire centers are *either* Tier 1 *or* Tier 2 wire centers, and thus ILECs such as Qwest are not obligated to provide unbundled DS3 interoffice transport on routes connecting either Tier 1 or Tier 2 wire centers. 47 CFR § 51.319(e)(2)(iii)(a). (*Id.*, p. 11). Finally, the FCC concluded that there is no impairment for dark fiber interoffice transport on routes connecting wire centers where *both* of the wire centers are *either* Tier 1 *or* Tier 2 wire centers, and thus ILECs such as Qwest are not obligated to provide unbundled dark fiber interoffice transport on routes connecting either Tier 1 or Tier 2 wire centers. 47 CFR § 51.319(e)(2)(iv)(a). (*Id.*)

As for its specific thresholds in determining what constitutes a “Tier 1” wire centers for purposes of high-capacity *interoffice transport*, the FCC defines such Tier 1 wire centers as those *with **four** or more fiber-based collocators, or with **38,000** or more business lines*. *TRRO*, ¶ 12; see also 47 CFR § 51.319(e)(3)(i). (Qwest 1, p. 9.) “Tier 2” wire centers are those with ***three** or more fiber-based collocators, or with **24,000** or more business lines*. *TRRO*, ¶ 118; see also 47 CFR § 51.319(e)(3)(ii). (*Id.*) The FCC considers all wire centers that are not Tier 1 or Tier 2 wire centers as “Tier 3” wire centers. *TRRO*, ¶ 123; see also 47 CFR § 51.319(e)(3)(iii). In

other words, all wire centers with fewer than three fiber-based collocators or with fewer than 24,000 business lines are Tier 3 wire centers. (*Id.*, p. 10.) The FCC uses these tiers as indicators of non-impairment and bases its unbundling requirements for DS1, DS3 and dark fiber interoffice transport on these tiers. (*Id.*)

2. High-capacity loops

Regarding high-capacity loops, the FCC uses a methodology similar to its treatment of high-capacity transport, in that it establishes a wire center-by-wire center unbundling requirement to determine whether a wire center is subject to actual or potential competition for high-capacity loops, based upon business line counts and fiber-based collocator counts. (Qwest 1, p. 12.) Specifically, the FCC found that there is no impairment in any building within a service area of a wire center that contains **60,000** or more business lines *and* **four** or more fiber-based collocators, and thus ILECs such as Qwest are not obligated to provide unbundled DS1 loops in these wire centers. 47 CFR § 51.319(a)(4)(i). (*Id.*) The FCC also determined there is no impairment in any building within a service area of a wire center that contains **38,000** or more business lines *and* **four** or more fiber-based collocators, and thus ILECs such as Qwest are not obligated to provide unbundled DS3 loops in these wire centers. 47 CFR § 51.319(a)(5)(i). (*Id.*) Finally, the FCC determined there is no impairment for dark fiber loops, therefore, ILECs such as Qwest are no longer obligated to provide unbundled dark fiber loops. 47 CFR § 51.319(a)(6)(i). (*Id.*, p. 13; see also Qwest 2, pp. 10-11.)

D. Future wire center determinations/updating of wire center list

Finally, Qwest expects to update its list of non-impaired wire centers to the extent that additional wire centers meet the FCC criteria in the future. As noted above, the FCC determined that the rules in the *TRRO* are self-effectuating, and that “our unbundling rules are designed to remove unbundling obligations over time.” *TRRO*, ¶ 3. Thus, going forward, if updates to the

list of non-impaired wire centers are required, Qwest intends to update the list of non-impaired wire centers using the same counting methodologies that Qwest has described in detail in this proceeding. (Qwest 1, p. 14.) In fact, both the CLECs and Qwest agree there should be a single unified process that includes Commission involvement and approval when CLECs contest the designation of a wire center, and that any new proceeding should be narrow, and thus should not be prolonged or used as a means for delay. (Ex. Qwest 1R (Response Testimony of Renee Albersheim (“Qwest 1R”), pp. 3-5.)

Accordingly, Qwest asks that any such process be expedited, and that the designation of new non-impaired wire centers be effective 30 days following the initial notification to CLECs that the impairment status for that wire center has changed, and in the event of a dispute between Qwest and a CLEC, Qwest should have the right to *back bill* CLECs to the effective date if the change in wire center status is subsequently approved, as the *TRRO* anticipates (*TRRO*, at fns. 408, 524, 630). (*Id.*, p. 4; Transcript (“Tr.”), pp. 13, 16-17 (confirming that Qwest would charge the UNE rate during the transition period until the services are converted to an alternative service, and then back-bill the difference between the UNE rate and the higher tariffed rate).)⁹ Finally, Qwest believes, and the Joint CLECs do not dispute, that the results of the docket should be *binding* on *all* CLECs in Utah. (Qwest 1R, p. 4.)¹⁰

⁹ As Qwest showed, the one-year transition period that the Joint CLECs have advocated was for the initial set of wire centers, and that transition period was to begin upon the effective date of the *TRRO*, which was March 11, 2005, and thus which has already expired on March 11, 2006. (Tr., pp. 13-14.)

¹⁰ The DPU largely agrees with Qwest’s process for updating the wire center lists in the future, and thus recommended that the Commission adopt the process, but with a couple of modifications. (DPU 1, pp. 9-10.) The first modification is based on the CLEC request that Qwest file its ARMIS 43-08 data whenever any wire center is within 5,000 business lines of any of the thresholds. (*Id.*) However, for the reasons set forth above, Qwest respectfully submits that such a requirement is without merit, is without any precedent either in the *TRRO* itself or any state commission ruling on these issues, could encourage gamesmanship or result in CLECs avoiding placing DS1 and DS3 facilities in wire centers in an effort to maintain a wire center’s impaired status, would be unduly burdensome on Qwest (which does not have a process for such advance notice), and would not help CLEC business plans in any event. The DPU also recommended shortening the time for challenging a wire center to a five-day period. (DPU, p. 10.) However, apparently both Qwest and the Joint CLECs believe that a 30-day period is sufficient. (Qwest 1R, p. 15; Qwest 1SR, p. 4; Eschelon 1R, pp. 26 (30 days notice is sufficient so long as Qwest does not simply provide a list, but provides information in support of a list, which Qwest has agreed to do); Tr., pp.

Specifically, Qwest envisions a process similar to current tariff filing procedures. For example, Qwest would file the updates to the wire center list with the Commission and provide notice to all CLECs through the Qwest/CLEC Change Management Process (“CMP”) notification process that an additional wire center is non-impaired. (Qwest 1R, pp. 3-4.)¹¹ As for the type of data Qwest would provide, Qwest intends to provide the same kind of supporting data that it used to support its initial list of non-impaired wire centers. (Tr., pp. 11-12, 14-16.) Parties would then have 30 days to raise objections to the Commission, and if no objections were raised, the wire center list would be deemed approved through operation of law. (Qwest 1R, pp. 3-4; Qwest 1SR, p. 4.)

Further, Qwest agrees that it would not “block” orders absent a final designation of non-impairment, either through operation of law, or by formal Commission approval when CLEC objections occur. (Qwest 1R, pp. 5-6; Tr., pp. 12-13.)¹² Qwest further agrees with the CLECs that wire center lists based on business lines would only be updated once a year, since ARMIS data is only prepared once a year. However, this once-a-year updating applies only to business lines, and not to updating the wire center list based on fiber-based collocators, since the collocation process is not connected to ARMIS. (Tr., pp. 14, 59-60.)

12, 173.) At the June 13th hearing, the DPU seemed to back off of such recommendation. (Tr., pp. 202-205.)

¹¹ The CMP is a formal collaborative process between Qwest and CLECs for management to changes to Qwest’s Operational Support Systems, including pre-ordering, ordering, billing and maintenance and repair processes as mandated by the FCC’s 271 requirements. (Qwest 1R, p. 4, fn. 2.)

¹² However, Qwest does not agree with the Joint CLECs that “the terms and procedures for rejecting orders must be predetermined and agreed by CLECs.” All that the parties must agree to is when orders may be rejected; and the parties are already in agreement that Qwest will not block orders for UNEs until a particular wire center is on a Commission-approved list of non-impaired wire centers. (Qwest 1R, p. 6.) Moreover, Qwest disagrees with the Joint CLECs’ argument about Qwest being required to immediately process orders from a CLEC who “self-certifies” that it is entitled to obtain the requested UNE. (Eschelon 1, p. 39.) Qwest should have a right to provide notice to CLECs that Qwest intends to change the status of a wire center, thus putting CLECs on notice that its authorization to place an order is in dispute pending a Commission decision on the status of that wire center. In addition, there should be no need for separate proceedings before this Commission between Qwest and each CLEC that wishes to place a UNE order in a particular wire center that Qwest believes is non-impaired. Finally, CLECs cannot have it both ways in insisting, on the one hand, that Qwest not block orders in a disputed wire center (with which Qwest agrees), but, on the other hand, insisting that they be allowed to place orders in such disputed wire center. (Qwest 1R, pp. 7-9.)

ARGUMENT

I. QWEST’S BUSINESS LINE COUNTS MEET THE TRRO THRESHOLDS

A. TRRO and FCC rule definitions of “business lines”

The FCC defined “business lines” in its *TRRO* as follows:

The BOC wire center data that we analyze in this Order is based on ARMIS 43-08 business lines, plus business UNE-P, plus UNE-loops. (Ex. Qwest 2 (Direct Testimony of David Teitzel) (hereafter “Qwest 2”), p. 3.)

Further, the FCC’s rules regarding implementation of *TRRO* requirements (47 CFR § 51.5) define “business line” as follows:

A business line is an incumbent LEC-owned switched access line used to serve a business customer, whether by the incumbent LEC itself or by a competitive LEC that leases the line from the incumbent LEC. The number of business lines in a wire center shall equal the sum of all incumbent LEC business switched access lines, plus the sum of all UNE loops connected to that wire center, including UNE loops provisioned in combination with other unbundled elements. Among these requirements, business line tallies:

- (1) shall include only those access lines connecting end-user customers with incumbent LEC end-offices for switched services,
- (2) shall not include non-switched special access lines,
- (3) shall account for ISDN and other digital access lines by *counting each 64 kbps-equivalent as one line*. For example, a DS1 line corresponds to 24 64 kbps-equivalents, and therefore to 24 “*business lines*.” (Qwest 2, pp. 3-4 (emphasis added).)

The FCC’s directives are very clear: *all* ILEC lines that are used to serve business customers, whether they are provided on a retail *or* a wholesale basis, should be included in the business line count. (Qwest 2, p. 4.)¹³ The FCC’s business line definition also recognizes that UNE loops are generic wholesale services and that an ILEC has no means of determining whether a CLEC is utilizing a UNE loop to serve a residential customer or a business customer. Thus, the FCC’s rules (47 CFR § 51.5) clearly state that the sum of *all* UNE loops should be

¹³ The FCC’s definition in 47 CFR 51.5 *excludes* any business lines that are served by loop facilities not owned by the ILEC, such as lines served through a CLEC-owned fiber facilities, lines served through coaxial cable facilities owned by cable MSOs, wireless services used in lieu of Qwest’s business lines, etc. (Qwest 2, p. 5, fn. 4.)

included in an ILEC's count of business lines. (*Id.*, pp. 4-5.) Further still, subsection (3) of the "business line" definition of 47 CFR § 51.5 clearly states that each 64 kilobit (64 kbps) channel¹⁴ within a high-capacity digital line, such as a DS1, should be counted as a separate business line. Since a DS1 line, for example, has a capacity of 1,544 kbps, a DS1 would be counted as containing 24 separate business lines. (*Id.*, p. 5.)¹⁵

Finally, the FCC stated that "business line counts are an objective set of data that incumbent LECs have already created for other regulatory purposes," and that "by basing our definition in an ARMIS filing required of incumbent LECs, and adding UNE figures, which must also be reported, we can be confident in the accuracy of the thresholds, *and a simplified ability to obtain the necessary information.*" *TRRO*, ¶ 105. (Emphasis added.) Thus, the FCC's intent is that ILECs should utilize data "already created for other regulatory purposes," and that they should follow the FCC's simple and unambiguous definition to count business lines in determining which wire centers meet the non-impairment thresholds established in the *TRRO*. (Qwest 2, p. 6.)¹⁶

¹⁴ A 64 kilobit per second channel (64 kbps) is also known as a Voice-Grade Equivalent ("VGE") channel. Qwest reports access lines in its annual FCC ARMIS data in terms of VGEs in service. (Qwest 2, p 5, fn. 5.)

¹⁵ As noted above, 47 CFR 51.5 specifically states that "a DS1 line corresponds to 24 64 kbps-equivalents, and therefore to 24 'business lines.'" (Qwest 2, p. 5, fn. 6.)

¹⁶ Numerous state commissions, including Indiana, Illinois, Ohio and Florida, have endorsed Qwest and other RBOC interpretations of the FCC guidelines in the *TRRO*. See e.g., *In the Matter of the Indiana Utility Regulatory Commission's Investigation of Issues Related to the Implementation of the Federal Communications Commission's Triennial Review Remand Order and the Remaining Portions of the Triennial Review Order*, Ind. URC, Cause No. 42857 (approved January 11, 2006), Issue 3, p. 16; Arbitration Decision, *Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 with Illinois Bell Telephone Company to Amend Existing Interconnection Agreements to Incorporate the Triennial Review Order and the Triennial Review Remand Order*, ICC, Docket No. 05- 0442 (Nov. 2, 2005) ("*Illinois TRO/TRRO Order*"), at p. 32; Arbitration Award, *In re Establishment of Terms and Conditions of an Interconnection Agreement Amendment*, PUCO, Case No. 05-887-TP-UNC (Nov. 9, 2005) ("*Ohio TRO/TRRO Order*"), at 16; *Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes in Law, by BellSouth Telecommunications, Inc.*, Fla. PUC, Docket No. 041269-TP, Order No. PSC-06-0172-FOF-TP (March 2, 2006) ("*Florida TRO/TRRO Order*"), at p. 37. The only state commission that Qwest is aware of that has ruled otherwise was the North Carolina Commission, which Qwest respectfully submits decided the issue incorrectly. See *In the Matter of Proceeding to Consider Amendments to Interconnection Agreements Between BellSouth Telecommunications, Inc. and Competing Local Providers Due to Changes of Law, Order Concerning Changes of Law*, NC PUC, Docket No. P-55, Sub. 1549 (March 1, 2006), at p. 5. (Qwest 2, pp. 6-10; see also Tr., pp. 130-134.)

B. Qwest's application of FCC "business line" definitions and methodology

1. December 2003 ARMIS data vintage

In developing wire center-specific counts of Qwest retail switched business lines in service, Qwest followed the FCC's directive of utilizing ARMIS Report 43-08 data, which was the most current data available at the time that Qwest conducted its analysis.¹⁷ Accordingly, consistent with ARMIS business access line definitions, Qwest's impairment analysis was based on the retail switched business line counts at each wire center from its *December 2003* ARMIS 43-08 Report, and included all Qwest retail switched business lines in Utah wire centers from this report. (Qwest 2, p. 13; Qwest 2R, pp. 2-4; Qwest 2SR, p. 3; Tr., pp. 32-37.)¹⁸

¹⁷ Qwest filed December 2003 ARMIS data with the FCC in April 2004. This was the same data that was available on February 4, 2005 when the FCC directed Qwest and other RBOCs to submit their lists of wire centers that met the FCC's non-impairment criteria. Qwest did not file ARMIS data for 2004 until April 2005. Thus, use of Qwest's December 2003 ARMIS data is not only appropriate, but it is also fully consistent with the FCC's intent, as expressed at paragraph 105 of its *TRRO*, to base determinations on "an objective set of data that incumbent LECs already have created for other regulatory purposes." (Qwest 2, pp. 13-14, fn. 13; Ex. 2R (Response Testimony of Dave Teitzel) ("Qwest 2R"), pp. 2-4; Tr., pp. 32-37.) The Joint CLECs do not dispute this position. (Tr., p. 163.)

¹⁸ There is no merit to the Joint CLEC argument (Eschelon 1, p. 17) that the vintage of business line data should be more recent than Qwest's use of December 2003 ARMIS 43-08 data. (Although the DPU did not object to Qwest's use of December 2003 data, it later said that it did not take any position regarding the vintage of data issue. (See e.g., Qwest 2SR, pp. 2-3; Tr., pp. 218-219.)

First, the FCC clearly meant for Regional Bell Operating Companies ("RBOCs") like Qwest to utilize access line data that was finalized and readily available on February 4, 2005, when the FCC directed the RBOCs to submit their lists of wire centers meeting the *TRRO*'s non-impairment criteria. The only ARMIS data that was on file with the FCC on February 4, 2005 was *December 2003 data*. Qwest files its access line data to the FCC in April of each year for incorporation into its ARMIS report, and as such, it filed data for full year 2004 to the FCC in April 2005, nearly two full months after the FCC's February 4th order. It is not reasonable to argue that the FCC's clear directions meant that the FCC intended for RBOCs to use incomplete and unofficial data to determine wire center non-impairment. Simply stated, and contrary to the Joint CLECs' assertion, full year 2004 access line data was not finalized and available in ARMIS when the FCC required Qwest to complete its wire center non-impairment analysis. (Qwest 2R, pp. 2-4.) The fact that time intervened between Qwest's initial wire center non-impairment filing in February 2005 and now does not mean that December 2003 data is not appropriate as the basis for Qwest's initial list. (*Id.*, p. 4; Qwest 2R, pp. 2-4; Tr., pp. 32-37.)

Second, not only do the FCC rules not require that fiber collocation data and business line data be of the same vintage in determining wire center non-impairment (especially since only business line data is based on ARMIS data, while fiber collocation data is not), but the Joint CLECs agree that that both types of non-impairment need not be based on the same vintage of data. (Qwest 2R, pp. 4-5; Tr., p. 63.)

Finally, not surprisingly, only two state commissions (of at least nine) have used RBOC business line data other than December 2003 ARMIS data. (Qwest 2R, pp. 6-7.) The vast majority of states have agreed with Qwest's position. (*Id.*, pp. 6-8; see also Eschelon 1, p. 32, Table 6.) Indeed, the only state commission in the Qwest region which has thus far addressed this issue is the Washington Utilities and Transportation Commission ("WUTC"). In that proceeding, the presiding Administrative Law Judge issued an order finding Qwest's use of December 2003 ARMIS data to be in full compliance with the *TRRO*. See *Washington TRRO Order*, ¶¶ 23-24. (Qwest 2R, p. 6.)

2. Adjustments to business line data

a. 64 kbps VGE adjustment

However, in order to satisfy the FCC's directives, it was necessary to adjust the ARMIS 43-08 data for high-capacity loops. Therefore, because the FCC mandated in its *TRRO* that all 64 kbps channels in a high-capacity digital line be included in the business line counts when determining which wire centers satisfy the FCC's non-impairment threshold test, Qwest multiplied all actual high-capacity digital business shown in its December 2003 ARMIS Report by the appropriate voice-grade equivalent ("VGE") factor to comply with the FCC's rules.¹⁹ For example, Qwest multiplied all DS1 unbundled loops in Qwest's December 2003 wholesale database -- the same vintage of data upon which Qwest's retail business line count for its ARMIS 43-08 report was based -- by a VGE factor of 24 (since there are 24 VGE channels in each high-capacity DS1 circuit), consistent with the FCC's guideline (47 CFR § 51.5) that *all* 64 kbps channels in a digital circuit should be counted as separate business lines. (Qwest 2, pp. 14-18; Qwest 2R, pp. 13-15.)²⁰ This adjustment, along with the other adjustments that Qwest made, are consistent with the FCC's directives in the *TRRO*, and despite Joint CLEC protestations of "manipulation of data," there was no such manipulation. (Qwest 2R., pp. 14-15.)²¹ In fact, the FCC use of ARMIS data implicitly includes some adjustment to the data, especially in the use of

Accordingly, there is no basis to review "December 2004" or "2005" data for any wire center. This is especially so because the FCC's rules mandate that even if the number of business lines in a particular wire center eventually or subsequently declines below non-impairment thresholds for DS1 or DS3 loops, the non-impairment designation for that particular wire center *remains unchanged*. (Qwest 2R, pp. 8-9; Tr., p. 28.)

¹⁹ The DPU agreed with Qwest that digital lines should be adjusted to reflect the full capacity of the underlying DS1 or DS1 circuit, at least when such circuits are being provided to Qwest's wholesale customers. (DPU 1, p. 5; Qwest 2SR, pp. 2-3.)

²⁰ Qwest also included enhanced extended loops ("EELs") in its unbundled loop counts. An EEL essentially consists of an unbundled loop plus interoffice transport. A CLEC utilizes an EEL to provide service to a customer located in a particular wire center when the CLEC's switching equipment is located in a different wire center. As such, EEL loops are appropriately included in the count of unbundled loops of the wire center in which the unbundled loop terminates. (Qwest 2, p. 17.) However, although other state commissions have allowed other RBOCs to include other services in the business line count, such as High-Speed Digital Service Lines ("HDSL"), Qwest conservatively did not include HDSL lines in its *TRRO* business line counts. (Qwest 2, pp. 17-18.)

²¹ In addition, at least two other state commissions- in Florida and Georgia- have concluded that adjusting ARMIS data to reflect the full capacity of digital facilities fully complies with the *TRRO*. (Qwest 2R, pp. 14-15.)

the data at the wire center level since it is reported at the state level. (Qwest 2R, pp. 19-20; Tr., pp. 47-48, 57, 61-62, 86-87.)

Finally, although the DPU agreed with Qwest that digital lines should be adjusted to reflect the full capacity of the underlying DS1 or DS1 circuit, it did so only for circuits that are being provided to Qwest's wholesale customers. (DPU 1, p. 5; Ex. Qwest 2SR (Surrebuttal Testimony of David Teitzel) (hereafter "Qwest 2SR"), pp. 2-3.) However, as Qwest showed, subsection 3 of the FCC's *TRRO* implementation rules, 47 CFR § 51.5, explicitly applies to both wholesale and retail digital services (e.g., subsection 3 specifically describes how "business line" digital services should be counted, and defines a "business line" as encompassing both retail and wholesale services. (Qwest 2SR, p. 6.) The DPU's only rationale for limiting the application of this rule to wholesale lines was that Qwest would only know the quantity of its retail lines, but not its wholesale lines, though the DPU also admitted that the FCC rules did not state they apply only to wholesale lines. (Tr., pp. 209-210.) However, that is not a logical basis for such limitation, and thus the rule applies to both retail and wholesale lines.

b. Non-removal of residential and non-switched UNE loop counts

Qwest also included *all* UNE loops in a wire center in its business line counts, as the FCC had directed. *TRRO*, ¶ 105. Thus, consistent with the FCC's "business line" definition, Qwest did not attempt to "remove" UNE loops that may be used to serve residential customers or that may be used to provide "non-switched" services. Indeed, the clear language in the *TRRO* and associated rules specifies that there is no basis to distinguish between "business" UNE loops and "residential" UNE loops in counting *all* UNE loops for determining the total number of business lines in a wire center. That is, wire center-level access line counts used to determine whether the non-impairment thresholds are satisfied must be "based on ARMIS 43-08 business lines, plus business UNE-p, *plus UNE-loops.*" *TRRO*, ¶ 105. (Emphasis added.) (Qwest 2, pp. 15-16, 18;

Qwest 2R, pp. 16-17; Tr., p. 35.)²² Notably, the FCC did not include the adjective “business,” or any other qualifier, for UNE loops in its definition of “business lines,” either in the *TRRO* itself or in the FCC’s implementation rules, 47 CFR § 51.5. (Qwest 2, p. 18; Qwest 2R, 16-17; Qwest 2SR, p. 3; Tr., p. 35.)²³

c. UNE-P “residential” access line adjustments

As the FCC’s guidelines in its *TRRO* require, Qwest also included business UNE-P lines in its wire center line counts, utilizing the same December 2003 data that it used for its ARMIS retail business line and UNE loop data. (Qwest 2, p. 21.) However, because Qwest’s wholesale UNE-P tracking systems were unable to distinguish between residential and business UNE-P lines in the December 2003 data, Qwest determined the number of “business UNE-P” lines in each wire center through the use of its white pages directory. (*Id.*, p. 22) Simply, Qwest deducted the number of directory listings associated with residential UNE-P access lines from the total number of UNE-P lines in service in the relevant Utah wire centers to determine the number of business UNE-P lines in service in December 2003. Qwest had previously used its white pages directory listings database to distinguish between residential and business UNE-P

²² The DPU agrees that all UNE-based lines should be included in Qwest’s business line count, regardless whether those UNEs are used to serve residential or business customers. (DPU 1, p. 5; Qwest 2SR, pp. 2-3.)

²³ A number of state commissions have agreed with Qwest and RBOC interpretations on this issue. See e.g., *Application of Pacific Bell Telephone Company, d/b/a SBC California for Generic Proceeding to Implement Changes in Federal Unbundling Rules Under Sections 251 and 252 of the Telecommunications Act of 1996*, California PUC, Decision 06-01-043 (January 26, 2006) (“*California TRRO Order*”), at p. 10-11; *Generic Proceeding to Examine Issues Related to BellSouth Telecommunications, Inc.’s Obligations to Provide Unbundled Network Elements*, Ga. PSC, Docket No. 19341-U (February 7, 2006) (“*Georgia TRRO Order*”), at pp. 19-20. (Qwest 2, pp. 18-20; Qwest 2R, pp. 16-17.) Indeed, as the Joint CLECs’ Table 6 summary of state commission decisions (Eschelon 1, p. 32) indicates, at least *seven of nine* state commission orders have agreed with Qwest and other RBOCs that UNE loop counts used to determine wire center non-impairment should not be reduced to account for UNE loops that may be used to serve residential customers, and no state commission has found that non-switched UNE loops should be excluded from the count of business lines to determine wire center non-impairment. (Qwest 2R, pp. 16-17.) It stands to reason, therefore, that there is no basis for the Joint CLEC recommendation (Eschelon 1, p. 30) that Qwest “work together” with the Joint CLECs and the DPU to establish a process to remove UNE loops serving residential customers and non-switched UNE loops from the business line total for the Salt Lake City main wire center. (Qwest 2R, p. 22.)

lines in the section 271 process, and thus it is a good (if conservative) proxy for determining business UNE-P lines. (*Id.*, pp. 22-25.)

d. High-capacity UNE-P adjustments

Finally, Qwest used the same approach for high-capacity UNE-P circuits as it used for high-capacity retail and UNE loop circuits. For example, services such as “UNE-P DSS”²⁴ and “UNE-P ISDN PRI”²⁵ are served by a DS1 loop. Thus, Qwest multiplied the quantity of UNE-P circuits by a “VGE-equivalence” factor of 24 to reflect the number of 64 kilobit channels associated with these UNE-P DS1 lines. (Qwest 2, pp. 25-26; Qwest 2R, pp. 10-11, 13-15; Tr., pp. 35, 37-39.) As stated, all of these adjustments were appropriate and consistent with the *TRRO*. (Qwest 1R, pp. 13-14; Qwest 2R, pp. 10-11; 13-16; Tr., pp. 35, 37-39.)

C. The Joint CLEC adjustments are improper

Further still, the Joint CLECs propose certain adjustments to Qwest’s business line data to support their argument that Qwest’s 2003 data does not support DS1 loop non-impairment in the Salt Lake City Main wire center. (See Eschelon 1, p. 29, Highly-Confidential Table 4.) Specifically, the Joint CLECs propose (1) use of February 2005 access line data, (2) use of what they call “43-08” access line counts for Qwest switched retail business lines, (3) removal of UNE loop lines used to serve residential subscribers, (4) removal of non-switched UNE loop line counts, and (5) use of “used capacity” for UNE-P and UNE loop lines to reflect actual channels in service. (*Id.*, p. 15.)

However, as Qwest demonstrated, the Joint CLECs’ “adjustments” to Qwest’s data are in conflict with the *TRRO*. This is especially so because the Joint CLECs substitute a value for Qwest’s switched business line count for the Salt Lake City Main wire center that they purport to

²⁴ UNE-P DSS is UNE-P service provided in a “Digital Switched Service” digital PBX trunk configuration and includes a DS1 loop. (Qwest 2, p. 26, fn. 20.)

²⁵ UNE-P ISDN-PRI is UNE-P service provided in an “ISDN-Primary Rate” configuration and includes a DS1 loop. (Qwest 2, p. 26, fn. 20.)

represent “actual” switched business lines in service, rather than a number which includes the *full capacity* of digital business lines. Not only are these adjustments directly contrary to the *TRRO*’s requirements that ILEC should count “each 64 kbps-equivalent as one line,” but they also undercount actual lines at the wire center because they do not capture actual digital business channels in service originating from that wire center, since Qwest’s tracking processes were not designed to track digital business channels by originating wire center. (Qwest 2R, pp. 18-22; Tr., pp. 37-39, 62-63, 81-83, 85-87.)²⁶ For the same reasons, the Joint CLECs’ “adjustments” of Qwest’s business UNE-P line counts, as well as of Qwest’s DS1 and DS3 loop counts, to arrive at an estimate of “used capacity” do not comply with the *TRRO* and thus should also be disregarded. (Qwest 2R, pp. 20-21.)

D. Non-impaired wire centers in Utah

Based on Qwest’s analysis of the data the *TRRO* requires, the only wire center in Utah meeting the non-impairment standard for *DS1 and DS3 unbundled loops* is the *Salt Lake City Main* wire center. (Qwest 2, p. 11; see also Ex. Qwest 2.1 (Qwest business access line for the Salt Lake City Main wire center); Tr., pp. 32, 35-36.)²⁷ In addition, there are six Utah wire

²⁶ Qwest showed the example of an ISDN-Primary Rate (“ISDN-PRI”) subscriber having service originating in the Salt Lake City Main wire center, but having the actual ISDN channels associated with that service terminate in a different wire center, thus resulting in an undercounting of digital lines at the Salt Lake City Main wire center. (Qwest 2R, pp. 19-2; Qwest 2SR, pp. 7-9.)

²⁷ The Joint CLECs argue that the Salt Lake City Main wire center has fewer than 60,000 business lines, based on its misinterpretation of Qwest’s publicly-available “ICONN” database. (Eschelon 1, pp. 19-20.) However, the Joint CLECs’ argument based on ICONN data, to the extent they still advocate the use of such data, is without merit for a variety of reasons, including that comparing ICONN data to ARMIS data is not an apples-to-apples comparison (including the differences between a “loop” and a “line”), and thus leads to a substantial undercounting of the business lines in the Salt Lake City Main wire center. (Qwest 2R, pp. 10-12.) They also argue, based on the “adjustments” described above, that the Salt Lake City Main wire center does not meet the DS1 non-impairment threshold. (Eschelon 1, p. 29.) However, for the same reasons as set forth above, the Joint CLEC adjustments are improper, and Qwest has demonstrated that the Salt Lake City Main wire center meets the *TRRO* non-impairment standard for both DS1 and DS3 loops.

For these same reasons, the Commission should also reject the DPU’s opinion (DPU 1, p. 6) that, if the Commission adopts the DPU recommendation regarding the use of only actual ARMIS 43-08 business lines in service and the full capacity of digital DS1 and DS3 services for wholesale customers only, “the Salt Lake City Main wire center would fall below the 60,000 business lines required to meet the non-impaired status for DS1 loops.” (Qwest 2SR, pp. 7-10.) Indeed, even using the DPU’s own definitions, the number of business lines in the Salt Lake City Main wire center is *still greater than 60,000*. (*Id.*, pp. 9-10.)

centers (Murray, Ogden Main, Provo, Salt Lake City Main, Salt Lake City South and Salt Lake City West) that are non-impaired for interoffice transport. This determination was based on both fiber collocation data, as well as business line data, to make the interoffice transport non-impairment determinations for those wire centers. (Qwest 2, p. 11.) Accordingly, based on Qwest’s analysis of both business line counts and fiber collocation data, six Utah wire centers meet the FCC’s interoffice transport threshold for “Tier 1” non-impairment status.²⁸ There were no Utah wire centers in the “Tier 2” interoffice transport non-impairment designation. (Qwest 2, p. 12; Qwest 2R, pp. 32, 35-36.)

II. QWEST’S FIBER-BASED COLLOCATOR EVIDENCE MEETS THE *TRRO*

A. *TRRO* and FCC rule definitions of “fiber-based collocators”

The *TRRO* defines a “fiber-based collocator” as any carrier, unaffiliated with the ILEC, that maintains a collocation arrangement in an ILEC wire center, with active electrical power supply, and that operates a fiber-optic cable or comparable transmission facility that (1) terminates at a collocation arrangement within the wire center; (2) leaves the ILEC wire center premises; and (3) is owned by a party other than the ILEC or an ILEC affiliate. See *TRRO*, ¶ 102.²⁹ Two or more affiliated fiber-based collocators in a single wire center are collectively counted as a single fiber-based collocator. *Id.*; see also 47 CFR § 51.5. Fixed-wireless collocation arrangements are included “if the carrier’s alternative transmission facilities both terminate in and leave the wire center.” *TRRO*, ¶ 102. Finally, a competitor’s collocation arrangement counts toward the qualification of a wire center for a particular tier irrespective of

²⁸ While Qwest reviewed both business access lines and fiber collocation data in its non-impairment analyses for Utah wire centers, with the sole exception of the Salt Lake City Main wire center, Qwest relied only on fiber collocation data in determining Tier 1 and Tier 2 non-impairment for the wire centers identified as qualifying for non-impairment status under the FCC’s *TRRO* guidelines.

²⁹ Dark fiber obtained from an ILEC on an indefeasible right of use (“IRU”) basis is treated as non-ILEC fiber-optic cable. *TRRO*, ¶ 102, fn. 292. (Qwest 3, p. 7.)

the services that the competing carrier offers. *Id.* (Ex. 3 (Direct Testimony of Rachel Torrence) (hereafter “Qwest 3”), pp. 7-8.)

B. Qwest’s processes to identify fiber-based collocators

In order to identify the number of fiber-based collocators within its Utah wire centers, Qwest took the criteria set forth in the *TRRO* (*TRRO*, ¶ 102) for determining a fiber-based collocator and adopted the *TRRO*’s definition for fiber-based collocators verbatim.³⁰ Thus, Qwest undertook two distinct efforts to identify the number of fiber-based collocators within its wire centers not only in Utah, but in all of its other ILEC states. (Qwest 3, p. 10; Ex. Qwest 3R (Response Testimony of Rachel Torrence) (hereafter “Qwest 3R”), pp. 3-6, 8-9, 10-13.)

First, Qwest used its collocation tracking records and billing data as a baseline which coincided with the December 2003 ARMIS data. (Qwest 3, pp. 10-12.)³¹ After Qwest filed its initial list of wire centers with the FCC on February 18, 2005, Qwest sent a letter to each CLEC

³⁰ The *TRRO* also set criteria regarding dark fiber users and fixed-wireless providers as fiber-based collocators. However, Qwest did not address them in its criteria because Qwest took a very conservative approach for the sake of increased accuracy, and thus it focused its attention on the majority of qualifying collocators, which were fiber-based collocators. Qualifying fixed wireless and dark fiber users operating with an indefeasible right of use (“IRU”) constitute a very small percentage of the total numbers of collocators, and thus identifying and verifying these types of collocators would have required an extensive research effort. Given the short timeframe within which Qwest had to accomplish its task, Qwest found it a more prudent approach to concentrate on compiling an accurate list of the types of collocators that constitute the vast majority of fiber-based collocators in Qwest’s wire centers. (Qwest 3, pp. 9-10.)

³¹ Specifically, Qwest used an internal database that tracks all CLEC-submitted and approved collocation requests in order to develop a list of fiber collocations. This list was then edited to extract all collocations that did not have a record indicator for fiber entrance facilities. The resulting list was sent to Qwest’s Collocation Project Management Center for verification that there was active power in those collocations. Qwest’s Wholesale Markets team then validated the list against February 2005 billing data, thus confirming that the carrier was being billed for collocation. (Qwest 3, p. 11.)

Qwest central office technicians and state interconnection managers then further verified the resulting list. Because of the relatively short timeframe between the FCC’s request and the time that Qwest was to file its list with the FCC, Qwest took a conservative and comprehensive approach that would result in a smaller but more accurate list. For example, Qwest did not include any collocations in its initial February 2005 list when network field personnel had been unable to confirm a particular collocation, such as based on their records or personal knowledge of their particular wire centers. Accordingly, Qwest did not include in its FCC filing any questionable collocations that it could not verify. (Qwest 3, p. 11.)

Finally, Qwest analyzed the resulting wire center list to ensure that multiple collocations at a single wire center by the same or affiliated carriers, or by multiple collocations by a single carrier, were counted as only one fiber-based collocator. Qwest counted the number of fiber-based collocators in any given wire center as of the date of the *TRRO*’s release, February 2005. Qwest then filed the resulting list with the FCC on February 18, 2005. (Qwest 3, p. 12.)

on March 29, 2005 advising them of the wire centers in which Qwest showed the CLEC to have a fiber-based collocation as reflected by the data on the initial list. In that March 29, 2005 letter, Qwest requested the CLEC make sure its records agreed with Qwest's records and, if there was a discrepancy, the CLEC should provide Qwest with documentation regarding the collocation at issue. (Qwest 3, pp. 12.)

Thereafter, Qwest engaged in a comprehensive validation of the data it had compiled. As part of this validation process, Qwest incorporated CLEC responses to Qwest's March 29, 2005 requests for confirmation of data, and further, it conducted actual field verifications of wire centers. (Qwest 3, p. 13.)³² As part of this process, Qwest sorted all of its Tier 1 and Tier 2 fiber-based collocations by wire center, and for each wire center, it entered all of the pertinent information regarding all identified collocations into a template spreadsheet. Qwest developed the spreadsheet in order to facilitate the documentation of the certain *TRRO* collocation elements during its field verifications, such as verification of operator/carrier name, verification of active power and verification of fiber facilities. (Qwest 3, pp. 14-15.)

Thereafter, in June 2005, Qwest directed its Utah central office field personnel to physically inspect the identified wire centers. (Qwest 3, p. 15.)³³ Qwest's physical verification of each wire center verified not only Qwest's inclusion of the collocators it originally identified, but further allowed Qwest to verify collocations that Qwest had not been able to include

³² Qwest undertook a second effort to validate the list of non-impaired wire centers because, although it was relatively confident in the accuracy of its initial list of non-impaired wire centers, it also recognized that due to its conservative approach, its wire center list might not necessarily be complete. As such, Qwest understood it might have undercounted the number of collocators, such as, for example, due to possible mergers and acquisitions that had not been properly communicated to Qwest. Thus, if Qwest had any question whether or not two particular carriers were affiliated, Qwest counted them as one collocator. In addition, Qwest's databases used to identify fiber-based collocations were designed for a much different purpose, and thus could have included different, but non-qualifying, collocations. Finally, some CLEC responses to the letters Qwest sent to collocating CLECs indicated that some changes to the initial list might be necessary. (Qwest 3, p. 13; Qwest 3R, pp. 11-13.)

³³ These wire center personnel were directed to (1) verify the information for the fiber-based collocations identified and listed in Qwest's initial FCC filing, (2) add any fiber-based collocations that met the criteria but that had not been captured in Qwest's initial list, and to document the criteria, (3) investigate disputes or data, if any, that CLECs may have provided in their responses to Qwest's March 29, 2005 letter, and (4) provide any pertinent anecdotal information or comments they may have had regarding any of the collocations. (Qwest 3, p. 15.)

originally. (*Id.*) Qwest then revised its initial list of fiber-based collocators to reflect the information gathered through the physical field verifications, and filed the revised list of Qwest non-impaired wire centers with the FCC on July 8, 2005. (*Id.*) Qwest only included those fiber-based collocations that were operational on the effective date of the *TRRO*, March 11, 2005. (*Id.*, pp. 15-16.)³⁴

The DPU agrees that Qwest has provided a list that captures as accurately as possible the fiber-based collocators in Utah. The DPU further disagreed with the Joint CLECs' criticism of Qwest's process in identifying fiber-based collocators, and agrees with Qwest that the efforts that Qwest undertook to obtain accurate information were sufficient. Accordingly, the DPU believes that Qwest's Tier 1 and Tier 2 wire center classifications should be accepted. (DPU 1, pp. 7-8; Ex. Qwest 3SR (Surrebuttal Testimony of Rachel Torrence) (hereafter "Qwest 3SR"), pp. 1-2.)³⁵

C. Qwest's revised list of fiber-based collocators in Utah

As stated, on July 8, 2005, Qwest filed its revised list of non-impairment wire centers in all states, including Utah, with the FCC. The result of the review and field verifications led to changes in the total number of fiber-based collocators in five wire centers in Utah. One additional Utah wire center had a change, but without a net change in the number of fiber-based

³⁴ Accordingly, Qwest showed that its methodology to identify fiber-based collocators is sound and objectively applied. (Ex. Qwest 3R, p. 3.) Qwest also showed that it had provided the CLECs with sufficient information to allow the CLECs to determine whether the carriers that Qwest had identified as fiber-based collocators were in fact fiber-based collocators. (*Id.*, pp. 4-6.) This is especially so because Qwest did all it could reasonably do to validate the existence of fiber-based collocators in a wire center. (*Id.*) Thus, a CLEC's failure to affirmatively respond to Qwest's request for information requesting validation, or its mere disagreement that it is a qualifying fiber-based collocator, especially in light of substantiation by other credible information, should not be a basis to exclude a carrier as a fiber-based collocator. (*Id.*, pp. 6-8.)

There is also no basis for the Joint CLECs' argument that Qwest's physical filed verifications were not conducted in an objective manner. (Qwest 3R, pp. 8-9.) Finally, Qwest showed that its fiber-based collocator identification methodology is sound and that it yields an accurate result. (*Id.*, pp. 10-13.) This is so despite that the Joint CLECs' approach seemed to be to take isolated pieces of Qwest's evidence out-of-context and attempted to use such isolated pieces of evidence to justify the removal of legitimate fiber-based collocators from the Utah wire center list. (*Id.*, p. 13.)

³⁵ Indeed, the DPU noted that allowing the tier designations to be adjusted simply because some CLECs failed to respond would be unfair to Qwest. (DPU 1, pp. 7-8; see also Tr., p. 140 (Joint CLECs admitting that a CLEC disputing that it is a fiber-based collocator is not by itself a sufficient basis to conclude that the CLEC is not a fiber-based collocator).)

collocators in that wire center. Finally, the changes resulting from the review and field verification let to tier re-designations for three wire centers in Utah. (Qwest 3, pp. 17-18; Qwest 3R, pp. 11-13; see also Ex. Qwest 3.3.)

The Joint CLECs, however, disagreed with Qwest with respect to several fiber-based collocators at several wire centers, namely the Ogden Main and Provo wire centers, as well as the effective date of non-impairment at the Salt Lake City West and Salt Lake City south wire centers. (Eschelon 1, pp. 11, 13-14.) With respect to the Ogden Main and Provo wire centers, the Joint CLECs argued that Qwest had not shown whether a single carrier should be counted as a fiber-based collocator. Specifically, they argued that this carrier had not confirmed to Qwest or the Joint CLECs that it is a fiber-based collocator, and that Qwest's field verification failed to confirm that the carrier was a fiber-based collocator. (Eschelon 1, p. 11; Eschelon 1SR, pp. 6-7; Supplemental Surrebuttal Testimony of Douglas Denney filed on June 23, 2006 (hereafter "Denney Supplemental Surrebuttal"), pp. 1-3; pp. 127-128, 152-155, 158-161.) As to the Salt Lake City West and Salt Lake City South wire centers, the Joint CLECs claim that the effective date of the non-impairment should be July 8, 2005, and not on the *TRRO* effective date of March 11, 2005, because these two wire centers were not on Qwest's original February 18, 2005 filing with the FCC. (Eschelon 1, pp. 13-14; Eschelon 1SR, pp. 12-14.)

D. Subsequent testimony at hearing and remaining collocations in dispute

As of the time of the June 13, 2006 hearing, the parties were still in dispute about Qwest's inclusion of fiber-based collocators in the Ogden Main and Provo wire centers. As stated, the dispute surrounded whether a single carrier should be counted as a fiber-based collocator, based on the Joint CLECs' argument that the carrier had not confirmed it is a fiber-based collocator and that Qwest's field verification failed to confirm it was a fiber-based collocator. (Eschelon 1, p. 11; Eschelon 1SR, pp. 6-7.) Accordingly, after Qwest's witnesses

had testified, the Joint CLEC witness Mr. Denney gave oral surrebuttal testimony with certain criticisms of Qwest's investigation of one carrier at the Ogden Main and Provo wire centers. (Tr., pp. 127-128.) Qwest then requested, and was granted, an opportunity to present additional oral surrebuttal by its fiber-based collocater witness, Rachel Torrence, on this particular dispute. (Tr., pp. 220-225 (Qwest request for oral surrebuttal), 226-229 (Torrence oral surrebuttal).)

Counsel for the Joint CLECs then cross-examined Ms. Torrence, and asked for, and was granted, an opportunity for Joint CLEC witness Mr. Denney to review certain detailed highly-confidential and proprietary back-up documentation regarding Qwest's investigation of this particular carrier's fiber-based collocations at those two wire centers, and thus Judge Goodwill ordered Qwest to produce such documentation by June 16, 2006, which Qwest did. (See Tr., pp. 230-239.) The Joint CLECs were also given the opportunity to file additional written surrebuttal testimony based on the additional documentation that Qwest had provided. (Tr., pp. 238-239.) The Joint CLECs thereafter filed additional surrebuttal testimony on June 23, 2006. (See Denney Supplemental Surrebuttal, filed on June 23, 2006.)

In its June 23, 2006 supplemental surrebuttal testimony, the Joint CLECs conceded that the carrier in question was in fact a fiber-based collocater at the Ogden Main and Provo wire centers. (See Denney Supplemental Surrebuttal, pp. 1, 7-8, 9 [unnumbered pages].)³⁶ Thus, those two wire centers are no longer in dispute. (*Id.*)

³⁶ The Joint CLEC witness Mr. Denney also complained that Qwest did not originally provide sufficient underlying supporting information, and thus argued that this alleged lack of sufficient information illustrated the importance of Qwest providing underlying supporting information when it attempts to add wire centers to the non-impaired list. (Denney Supplemental Surrebuttal, pp. 1-2, 3-4, 6-8.) The witness also argued that this alleged lack of supporting information illustrates why the Commission should set the effective dates of wire centers that Qwest proposes to add to the non-impaired list. (*Id.*, p. 2, 7-8.) Thus, the Joint CLECs proposed that the Commission establish the effective date of wire center updates based on the evidence before it, which would allegedly encourage Qwest "to be more forthcoming with its supporting documentation." (*Id.*, p. 8.)

However, although Qwest agrees that CLECs should be entitled to *sufficient information* regarding the fiber-based collocaters in any future wire center that Qwest proposes to add to the non-impaired list, the Joint CLECs completely ignore the competitively-sensitive nature of the information they apparently want Qwest to disclose, without the prior consent of the carriers whose data is being disclosed, in the first instance. Obviously, Qwest is willing to provide proof of its investigation of the carriers who it identifies as fiber-based collocaters in a

Accordingly, the only collocations remaining in dispute are with respect to the *effective date* (March 11, 2005 or July 8, 2005) of non-impairment based on fiber-based collocators at the Salt Lake City West and Salt Lake City South wire centers. (See Eschelon 1, pp. 13-15, and fns. 26, 27; Eschelon 1SR, pp. 12-14; Denney Supplemental Surrebuttal, pp. 2-3.) Specifically, the Joint CLECs argue that because Qwest updated its wire center list with the FCC with these two wire centers on July 8, 2005, the effective date for such ii should not be the March 11, 2005 effective date of the *TRRO*, but should instead be July 8, 2005 (or alternatively, August 7, 2005 (30 days after Qwest's second filing with the FCC on July 7, 2005)). (*Id.*)³⁷ However, this argument conveniently ignores the fact that the fiber-based collocations for these particular wire centers were *all operational* as of the March 11, 2005 *TRRO* effective date. (Qwest 3R, p. 13; Qwest 2SR, pp. 2-3.) Moreover, the FCC did not require that ILECs provide notice to CLECs or production of the non-impaired wire center list by the March 11, 2005 *TRRO* effective date. Further still, given the short time period involved, it is reasonable that the notice of such non-impaired wire centers could follow later, especially since RBOCs like Qwest were conducting thorough but cautious investigations of the identify of fiber-based collocators in their wire centers. (Qwest 3SR, pp. 2-3.)

given wire center. Nevertheless, to be required to produce the level of highly-confidential and proprietary CLEC-specific information such as that which Qwest produced on June 16, 2006, in the first instance, would not be appropriate absent a compelling reason by the CLECs showing that such information is absolutely necessary for their investigation of Qwest's claim of fiber-based collocators in that wire center. Certainly Eschelon, whose employee testified on behalf of the Joint CLECs, would be loath to have numerous of its competitors have access to such highly-confidential and proprietary information in the first instance, especially when the majority of fiber-based collocators in a given wire center are likely to not be in dispute.

Accordingly, Qwest is pleased that the Joint CLECs now agree that the carrier in question at the Provo and Ogden main wire centers was indeed a fiber-based collocator as of the March 11, 2005 effective date of the *TRRO*. However, Qwest cautions that it should not be required to provide the level of detail that it provided on June 16, 2006 regarding this carrier at these two wire centers *unless and until* the CLECs can show that such back-up documentation is essential to their review of Qwest's claim.

³⁷ The DPU concurs with this CLEC recommendation. (DPU 1, pp. 8-9.)

III. THE COMMISSION SHOULD REJECT ANY ADVANCE NOTICE MANDATE

As Qwest mentioned, Qwest and the Joint CLECs largely agree on most issues regarding the process for the updating of the wire center non-impairment list in the future. However, there is still a dispute regarding certain recommendations that the Joint CLECs make regarding the timing and notice of future wire centers on the non-impairment list.

Specifically, as to the timing and notice for the updating of such wire center lists in the future, Qwest believes a time period of *30 days* is sufficient time for CLECs to determine if they have an objection to Qwest's non-impaired wire center designation. However, Qwest strongly disagrees with the Joint CLECs' recommendation (Eschelon 1, p. 35) that Qwest should provide *advance notice* five days before Qwest actually files a request with the Commission to update the wire center list. Qwest also vehemently disagrees with the Joint CLEC position (Eschelon 1, p. 37) that Qwest provide *advance notice* when a wire center is "within 5,000 business lines" or "within one fiber-based collocator" of changing tier designation.³⁸

First, the Joint CLECs do not explain why CLECs need more than 30 days to advise the Commission that they have an objection to the addition of any particular wire center to the non-impaired list. (Ex. 1R (Response Testimony of Renee Albersheim) (hereafter "Qwest 1R"), p. 9.) A time period of 30 days is sufficient time for CLECs to determine if they have an objection to Qwest's non-impaired wire center designation. (*Id.*) Moreover, although the Joint CLECs argue that they need five days advance notice because they need additional time to determine whether they need to object to having the data released to the public, this is not an issue. This is especially so because Qwest intends to protect any such data as it has in this case,

³⁸ The DPU also joins in the request for advance notice, but apparently only when the business line counts in a particular wire center are within 5,000 of a non-impairment threshold, and not when a wire center is within one fiber-based collocator of a non-impairment threshold. (DPU 1, pp. 9-10.)

such as through a standing non-disclosure agreement or protective order that can protect sensitive CLEC-specific data. (Tr., pp. 11-12.)

Further still, there is no reason to add the administrative burden of providing advance notice of a wire center being within 5,000 business lines or one fiber-based collocator of a threshold upon Qwest, especially since Qwest does not have a process in place for such notice. (Qwest 1R, p. 10; Ex. Qwest 1SR (Surrebuttal Testimony of Renee Albersheim (hereafter “Qwest 1SR”), pp. 3-4; Tr., pp. 20-21, 24, 27, 39-43, 51-54, 59-61.) This is especially so because there is no such “advance notice” requirement in the *TRRO*, and no state commission has imposed such a requirement. (Qwest 1SR, p. 3; Tr., pp. 139-140.) The Commission should not impose a separate Utah threshold, in addition to the FCC threshold. (Qwest 1SR, p. 3.)

Additionally, the thresholds that the Joint CLECs advocate are not meaningful, especially since 5,000 lines or one fiber collocator does not mean that a change in the impairment classification for that wire center is imminent. (Qwest 1R, p. 10; Qwest 1SR, pp. 3-4.) For example, since Qwest must rely on ARMIS 43-08 data which is filed once per year (in April for the previous year’s data), Qwest can only propose updates to the wire center non-impairment list based on ARMIS data once per year. If the number of business lines in a wire center increased to within 5,000 of a non-impairment threshold in June, but subsequently declined to a number below 5,000 of a non-impairment threshold by December, advance notice could actually cause CLECs to take costly action to prepare for a wire center non-impairment reclassification that will not occur. Finally, advance notification could allow a CLEC to attempt to “game” the system by changing its business plans so that the wire center would be unlikely to meet the threshold. (Qwest 1R, p. 10; Qwest 1SR, pp. 3-4.)

IV. QWEST IS ENTITLED TO ASSESS NRCs TO CONVERT UNEs TO SUBSTITUTE SERVICES IN NON-IMPAIRED WIRE CENTERS

Finally, the last issue in the case is whether Qwest is entitled to assess nonrecurring charges (“NRCs”) when converting a UNE to an alternative Qwest circuit, such as a private line or special access circuit. Since a CLEC which converts a UNE to an alternative Qwest circuit has *other business alternatives*, and thus *voluntarily* requests such a conversion, and because Qwest performs work activities in converting UNEs to private line circuits in wire centers meeting the FCC’s non-impairment thresholds, Qwest is entitled to recover its Design Change charge as an NRC for conducting such work at the CLEC’s request. (Ex. Qwest 4 (Direct Testimony of Teresa Million) (hereafter “Qwest 4”), pp. 2-3.)³⁹ Qwest will utilize an NRC to recover the costs that it incurs when implementing these conversions. (*Id.*, pp. 7-8.)

A. Work activities involved

As Qwest demonstrated, the conversion of a UNE circuit to a special private line circuit involves three functional areas within Qwest’s ordering and provisioning organizations, and the personnel within these three functional areas involved with a conversion are the (1) Service Delivery Coordinator (SDC), (2) Designer and (3) Service Delivery Implementor. Qwest demonstrated that there are a variety of steps that it must undertake to assure itself that the data for the converted circuit is accurately recorded in the appropriate systems within each of these three job functions. (Qwest 4, pp. 4-6.)⁴⁰ In addition, Qwest showed why the circuit identifier

³⁹ This is especially so because in the case of the conversions of UNEs to alternative facilities, *but for* the conversion, Qwest would not have to incur the costs of performing the associated tasks. (Qwest 4, pp. 2-3.) Thus, there is no merit to the Joint CLECs’ argument that Qwest’s conversion of UNEs to private line circuits is not required by the *TRRO*, or is for Qwest’s convenience, or that there is no benefit to the CLECs. (Ex. Qwest 4R (Response Testimony of Teresa Million) (hereafter “Qwest 4R”), pp. 4-5.) 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 end-user customers, thereby disadvantaging Qwest in a market the FCC has determined to be competitive. Thus, to the extent Qwest incurs costs to facilitate the CLEC’s conversion from a UNE to a private line service, Qwest should be entitled to assess an appropriate charge. (*Id.*, p. 4.)

⁴⁰ Qwest will not go into all of the detailed work that Qwest must perform when a CLEC requests a conversion to an alternative circuit. However, at a minimum, the SDC, who is the primary contact for the CLEC, provides the CLEC end-to-end order coordination from request to order completion must review, and must confirm

("circuit ID") must be changed. The circuit ID must be changed for several reasons, including the fact that FCC rules (47 C.F.R. §32.12(b) and (c)) require that telephone carriers accurately maintain records that track inventories of circuits,⁴¹ and that the unique circuit ID is maintained as a means of measuring the different service performance requirements applying to UNEs and private line services. (Qwest 4, pp. 6-7.)

Finally, the process for converting a UNE circuit to a private line circuit is transparent to a CLEC's end-user customer, and this process is used to avoid placing the end-user customer's service at risk. (Qwest 4R, pp. 3-4.) However, Qwest, having already spent hundreds of millions of dollars to enhance and modify its ordering, provisioning and inventory systems to appropriately track facilities it has been required to provide as UNEs, should not be required to spend millions more to further modify its systems to track these same facilities yet another way. Such costs would place an unfair burden on Qwest, especially when it already has systems and identifiers in place to track private line services and avoid service interruptions. (*Id.*, pp. 6-7.)

B. Qwest's Design Change charge

Finally, Qwest believes that the use of its tariffed Design Change charge should be used, instead of a unique charge for the UNE-to-private line conversion process. This is so because the Design Change charge involves functional areas and work tasks that are similar to those

the data in the Access Service Request (ASR) and assure that the data is accurately transferred into two service orders required to change billing from the CRIS billing system to the IABS billing system. The SDC must also change the circuit identifier ("circuit ID") to reflect the fact that the circuit will now be recognized as a private line rather than a UNE circuit once the order is complete, and must check the accuracy of other data. (Qwest 4, pp. 4-5.)

In addition, the Designer reviews and validates the circuit design and assures that the design records for the converted circuit match the current UNE circuit, as well as that no physical changes to the circuit are needed. The Designer also reviews the circuit inventory in the TIRKS database to ensure accuracy and database integrity in order to ensure there is no service interruption for the CLEC's end-user customer. (Qwest 4, p. 5.)

Finally, the Service Delivery Implementer has overall control for order provisioning, and verifies the orders and completes the update of the circuit orders in the appropriate system. (Qwest 4, p. 6.)

⁴¹ This rule requires Qwest to maintain subsidiary records in sufficient detail to align specific circuits with the billing, accounting, and jurisdictional reporting requirements related to the services that these circuits support. (Qwest 4, p. 6.) Changing the circuit ID is not merely for the convenience of Qwest, as the Joint CLECs allege. (Qwest 4R, pp. 5-6.)

associated with the conversion of a UNE to a private line service or facility. In addition, it provides a conservative estimate of the costs that Qwest will incur when converting CLEC high-capacity loop and transport UNEs to their private line counterparts.⁴² Similar activities take place when Qwest processes the orders for the conversion of a UNE to a private line circuit. Due to the systems involved in the separate tracking of UNE and private line services, as well as the additional manual efforts that Qwest undertakes to ensure there are no service disruptions for CLEC customers, the UNE-to-private line conversion orders are typically more costly to process than a typical Design Change.⁴³ The use of the existing Design Change charge avoids the complexity of adding a new charge to Qwest's billing systems, and gives CLECs the benefit of a very conservative charge when compared with the actual activities that Qwest undertakes during this conversion process. (Qwest 4, pp. 7-8.)⁴⁴

Accordingly, Qwest is not asking this Commission to determine the reasonableness of Qwest's tariffed Design Change charge. Rather, Qwest demonstrated the nature of the work

⁴² The existing Design Change charge reflects the costs and activities for Qwest personnel reviewing ASRs, communicating with CLECs and intra-company contacts, validating rates and billing systems, checking certain systems and completing the service orders in Qwest's various billing and tracking systems. (Qwest 4, pp. 7-8.)

⁴³ Thus, any comparison between the conversion of DS1 and DS3 UNEs to private line circuits and the conversion of UNE-P to Qwest Platform Plus™ ("QPP") is not appropriate. This is especially so because in the case of QPP, the *loop portion* of the product (the portion that is identified by a circuit ID) *is still a UNE*, and is still identified by its telephone number, which does not change, for purposes of billing, maintenance and repair. In contrast, however, in the case of UNE-P, Qwest was not converting a UNE product to an existing tariffed equivalent because QPP did not previously exist. (Qwest 4R, pp. 7-8.)

⁴⁴ Accordingly, and as Qwest has shown, the Joint CLEC argument that any NRC for a UNE-to-private line conversion should be rated at Total Element Long Run Incremental Cost ("TELRIC") is not appropriate. First, requiring a TELRIC rate for an NRC for a *tariffed interstate* private line service would be an inappropriate application of TELRIC rates and be outside the scope of this Commission's jurisdiction. Nonrecurring TELRIC charges should only apply to *UNEs*, and *not* to a tariffed private line service. (Qwest 4R, pp. 9-10; Tr. p. 114.) Second, the CLECs' discussion of TELRIC rates for private line-to-UNE conversions is limited to only two states. However, one of those states has historically set significantly lower NRCs and other rates than those set in other Qwest states (largely on studies not presented in those other states). Further, while this Commission set the second-lowest rate for conversions in Qwest's 14-state region, it did so because the process would require little or no manual activity (unlike here, where there is a need to change circuit IDs), and thus the Commission reduced Qwest's time estimates by 40%. In contrast, the TELRIC rates for private line-to-UNE conversions in Qwest's other 12 states range between \$22 and \$42, with the most prevalent rate being about \$37. Thus, even if this Commission were to apply its 40% reduction in time estimates to Qwest's estimate of UNE-to-private line conversion costs, the resulting rate would still be well above the existing tariffed charge that Qwest recommends for this activity. (*Id.*, pp. 9-11.)

activities that it will perform in processing the conversions from UNEs to private line circuits that will occur at those wire centers that the FCC has deemed non-impaired. Qwest believes that its existing tariffed Design Change charge represents an appropriate charge to CLECs for Qwest's processing of these conversions. In short, Qwest should have a right to assess such a charge for the work that it performs. (Qwest 4, p. 8.)

CONCLUSION

For all of these reasons set forth above, Qwest respectfully submits that the Commission should adopt Qwest's positions in this docket. Accordingly, Qwest respectfully submits that the Commission should declare the wire centers Qwest presents here to be non-impaired pursuant to the guidelines and standards in the *TRRO* and the FCC's associated implementation rules.

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Respectfully submitted,

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