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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In re Petition of Qwest Corporation to  
Open a Commission Investigation and  
Adjudicatory Proceeding to Verify Qwest  
Wire Center Data and Resolve Related Issues

Docket No. 06-049-40

**QWEST CORPORATION'S PETITION  
TO OPEN A COMMISSION  
INVESTIGATION AND  
ADJUDICATORY PROCEEDING TO  
VERIFY QWEST WIRE CENTER  
DATA AND RESOLVE RELATED  
ISSUES**

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**I. INTRODUCTION**

Qwest Corporation (“Qwest”) respectfully petitions the Commission to open a Commission investigation and adjudicatory proceeding for the primary purpose of establishing the number of business lines and fiber collocators in Utah wire centers. As described below, Qwest and competitive local exchange carriers (“CLECs”) in Utah agree that findings from the Commission on these narrow issues are necessary for Qwest and CLECs to implement the Federal Communications Commission’s (“FCC”) regulatory framework for unbundled dedicated transport and high-capacity loops set forth in the Triennial Review Remand Order (“TRRO”).<sup>1</sup>

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<sup>1</sup> Order on Remand, *In the Matter of Review of Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, WC Docket No. 04-313 (FCC rel. February 4, 2005).

Qwest's request that the Commission take action on the issues described in this petition is supported by the FCC's endorsement in the TRRO of an ongoing role for state commissions in these matters that relate to the change of law provisions in interconnection agreements between Qwest and CLECs and to Sections 251 and 252 of the Telecommunications Act of 1996 ("the Act").<sup>2</sup>

Qwest respectfully requests that the Commission convene a procedural conference as soon as possible to establish an expedited process and schedule for addressing these issues. In the discussion that follows, Qwest explains the need for expedited resolution of these issues and describes the type of binding, adjudicatory proceeding the Commission should conduct to ensure that the regulatory framework established by the TRRO is implemented expeditiously and with clarity.

## **II. BACKGROUND**

On February 15, 2006, a coalition of CLECs ("the Joint CLECs") submitted a letter to the Commission requesting a proceeding for the purpose of determining the business line counts and numbers of collocators in Utah wire centers, explaining that these determinations are necessary to implement the FCC's rulings in the TRRO relating to unbundled dedicated transport and high-capacity loops.<sup>3</sup> Qwest agrees that a proceeding for these and other related purposes is necessary, and thus Qwest petitions the Commission to open such an adjudicatory docket. As described below, however, Qwest differs from the CLECs in some respects concerning the nature of the proceeding and the issues the Commission should address.

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<sup>2</sup> See, e.g., TRRO at ¶¶ 233, 234.

<sup>3</sup> The CLECs that submitted the letter are Covad Communications Company, Eschelon Telecom, Inc., Integra Telecom, Inc., McLeodUSA Telecommunications Services, Inc., and XO Communications Services, Inc.

**A. The FCC’s Impairment Criteria for Dedicated Interoffice Transport and High-Capacity Loops**

The agreement between Qwest and the Joint CLECs that a proceeding is necessary arises from the structural framework the FCC established in the TRRO for determining whether high-capacity dedicated transport and high-capacity loops meet the “impairment” requirement for unbundled network elements (“UNEs”) set forth in Section 251(d)(2) of the Act. The primary significance of these impairment determinations is that they dictate whether high-capacity transport and loops qualify as Section 251(c)(3) UNEs that Qwest must provide to CLECs at rates based on the FCC’s total element long-run incremental cost (“TELRIC”) pricing methodology or whether they are no longer within Section 251(c)(3) and are governed by the non-TELRIC pricing standard in Sections 201 and 202 of the Communications Act of 1934.<sup>4</sup>

Under the TRRO framework, CLECs are deemed not to be impaired without access to DS1 transport on routes connecting a pair of wire centers where both wire centers contain at least four fiber-based collocators or at least 38,000 business access lines.<sup>5</sup> For DS3 transport and dark fiber transport, there is no impairment on routes connecting a pair of wire centers where both wire centers contain at least three fiber-based collocators or at least 24,000 business lines.<sup>6</sup>

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<sup>4</sup> Under this standard, rates must not be unjust, unreasonable, or unreasonably discriminatory. Responsibility for administering the Section 201-02 pricing standard rests with the FCC. *See, e.g.*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *In the Matter of 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 Dkt. Nos. 01-338, 96-98, 98-147, FCC 03-36 at 664 (FCC rel. Aug. 21, 2003) (“Triennial Review Order” or “TRO”), *vacated in part, remanded in part, U.S. Telecom Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (“*USTA II*”).

<sup>5</sup> TRRO at ¶ 126. The wire centers meeting these criteria are referred to as “Tier 1 wire centers.” They are the wire centers “with the highest likelihood for actual and potential competitive deployment, including wholesale opportunities.” *Id.* at ¶ 111.

<sup>6</sup> TRRO at ¶¶ 118, 129, 133. The FCC defines wire centers with three or more fiber-based collocators or 24,000 or more business lines as “Tier 2 wire centers.” *Id.* at ¶ 118. According to the FCC, the presence of three or more fiber-based collocators “establishes that multiple carriers have overcome the costs of deployment in a wire center, signifying that substantial revenues exist in the wire center to justify deployment.” *Id.*

The impairment criteria for high-capacity loops also are based on a capacity-specific approach that distinguishes between DS1 and DS3 capacity. For DS1 loops, CLECs are not impaired in any building within the service area of a wire center containing 60,000 or more business lines and four or more fiber-based collocators.<sup>7</sup> CLECs are not impaired without access to DS3 loops in any building within the service area of a wire center containing 38,000 or more business lines and four or more fiber-based collocators.<sup>8</sup>

**B. Qwest's Identification of Non-Impaired Wire Centers**

To implement the FCC's impairment framework, Qwest undertook a detailed, multi-step process designed to generate accurate wire center data and to permit CLECs to verify these data. On February 18, 2005, Qwest responded to a request from the FCC's Wireline Competition Bureau with a submission designating the wire centers in Qwest's operating areas as Tier 1, Tier 2, or Tier 3 based on the criteria in the TRRO.<sup>9</sup> This submission also identified the wire centers in Qwest's operating areas that meet the non-impairment thresholds for DS1 and DS3 loops.<sup>10</sup>

After providing this information to the FCC, Qwest attempted to develop a cooperative process with the CLECs and state commissions to ensure the accuracy of its wire center data. Under the protection of a nondisclosure agreement, Qwest provided CLECs and state

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<sup>7</sup> TRRO at ¶ 178.

<sup>8</sup> TRRO at ¶ 174.

<sup>9</sup> A copy of this February 18, 2005 letter to the FCC is attached as Attachment A. Because the lists of wire centers that were attached to the original letter as Attachment A and Attachment B to that letter were quite voluminous and are not necessary to this response, Qwest is not including those lists with Attachment A to this petition.

<sup>10</sup> Qwest based the counts of switched business access lines on its most recent ARMIS Report 43-08 data, which were current as of December 2003. To develop an estimate of the business UNE-P lines in each wire center, Qwest relied on the percentage of white page listings for each wire center that are business, not residential. Qwest determined the number of collocation arrangements that meet the TRRO's definition of "fiber-based collocator" based on billing data that were current as of February 2005 and physical inspections of wire centers.

commission staffs access to the confidential data underlying its February 18th submission. These data included, on a wire center-specific basis, numbers of switched business lines, UNE-P lines, UNE loops, and fiber collocators. Qwest also provided to each carrier upon whose data it relied in the February 18th submission a list of the wire centers where, according to Qwest's records and investigation, the carrier has fiber-based collocation. These carriers were given the opportunity to review and, if appropriate, contest the accuracy of Qwest's data.

As a further step toward verification, Qwest conducted an additional internal review of the collocation and line count data used for its February 18th submission. Based on this additional review, which included another comprehensive evaluation of collocation arrangements in Qwest's wire centers, Qwest refined its list of wire centers. In another submission to the FCC on July 8, 2005, Qwest provided a revised list of wire centers.<sup>11</sup> Qwest continued reviewing its wire center data after this submission, leading to a third submission on August 18, 2005 that made a minor correction to the wire center data.<sup>12</sup>

Despite these efforts, some CLECs have insisted upon further review and verification of wire center data by state commissions. An expedited proceeding to determine and establish line counts and numbers of collocators in wire centers is therefore necessary to avoid delay in implementing the TRRO's regulatory framework.

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<sup>11</sup> A copy of this July 8, 2005 letter to the FCC is attached hereto as Attachment B. Qwest is not including the lists of wire centers that were provided with the original submission because those lists also were voluminous and are not necessary to this response.

<sup>12</sup> This third submission to the FCC, on August 18, 2005, is attached as Attachment C. Qwest is providing with Attachment C a list of the Utah wire centers that were attached to the original August 18, 2005 submission but, for reasons of economy, is not including the wire centers that were listed for other states.

### III. DISCUSSION

#### A. The Commission Should Conduct an Expedited Adjudicatory Proceeding

The Joint CLECs' letter to the Commission confirms that Qwest and the Joint CLECs agree that the Commission should conduct an expedited proceeding to review and establish wire center line counts and numbers of fiber collocators per wire center. However, it appears there may be potentially significant differences between Qwest and the CLECs concerning the nature of this proceeding. In the discussion that follows, Qwest describes the framework the Commission should adopt for the proceeding to ensure that all necessary issues are resolved expeditiously and with the certainty required for Qwest and the CLECs to implement the TRRO as the FCC intended.

1. *The proceeding must be binding on Qwest and all CLECs in the state.* It is not apparent from the Joint CLECs' submission whether they are proposing a proceeding that would be binding on Qwest and all CLECs in the state. There should be no question, however, that the proceeding will be binding on every registered local exchange carrier in the state, including those that receive notice of the proceeding but choose not to participate. Unless the Commission resolves the wire center counts and related issues through rulings that are binding, implementation of the TRRO will be delayed and time-consuming, costly disputes will be inevitable. Moreover, it would be a highly inefficient use of the Commission's and the parties' resources to conduct a non-binding proceeding with rulings that any dissatisfied party could elect to ignore.

Thus, for example, in submitting orders for high-capacity transport and loops, all carriers will be required to review and adhere to the list of non-impaired wire centers that results from the Commission's determination of the business line counts and numbers of collocators in

individual wire centers. Further, if a CLEC submits an order for UNE transport or a high-capacity loop in a wire center that is on the list of non-impaired wire centers resulting from this proceeding, the Commission should confirm that Qwest is permitted to reject that order.

In addition, to maximize the efficiency of the proceeding and to eliminate future disputes, the Commission should provide notice of the proceeding to all local exchange carriers registered in the state, not just the carriers with which Qwest has interconnection agreements. The notice should state expressly that the proceeding is binding on all registered local exchange carriers.

2. *The proceeding should be expedited.* To avoid any further delays in implementing the TRRO and to minimize or eliminate the possibility of disputes upon expiration of the FCC's transitional pricing scheme for high-capacity transport and loops, the Commission should invoke any available procedures for expedited resolution of the issues described in this petition. As part of this expedited approach, the Commission should convene a procedural conference and schedule an adjudicatory hearing as soon as possible.

3. *The Commission should conduct an adjudicatory proceeding.* Because the issues involving line counts and fiber collocators are factual in nature, the Commission should conduct an adjudicatory proceeding. Qwest proposes a proceeding under which it would present an opening round of testimony containing wire center data for line counts and fiber collocators, and the CLECs would present response testimony indicating if they have a good faith basis for contesting Qwest's data. If the CLECs have such a good faith basis, they would offer data of their own or other evidence responding to Qwest's data. Qwest would submit reply testimony addressing any CLECs challenges to Qwest's data. Through this process, Qwest expects that the parties could significantly limit any disagreements concerning the wire center data. More important, an adjudicatory proceeding will result in a definitive determination by the

Commission concerning the business line counts and numbers of fiber collocators in wire centers and will thereby give Qwest and the CLECs alike the certainty they need going forward.

4. *The Commission should adopt an appropriate protective order.* Qwest agrees with the Joint CLECs that because this proceeding will involve large amounts of confidential information, the Commission should adopt an appropriate protective order. In particular, confidentiality protection is needed for the types of CLEC-specific data described below. The Joint CLECs advocate using a protective order “similar to those issued in the ILEC cost cases.” Qwest suggests that prior to or during the initial procedural conference, all interested parties should discuss and attempt to agree upon an appropriate protective order. Protective orders that the Commission has adopted in prior proceedings, such as the protective orders from the Triennial Review Order proceedings and wholesale cost dockets, provide a good foundation for these discussions.

5. *The Commission Should Issue an Order Compelling Qwest to Produce CLEC-Specific Data to Interested Parties.* To facilitate review of the relevant wire center data, it will be necessary for Qwest to provide wire center data, including data specific to individual CLECs, to all interested parties. Because these data may fall within the protections afforded under Section 222 of the Act and CLECs deem the data confidential, Qwest is unable to produce them without an order from the Commission compelling production with appropriate confidentiality protection. It is particularly important that the order the Commission issues authorize Qwest to produce wire center data that is disaggregated so that individual pieces of data can be identified and associated with particular carriers. For example, a carrier reviewing data to determine the number of fiber collocators in a wire center very likely will want to know not just the total number of collocators, but the specific CLECs that are collocated.

Accordingly, following adoption of an appropriate protective order, the Commission should issue an order compelling Qwest to produce CLEC-specific wire center data to all interested parties. Qwest includes with this response a motion requesting issuance of such an order.

Relatedly, if the Joint CLECs are requesting that the Commission designate as “Commission-ordered” the “information requests” included in their February 15th letter as “Attachment B,” the Commission should reject that request for several reasons. First, the more efficient and procedurally proper course is for Qwest to provide wire center data in the first instance through its opening round of testimony, as described above. The CLECs should analyze those data and then serve information requests if they have questions or desire additional data. Through this approach, the number of information requests and the potential for discovery disputes will be reduced. Second, a request for the Commission to treat the CLECs’ information requests as “ordered” by the Commission would amount to an improper attempt to abrogate Qwest’s procedural right to object to information requests that are irrelevant, overly broad, or otherwise improper. Indeed, on their face, it is clear that some of the information requests likely would not satisfy even a broad determination of relevancy and would impose undue burden on Qwest. For example, Information Request No. 3 includes 16 sub-parts, some of which plainly seek information that is not needed for line counts or fiber collocator determinations. Qwest has a right to object to requests of this type, and the Joint CLECs should not be permitted to circumvent that right by having their proposed information requests deemed ordered by the Commission at the outset of this proceeding.

**B. In Addition to Making Determinations Relating to Wire Center Data, the Commission Should Resolve Other Issues That Will be Directly Affected by Those Determinations**

The Commission's resolution of the wire center data issues is essentially a counting exercise, with the Commission being asked to review data and determine the number of business lines and fiber collocators in wire centers. Qwest and the CLECs are not asking the Commission to make any impairment determinations relating to high-capacity transport and loops, as the D.C. Circuit's decision in *USTA II* establishes that the FCC alone has authority to make those determinations.<sup>13</sup> However, application of the FCC's *TRRO* criteria to the line counts and collocator counts the Commission adopts will permit Qwest and the CLECs to make their own wire center-specific impairment determinations, consistent with the FCC's expectation that the *TRRO* would be largely self-effectuating.<sup>14</sup> In addition to changing the rates that will govern CLEC purchases of high-capacity transport and loops, a determination that there is no impairment in a particular wire center where a CLEC is purchasing one of these network elements will trigger at least two other issues relating to the conversion of the element from a Section 251 UNE to a non-251 element. The Commission should address these issues as part of this proceeding.

First, the Commission should confirm Qwest's right to assess a nonrecurring charge ("NRC") at applicable tariffed rates if Qwest performs a conversion after a CLEC fails to perform that work. Qwest incurs costs in converting UNE transport or high-capacity loops to alternative facilities or arrangements, and, accordingly, it should be permitted to assess an appropriate tariffed charge. Multiple CLECs have implicitly recognized Qwest's right to assess

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<sup>13</sup> See *USTA II*, 359 F.3d at 568.

<sup>14</sup> See, e.g., *TRRO*, ¶¶ 233, 234.

this charge, as evidenced by their decisions to enter into amendments to their interconnection agreements containing the charge. Significantly, Qwest is not asking the Commission to address or otherwise rule upon the amount of a nonrecurring conversion charge; it is seeking only to have the Commission confirm the right to assess such a charge.

Second, as the Joint CLECs have requested in its submission, the Commission should establish a process for future updates of Qwest's list of non-impaired wire centers. Contrary to the CLECs' proposal, this process should be streamlined and efficient and should not require a new docket or a prolonged proceeding each time there is a change to the list. The Joint CLECs' proposal for a time-consuming proceeding each time a wire center is to be added to the list of non-impaired wire centers would only delay implementation of the TRRO framework, contrary to the FCC's directive that carriers implement that framework expeditiously and in a self-executing manner, and would result in potentially extended periods during which CLECs would improperly be paying UNE-based TELRIC rates for high-capacity transport and loops in wire centers where there is no impairment.

Instead of the potentially unwieldy process proposed by the Joint CLECs, the Commission should require Qwest to provide notice to the CLECs of additions to the list of non-impaired wire centers and, if the CLECs seek additional information, should direct Qwest to provide the CLECs with the methodology by which Qwest determined that a wire center meets the TRRO's non-impairment criteria relating to numbers of business lines and fiber collocators. The CLECs should thereafter be given 90 days to transition DS1 and DS3 UNEs to an alternative service.

At the procedural conference, the Commission should direct the parties to propose a streamlined process in their testimony -- similar to that described here -- that will govern changes to the list of non-impaired wire centers.

#### **IV. CONCLUSION**

For the reasons stated, Qwest respectfully requests that the Commission open an investigation and conduct an adjudicatory proceeding to address the issues described herein on an expedited basis.

RESPECTFULLY SUBMITTED this 1st day of March, 2006.

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Melissa K. Thompson  
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#### **CERTIFICATE OF SERVICE**

I certify that the original and five copies of **QWEST CORPORATION'S PETITION TO OPEN A COMMISSION INVESTIGATION AND ADJUDICATORY PROCEEDING TO VERIFY QWEST WIRE CENTER DATA AND RESOLVE RELATED ISSUES** were hand-delivered on March 1, 2006 to:

Julie P. Orchard  
Commission Administrator  
Utah Public Service Commission  
Heber M. Wells Building, 4th Floor  
160 East 300 South  
Salt Lake City, UT 84111

and a true and correct copy was sent by U.S. mail, postage prepaid, on March 1, 2006, to:

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