**- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -**

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| In the Matter of the Investigation into Qwest Wire Center Data | ) ) ) | **DOCKET NO. 06-049-40** |

# REBUTTAL TESTIMONY OF

# DOUGLAS DENNEY

## PUBLIC VERSION

**ON BEHALF OF ESCHELON TELECOM, INC., AND JOINT CLECS, INCLUDING COVAD COMMUNICATIONS CORPORATION AND XO COMMUNICATIONS SERVICES, INC.**

**APRIL 26, 2006**

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## I. INTRODUCTION

**Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

A. My name is Douglas Denney. I work at 730 2nd Avenue South, Suite 900 in Minneapolis, Minnesota.

**Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

A. I am employed by Eschelon Telecom, Inc. as Senior Manager of Costs and Policy. My responsibilities include negotiating interconnection agreements, monitoring, reviewing and analyzing the wholesale costs Eschelon pays to carriers such as Qwest, and representing Eschelon in regulatory proceedings.

**Q. PLEASE DESCRIBE YOUR EDUCATION AND PROFESSIONAL BACKGROUND.**

A. I received a B.S. degree in Business Management in 1988. I spent three years doing graduate work at the University of Arizona in Economics, and then I transferred to Oregon State University where I have completed all the requirements for a Ph.D. except my dissertation. My field of study was Industrial Organization, and I focused on cost models and the measurement of market power. I taught a variety of economics courses at the University of Arizona and Oregon State University. I was hired by AT&T in December of 1996 and spent most of my time with AT&T analyzing cost models. In December of 2004, I was hired by Eschelon Telecom, Inc., where I am presently employed.

I have participated in over 30 proceedings in the 14-state Qwest region. Much of my prior testimony involved cost models -- including the HAI Model, BCPM, GTE's ICM, U S WEST's UNE cost models, and the FCC's Synthesis Model. I have also testified about issues relating to the wholesale cost of local service -- including universal service funding, unbundled network element pricing, geographic deaveraging, and competitive local exchange carrier access rates.

**Q. HAVE YOU PREVIOUSLY TESTIFIED IN UTAH?**

A. Yes, I have participated in numerous dockets in Utah relating to the pricing of Unbundled Network Elements ("UNEs") and Universal Service. I filed testimony in dockets 01-049-85, 00-049-105 and 94-999-01 3B and 3C. I have also participated in a number of workshops with the Division, other parties and the Commission pertaining to Universal Service, the FCC Synthesis Model, Unbundled Network Elements, and Collocation. Most recently I filed testimony in the Triennial Review Order ("TRO") proceeding (03-999-04) which was suspended after the D.C. Circuit Court ruling remanding certain portions of the TRO back to the FCC.

**Q. WHAT IS THE PURPOSE OF THIS TESTIMONY?**

A. My testimony addresses a number of concerns relating to impairment designations and the transition from UNEs to non-TELRIC priced network elements.

**Q. PLEASE SUMMARIZE YOUR TESTIMONY**

A. I provide the Commission with the results of the Joint CLECs' investigation of Qwest's wire center data. I explain why the Commission should reject Qwest's

methodology for counting fiber-based collocators and switched business access lines. I present the Joint CLECs' analysis of the data which comports with the FCC's rules. I also offer for the Commission's consideration a proposal for addressing future changes in wire center classifications. Qwest has stated that it intends to block CLEC orders for UNEs in unimpaired wire centers and I explain why doing so would violate the FCC's order. In addition, I show why Qwest's proposed process for "conversions" is both highly inefficient and overly burdensome to CLECs and why Qwest's proposed non-recurring charge is inappropriate.

**Table 1: Summary of Joint CLEC's Investigation of Qwest's Wire Center List**

| Wire Center | CLLI(8) | Wire Center Designation | |
|---|---|---|---|
| | | Qwest | Joint CLECs |
| Murray | MRRYUTMA | T1 | T1 |
| Ogden Main | OGDNUTMA | T1 | T2 |
| Provo | PROVUTMA | T1 | T2 |
| Salt Lake Main | SLKCUTMA | T1, DS1 & DS3 Loops | T1 |
| Salt Lake West | SLKCUTWE | T1 | T2 from 3.11.05 to 7.7.05, T1 as of 7.8.05 |
| Salt Lake South | SLKCUTSO | T1 | T2 as of 7.8.05 |

**Q. BEFORE WE GET INTO THE SUBSTANCE OF YOUR TESTIMONY, PLEASE DESCRIBE HOW IT IS ORGANIZED?**

A. My testimony is divided into seven sections. Following Section I's introduction and summary, Section II focuses on fiber-based collocation. This section explains the role that fiber-based collocations plays in the determination of "non-impaired" status for Qwest wire centers and explains the short-comings and discrepancies in the data provided by Qwest. Section III focuses on the switched business line

count data. This section describes how Qwest manipulated the switch business line count data and as a result erroneously claims "non-impaired" status with regards to DS1 and DS3 loops in the Salt Lake Main wire center. Section IV discusses the importance of an explicit and timely process for Qwest to make future updates to the wire center list. Section V explains why it is important that Qwest not be able to unilaterally block orders in wire centers, even after they are determined to be "non-impaired." Any process for blocking orders should be agreed upon between CLECs and Qwest. Section VI describes the appropriate non-recurring charge ("NRC") for the transitioning of facilities from unbundled network elements ("UNEs") to alternative arrangements such as special access / private line circuits. This section describes why the charge Qwest proposes to impose is inappropriate, not cost based and is more than five times a similar charge approved by this commission in a recent UNE docket. Finally, Section VII concludes my testimony.

**Q. ARE THERE ANY EXHIBITS TO YOUR TESTIMONY?**

A. Yes, there are a number of exhibits to this testimony. The exhibits are described below:

**Exhibit DD-01**: Contains a number of Qwest's non-confidential data responses to the Joint CLEC data requests. These include:

> Joint CLEC Data Request ("JCDR") 01-008 Qwest explains some manual processes that have been put into place in an attempt to assure that the CLEC's customer's service is not disrupted during the transition from UNEs to Private Line / Special Access.
>
> JCDR 01-014 Qwest explains activities the SDC must perform during the conversion of UNEs to Special Access / Private Line circuits to minimize the risk of the CLEC's end-user customer being taken out of service.

JCDR 01-016 Qwest further explains activities the SDC must perform during the conversion of UNEs to Special Access / Private Line circuits to minimize the risk of the CLEC's end-user customer being taken out of service.

JCDR 01-019 Qwest explains that because Qwest proposes to change the circuit ID when converting a UNE to a Special Access / Private Line circuit the CLEC's customer risks having service disrupted.

JCDR 01-020 Qwest explains that certain provisioning steps were put in place during the conversion of UNEs to Special Access / Private Line circuits in an attempt to protect against disruption of service to the CLEC's end-user customer.

JCDR 01-022 Qwest indicates that prior to April 2005 it did not require a change in the circuit ID when a CLEC requested a conversion from Private Line / Special Access to EEL. When Qwest implemented the change in the circuit ID, Qwest allowed CLECs to opt out of these changes for their embedded base.

JCDR 01-025 Qwest indicates that for conversions of special access / private line circuits to EEL circuits where the circuit ID did not change, Qwest was properly managing service performance data for the PID/PAP reporting.

JCDR 01-027 Qwest identifies the amount of the NRC it proposes to charge CLECs for transitioning circuits from UNEs to Special Access / Private Lines. In this data response Qwest also mentions that it plans to update the definition of Design Change Charge in the FCC tariff, apparently so that it fits Qwest's current proposal for the use of this rate.

JCDR 01-029 explaining, for each wire center where Qwest claimed some level of "non-impaired" status, whether Qwest relied upon fiber-based collocations, switched business lines or both.

JCDR 01-030 contains Qwest's description of its line count data. The response to part (i) indicates that if a CLEC uses loops to serve residential customers these residential loops are included in Qwest's switched business line counts for the purposes of determining "non-impaired" status.

JCDR 01-031 is Qwest's objection to the production of line count data corresponding with the effective date of the TRRO.

JCDR 01-034 Qwest confirms that CLEC non-switched lines served over Qwest's loops were included in Qwest's switched business line counts for the purposes of determining "non-impaired" status.

JCDR 01-040 lists the carriers that did not respond to Qwest's letter requesting verification that the carrier was a fiber-based collocator. See also Confidential Attachment A to this data response, contained in Exhibit DD-02.

JCDR 01-041 verifying that the fiber-based collocations that Qwest counted were in place as of February 2005, right before the implementation of the TRRO.

**Exhibit DD-02**: Contains a number of Qwest's confidential data responses to the Joint CLEC data requests. These include:

JCDR 01-040 Confidential Attachment A contains CLEC response to Qwest's letter (see JCDR 01-043) asking the CLEC to verify whether or not they were a fiber-based collocator.

JCDR 01-043 Confidential Attachment A contains the letter Qwest sent to CLECs asking CLECs to verify their fiber-based collocations.

JCDR 01-045 Confidential Attachment A, which includes details, for each wire center, from Qwest's field verification of the fiber-based collocations.

JCDR 01-046 Confidential Attachment A contains the letter Qwest sent to its State Interconnection Managers asking for verification of fiber-based collocations.

**Exhibit DD-03**: ALJ decision from the State of Washington regarding its Wire Center investigation

**Exhibit DD-04**: Contains Highly Confidential responses by Qwest to the Joint CLEC data requests. These include:

JCDR 01-030 Highly Confidential Attachment A in response to part (d) contains Qwest's 2003 43-08 ARMIS data along with Qwest's manipulation of this data for the purposes of this proceeding.

JCDR 01-030 Highly Confidential Attachment C in response to part (k) contains information on high capacity CLEC loops and high capacity UNE-P lines used in Qwest's count of CLEC loops for the purposes of determining switched business lines.

**Exhibit DD-05**: A Change Request submitted by Qwest demonstrating its intention to block CLEC orders in wire centers Qwest finds to be "non-impaired." This can also be found at http://www.qwest.com/wholesale/cmp/cr/CR_SCR083005-01.htm.

**Exhibit DD-06**: A Verizon data response to a Washington Commission bench request (Question 4, part viii), stating that the methodology Verizon used to count

its own switched business lines "is the same as the methodology used to determine switched business line counts for ARMIS 43-08."

**Exhibit DD-07**: A copy of a notice Qwest sends to carriers indicating that proprietary information related to that carrier will be confidentially provided in a given docket.

## II. FIBER-BASED COLLOCATION

**Q. WHAT ROLE DOES THE NUMBER OF FIBER-BASED COLLOCATORS PLAY IN THE DETERMINATION OF WIRE CENTER "NON-IMPAIRMENT" STATUS?**

A. The number of fiber-based collocators in each Qwest wire center plays a crucial role in determining a wire center's "non-impairment" status. If a wire center has three fiber-based collocators, then that wire center is automatically classified as Tier 2, and if it has four fiber-based collocators automatically classifies a wire center as Tier 1.[1] Wire centers with four fiber-based collocators and the requisite number of switched business lines (60,000 for DS1 loops and 38,000 for DS3 loops) are classified as "non-impaired" with respect to DS1 and/or DS3 UNE loops.[2] The six Utah wire centers where Qwest claims some level of "non-impairment" all rely upon the number of fiber-based collocations in whole or in part.[3]

[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*") ¶66. The Tier status determines the availability of DS1, DS3 and Dark Fiber UNE transport. DS1 UNE transport is not available between Tier 1 wire centers. DS3 and Dark Fiber UNE transport is not available between wire centers designated as Tier 1 and/or Tier 2. Line counts can also play a role in determining the Tier status of a wire center, though they did not do so in Utah. Offices with more than 38,000 switch business lines are classified as Tier 1 and offices with between 24,000 and 38,000 business lines are classified as Tier 2.

[2] *TRRO* ¶146

[3] See Exhibit DD-01 Qwest's Response to Joint CLEC Data Request 01-029.

**Q. WHAT INFORMATION DID QWEST PROVIDE FOR REVIEWING ITS COUNTS OF FIBER-BASED COLLOCATORS?**

A. Highly Confidential Exhibit RT-3 contains a list of the names of the fiber-based collocators for each office on the Qwest Wire Center List. In addition, this exhibit indicates whether Qwest performed a "physical field verification" of the CLEC fiber-based collocation.[4, 5] Ms. Torrence also provides a list of changes to Qwest's fiber-based collocation determinations that took place as a result of Qwest's review of its initial (February 18, 2005) list.[6] Highly Confidential Exhibit RT-4 provides a list of fiber-based collocation disputes and Qwest's resolution of the dispute.[7]

**Q. IS THIS INFORMATION SUFFICIENT FOR THE CLECS TO VALIDATE QWEST'S CLAIMS OF FIBER-BASED COLLOCATIONS?**

A. While the fiber-based collocation data supplied was more detailed and useful than the corresponding line count data, the information provided with Ms. Torrence's Direct Testimony was not sufficient for the CLECs to review the Qwest data in the time provided by this proceeding. However, Qwest provided additional information in response to Joint CLEC data requests that have allowed a more thorough review of the fiber-based collocation information.

[4] Although this exhibit indicates whether Qwest performed a field verification, it does not indicate whether the field verification was successful. In some cases the field verification was unable to verify the information sought. As is discussed below, the fact that Qwest could not verify crucial facts did not stop Qwest from counting these CLECs as fiber-based collocators. (See also Exhibit DD-02 Qwest's response to Joint CLEC Data Request 01-045, Confidential Attachment A).

[5] Direct Testimony of Rachel Torrence on behalf of Qwest Corporation, Docket No. 06-049-40 ("*Torrence Direct*"), March 24, 2006, pages 17 – 19.

[6] *Torrence Direct* page 18, Table 1.

[7] It is important to note that if a CLEC did not respond to Qwest's request for verification of a fiber-based

In response to the Joint CLEC Data Requests, Qwest provided a copy of the letter it sent to CLECs asking CLECs to verify whether or not they were fiber-based collocators in certain Qwest offices.[8] In addition, Qwest provided information as to whether the CLEC affirmatively responded to Qwest's letter.[9] This information helped to facilitate the Joint CLECs review of the Qwest fiber-based collocation information. Further, Qwest verified that the fiber-based collocators were operating both in December of 2003 and February of 2005, eliminating concerns that the data was stale and no longer accurate as of the date of the impairment determination.[10] Finally, Qwest provided the spreadsheet referenced in Ms. Torrence's Direct Testimony (page 14) regarding details for the field verification of fiber-based collocations.[11]

**Q. WHAT CONCLUSIONS DO THE JOINT CLECS REACH FROM THEIR REVIEW OF THE QWEST FIBER-BASED COLLOCATION DATA?**

A. The information provided by Qwest does not fully support its list of "non-impaired" wire centers that were based upon the fiber-based collocation data. I found the following problems upon review of Qwest's data.

1) Qwest sent a letter to CLECs asking the CLECs to verify whether or not the CLEC is a fiber-based collocator. Qwest gave the CLECs two weeks to respond[12] and counted a CLEC as a fiber-based collocator even if the CLEC failed to

collocation, Qwest interpreted this as CLEC agreement, rather than a CLEC dispute. As a result, Qwest counted these CLECs as fiber-based collocators.

[8] Exhibit DD-02, Qwest's response to JCDR 01-043, Confidential Attachment A.

[9] Exhibit DD-02, Qwest's response to JCDR 01-040, Confidential Attachment A.

[10] Exhibit DD-01, Qwest's response to JCDR 01-041.

[11] Exhibit DD-02, Qwest's response to JCDR 01-045, Confidential Attachment A.

confirm this status. In response to Joint CLEC DR 01-040,[13] Qwest indicated only two CLECs that did not respond to Qwest's letter, however in Confidential Attachment A to this response[14] there were two additional CLECs that did not respond to Qwest's letter.[15] In response to Qwest's letter, one CLEC disputes that it should be counted as a fiber-based collocator in both the Salt Lake Main and Salt Lake West wire centers. Qwest disagrees and counted this carrier.[16]

2) Qwest attempted a field verification of the fiber-based collocations in question. To do this, Qwest asked its Central Office Technicians and State Interconnection Manages to verify the fiber-based collocations.[17] The letter Qwest sent was written in a way that encouraged Qwest employees to error on the side of finding fiber-based collocations. The letter begins: **[*** Begin Confidential]** [redacted] **[End Confidential ***]**[18]

This letter casts doubt on whether Qwest's verification process was performed in an objective manner.

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[12] *Torrence Direct*, 12:7-13
[13] See Exhibit DD-01.
[14] See Exhibit DD-02, JCDR 01-040 Confidential Attachment A
[15] One of these two CLECs responded to Qwest that Qwest had sent the letter to the wrong place, but did not respond to the substance of the letter.
[16] Because Salt Lake Main and Salt Lake West have four or more fiber-based collocators, regardless of whether this carrier is counted, for practical purposes I will not discuss the details of this dispute.
[17] *Torrence Direct*, 11:12-13
[18] See Exhibit DD-02, JCDR 01-046 Confidential Attachment A

3) Upon review of the "Collocation Verification Worksheets"[19] Qwest counted fiber-based collocators, without explanation, regardless of whether the information Qwest requested was verified. Qwest states that the purpose of the spreadsheet was to verify various aspects of the collocation including an inspection of the name, power, and fiber facilities. In two wire centers Qwest was unable to verify certain information of some of the fiber-based collocations. However, this did not stop Qwest from counting these carriers as fiber-based collocators.[20]

Ogden Main: For one carrier, Qwest did not verify that the fiber left the central office. This particular carrier also did not verify its fiber-based collocation as discussed with the first point above. This carrier should not be counted as a fiber-based collocator. A second carrier in this office was identified upon visual inspection as a fiber-based collocator, but according to the correspondence between Qwest and this carrier neither party believes the carrier is a fiber-based collocator in this Qwest office.

Provo: For one carrier, Qwest verified that the fiber did not terminate in the carrier's collocation. Further power could not be verified. This particular carrier also did not verify its fiber-based collocation as discussed with the first point above. This carrier should not be counted as a fiber-based collocator.

[19] See Exhibit DD-02, JCDR 01-045 Confidential Attachment A

[20] Without sufficient evidence carriers should not be declared fiber-based collocators. I have made a determination, based on the evidence provided, whether Qwest's list of fiber-based collocations is accurate. If Qwest provides further evidence for the fiber-based collocations in dispute, then the Joint CLECs will update the status of "non-impaired" status of the wire centers, where relevant.

Salt Lake West: For one carrier, Qwest verified that fiber did not terminate in the collocation space and also verified that the fiber did not exit the central office. However, this carrier verified itself as a fiber-based collocator. Qwest did not explain this discrepancy, but counted the carrier as a fiber-based collocator. Two other carriers in this office shared the same fiber entrance. Neither of these carriers confirmed with Qwest that it was a fiber-based collocator. Sharing the same fiber entrance does not necessarily mean the carrier is sharing the same fiber, but based on the information Qwest provided, Qwest made no effort to determine if this was the case.

Salt Lake South: For three carriers there was no verification as to whether the fiber left the Qwest central office. These three carriers did not verify with Qwest that they were fiber-based collocators in this office. I was able to verify with two of these carriers that they were in fact fiber-based collocators. The other carriers should not be counted as a fiber-based collocator at this time

4) Qwest filed two wire center lists with the FCC, the first on February 18, 2006 and the second, updating the first on July 8, 2006.[21] Ms. Torrence mentions on a number of occasions that the wire center list Qwest filed with the FCC on February 18, 2005 was "accurate."[22] Qwest's standard of accuracy is questionable. Table 2 below shows the differences between Qwest's initial list

[21] *Torrence Direct*, page 4 lines 12 – 13.
[22] *Torrence Direct*, page 10 lines 9 – 11, page 11 lines 14 – 16, page 12 lines 7 – 9, page 13 lines 7 - 8, and

and the updated list. Three of seven wire centers on this list had a change in their Tier status - an accuracy rate of 57%. Further Table 1 of Ms. Torrence's testimony shows that changes regarding fiber-based collocators took place in six of the seven offices under consideration. These changes evidence why it is important for this Commission to carefully examine the data Qwest provides when proposing to add a wire center to the "non-impaired" list.

**Table 2: [23] Comparison of Wire Center Lists Qwest filed with the FCC**

| Wire Center | CLLI(8) | Qwest Claim Status on 02.18.05 | Qwest Claim Status on 07.08.05 |
|---|---|---|---|
| Murray | MRRYUTMA | **T1** | **T1** |
| Ogden Main | OGDNUTMA | **T1** | **T1** |
| Provo | PROVUTMA | **T1** | **T1** |
| Salt Lake Main | SLKCUTMA | **T1 / DS1** | **T1 / DS1** |
| Salt Lake West | SLKCUTWE | **T2** | **T1** |
| Salt Lake South | SLKCUTSO | **T3** | **T1** |
| Midvale | MDVAUTMA | **T2** | **T3** |

5) For three wire centers, Qwest changed the "non-impairment" status in its July 8, 2005 filing.[24] Qwest rescinded its claim regarding Midvale and changed the statuses of Salt Lake West from Tier 2 to Tier 1 and Salt Lake South from Tier 3 to Tier 1. Because Qwest updated its claims regarding these two wire centers, the effective date of the new tier designations should be no earlier than July 8, 2005. It would be inappropriate for Qwest to impose its wire center tier designation going backward to March 11, 2005, because CLECs cannot retroactively alter

page 14 lines 3 – 4.
[23] *Torrence Direct*, page 4, lines 11 – 15 and page 18, Table 1.
[24] *Torrence Direct*, page 18, table 1 confirms these changes.

business decisions. Qwest had from February 4, 2005, when Mr. Carlisle, Chief of the Wireline Competition Bureau, requested wire center designations through March 11, 2005, when those designations went into effect to submit its list. The FCC described the information sought as "readily ascertainable."

Because Qwest made these changes during the one year transition period outlined in the TRRO[25] while failing to provide this Commission and other interested parties with sufficient information to verifying either Qwest's initial or its updated wire center list, the Joint CLECs recommend that these wire centers' Tier status becomes effective as of August 7, 2005, 30 days after Qwest made these changes.[26, 27]

**Q. HOW DID YOU MAKE YOUR DETERMINATION AS TO WHETHER A WIRE CENTER REACHES TIER 1 OR TIER 2 STATUS?**

A. First, I looked at the carriers Qwest claimed were fiber-based collocators in each office and in most cases attempted to contact these carriers to see if they could verify their status.[28] Second, I looked at the information Qwest provided such as: whether the carrier affirmatively told Qwest it was a fiber-based collocator, and I reviewed the results of Qwest's field verification. Despite doubts about the field

[25] *TRRO* ¶142

[26] The July 8, 2005 update is only an issue with regard to Salt Lake West and Salt Lake South. Note that for Salt Lake South, Qwest has not demonstrated that there are enough fiber-based collocators to justify a Tier 1 or Tier 2 status. If the Commission agrees that Qwest has not met its burden of proof, then the July 8, 2005 update only becomes important with regard to Salt Lake West.

[27] The effective date of the Tier 1 status of these two wire centers determines at what point in time CLECs must begin to pay the transition rate of 115% times the UNE rate for DS1 transport for both Salt Lake South and Salt Lake West and DS3 transport for Salt Lake South.

[28] Since only four fiber-based collocators are necessary for Tier 1 status I did not need to contact each carrier in each office. In addition, for some carriers, I focused my inquiry to specific wire centers where there were questions based on the information Qwest provided.

verification process, if these results did not contradict any of the other information in my possession, I counted these carriers as fiber-based collocators.

**Q. WHAT CONCLUSIONS CAN WE REACH WITH REGARD THE TIER DESIGNATIONS OF THE WIRE CENTERS QWEST PROPOSES TO PLACE ON THE WIRE CENTER LIST IN UTAH?**

A. Table 3 below summarizes my review of the fiber-based collocation information provided by Qwest.

**Table 3: Joint CLEC Verification of Qwest's Wire Center List based on Fiber-Based Collocations**

| Wire Center | CLLI(8) | Wire Center Designation | |
|---|---|---|---|
| | | Qwest | Joint CLECs |
| Murray | MRRYUTMA | T1 | T1 |
| Ogden Main | OGDNUTMA | T1 | T2 |
| Provo | PROVUTMA | T1 | T2 |
| Salt Lake Main | SLKCUTMA | T1, DS1 & DS3 Loops | T1 |
| Salt Lake West | SLKCUTWE | T1 | T2 from 3.11.05 to 7.7.05, T1 as of 7.8.05 |
| Salt Lake South | SLKCUTSO | T1 | T2 as of 7.8.05 |

The Joint CLECs have confirmed that there are four or more fiber-based collocators in three of Qwest's offices on the wire center list and therefore the Joint CLECs do not challenge the Tier 1 status of these three wire centers. However, Salt Lake West should not be considered Tier 1 until August 7, 2005. For two offices, the Joint CLECs have confirmed there are three fiber-based collocators and for one office there are less than three fiber-based collocators.

If the Joint CLECs receive additional information regarding the fiber-based collocations in the offices where there are disputes, the Joint CLECs will update the status of these wire centers.

## III. SWITCHED BUSINESS LINE COUNTS

**Q. DOES QWEST PROPERLY RELY UPON SWITCHED BUSINESS LINES TO DETERMINE "NON-IMPAIRMENT" FOR UTAH WIRE CENTER(S)?**

A. No, Qwest attempts to use business line count data to justify its classification of the Salt Lake Main (SKLCUTMA) wire center as "non-impaired" for DS1 and DS3 UNE loops.[29]

The FCC defines a Business Line as follows:[30]

> 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 makes a number of errors that render its line counts for Salt Lake Main unreliable and as a result Salt Lake Main should not be classified as "non-

[29] See Exhibit DD-01, JCDR 01-029. The information in this response lists Salt Lake Main as the only wire center where line counts played a determination in Qwest's impairment analysis.
[30] 47 C.F.R. § 51.5 Terms and Definitions, Business Line.

impaired" for DS1 and DS3 loops. Qwest's errors are as follows: Qwest uses line count data from the wrong time period; Qwest manipulates its ARMIS data in a way that overstates its own line counts; Qwest erroneously includes CLEC residential and non-switched lines in its switched business line count; and Qwest inappropriately counts DS1 and DS3 loops as total potential capacity rather than total capacity in use.

## A. LINE COUNT DATA SHOULD BE REFLECTIVE OF THE EFFECTIVE DATE OF THE TRRO

**Q. DID QWEST USE LINE COUNT DATA FROM MARCH 2005, THE EFFECTIVE DATE OF THE TRRO, TO DETERMINE THE IMPAIRMENT STATUS OF UTAH WIRE CENTERS?**

A. Surprisingly, no. Qwest instead chose to use line counts from December 2003, more than a year prior to the effective date of the TRRO of March 11, 2005. The FCC implemented new rules regarding DS1 and DS3 UNE loop availability that took effect as of the effective date of the TRRO. C.F.R. Title 47 § 51.319(a)(4) states, "…an incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to a DS1 loop on an unbundled basis to any building not served by a wire center with at least 60,000 business lines and at least four fiber-based collocators." Nowhere in the rule or in the TRRO is it stated, or even suggested, that the count of business lines and fiber-based collocations should be made from data collected over a year prior to the effective date of the TRRO. If the FCC had intended to permit the use data that was not

contemporaneous with the rule, the rule would have said "any building *ever* served by a wire center with at least 60,000 business lines." The FCC put in place rules on March 11, 2005, to determine whether CLECs were impaired without access to DS1 and DS3 loops (and transport). The FCC requested ILECs provide the data to the FCC on February 4, 2005, and described the data such as line counts as "readily ascertainable."[31] There is no reason to use stale data collected many months earlier for such a critical determination.

**Q. HAVE ANY OF THE OTHER RBOCS UPDATED LINE COUNTS TO BE MORE REFLECTIVE OF THE IMPLEMENTATION DATE OF THE TRRO?**

A. Yes, Bell South updated its line count information to December 2004, the period of the ARMIS filing most closely aligned with the effective date of the TRRO.[32] In addition the Michigan Commission found that, "The age of the data must be close enough in time to reflect conditions at the time that SBC claims that the wire center is no longer impaired. In this case, the Commission finds that SBC should have used the 2004 ARMIS data, which was available, even if not fully edited and incorporated in a report to the FCC."[33]

[31] Letter from Jeffrey J. Carlisle, Chief, Wireline Competition Bureau, FCC to Gary R. Lytle, Senior Vice President, Federal Relations, Qwest, WC Docket No. 04-313 and CC Docket No. 01-338 (Feb. 4, 2005).
[32] *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**, Docket No. P-55, SUB 1549, March 1, 2006, page 38 notes "[BellSouth] [w]itness Tipton noted that, recently, BellSouth has updated its wire center results to include December 2004 ARMIS data and the December 2004 UNE loop and UNE-P data so that the most current information is used to establish the wire centers that satisfy the FCC's tests."
[33] In the matter, on the Commission's own motion, to commence a collaborative proceeding to monitor and facilitate implementation of Accessible Letters issued by SBC MICHIGAN and VERIZON, Case No. U-14447, **Order**, September 20, 2005, page 5.

**Q. DID YOU EVALUATE QWEST'S SWITCHED BUSINESS LINE COUNT DATA FROM FEBRUARY OF 2005?**

A. The Joint CLECs requested this data from Qwest but Qwest refused to provide such data to CLECs, claiming the data irrelevant for this proceeding.[34] The data is unquestionably relevant, and the Commission should view Qwest's refusal to provide it with suspicion. If both the 2005 data and the 2003 data support Qwest "non-impairment" claims for either DS1 and/or DS3 loops, then the Joint CLECs would be able to confirm, at least in part, the status of Salt Lake Main and avoid an unnecessary dispute.[35]

**Q. IS THERE ANY PUBLICLY AVAILABLE INFORMATION THAT LEADS YOU TO BELIEVE THAT QWEST'S SWITCHED BUSINESS LINE COUNT DATA DOES NOT SUPPORT QWEST'S FINDING OF NON-IMPAIRMENT FOR DS1 LOOPS?**

A. Yes, although the detailed data necessary to make a precise determination of switched business line counts is not available, data does exist that casts doubt upon the current status of the Salt Lake Main wire center. Qwest's ICONN database, publicly available on Qwest's website,[36] contains two reports that, in conjunction, provide a reasonable doubt as to whether the Salt Lake Main wire center contains 60,000 switched business lines.

[34] See Exhibit DD-01, JCDR 01-031

[35] As discussed below, even the 2003 line count data supplied by Qwest does not support Qwest's claims of "non-impairment" for DS1 loops in Salt Lake Main.

[36] http://www.qwest.com/iconn/

The first report, titled "Loop Data," lists, by wire center, the total number of loops in service. Qwest defines loops in service as "Loops/pairs that are active and carrying traffic (i.e., working pairs) from assignable OSP feeder terminals."[37] The total number of loops in service for the Salt Lake Main wire center is 64,797.[38] This count contains both business and residential lines. The second report, titled "Central Office Find," provides the number business and residence access lines. Qwest lists the number of business lines for the Salt Lake Main wire center as 35,844 and the number of residential lines as 21,849.[39] Although the business line counts reported in the "Central Office Find" table are significantly less than 60,000 Qwest has indicated that they do not include all of the loops that Qwest sells to CLECs.[40]

We can obtain a proxy for the number of Qwest loops used to serve business customers by subtracting residential lines from the total number of loops in service. This calculation shows that the number of Qwest loops in service for business lines are approximately 42,948 (64,797 – 21,849),[41] well shy of the 60,000 required for DS1 UNE loop "non-impairment."

[37] http://www.qwest.com/cgi-bin/iconn/dlc.cgi

[38] The Qwest website claims that this data is updated monthly. The numbers cited in the testimony were downloaded for Salt Lake Main on April 16, 2006.

[39] Qwest's web site lists these line counts as of 2005. Though the web site states that data in the "Central Office Find" table is updated weekly, it is my experience that line counts change on an annual basis.

[40] Statement by Mark Reynolds at the February 1, 2006, workshop in the Washington investigation of Qwest's wire center designations.

[41] These are only estimates and can not be relied upon for a final determination of the switched business line counts in the Salt Lake Main wire center for two reasons. First, this data is not contemporaneous with the date of the FCC's letter request of February 4, 2005, but rather is the best information that is publicly available. Second, the calculation counts loops and therefore does not match the FCC's definition of business line counts. Nonetheless, this data suggests there is good reason to scrutinize Qwest's line count data and to insist that the data be contemporaneous with the FCC's TRRO.

**Q. THE THRESHOLD FOR DS3 UNE LOOP "NON-IMPAIRMENT" IS 38,000 SWITCHED BUSINESS LINES AND FOUR FIBER-BASED COLLOCATORS. CAN THIS DATA BE USED TO SUPPORT DESIGNATING THE SALT LAKE MAIN WIRE CENTER AS "NON-IMPAIRED" WITH RESPECT TO DS3 UNE LOOPS?**

A. No, this data is only used to demonstrate the importance of reviewing data contemporaneous with the TRRO. Although the data suggests a greater likelihood that Salt Lake Main will be properly classified as "non-impaired" for DS3 loops than for DS1 loops, it is crucial to review data that actually reflects the existing state of affairs as of the date the FCC requested Qwest provide it.

**Q. IS THE TIMING OF THE COUNTS OF SWITCHED BUSINESS LINES AND FIBER-BASED COLLOCATORS IMPORTANT AS QWEST MAKES UPDATES TO ITS "NON-IMPAIRED" WIRE CENTER LIST IN THE FUTURE?**

A. Yes, the issue as to the appropriate time period to review both the switched business line count and the fiber-based collocation data is crucial as updates are made to Qwest's Wire Center List. As Qwest makes updates to its list, this Commission should make clear that Qwest should use data that is contemporaneous with Qwest's claim for "non-impaired" status. For example, suppose there exists a wire center today that has four fiber-based collocators, but fewer than 60,000 lines. Suppose that the wire center surpasses 60,000 lines in the future, but by this time there are only three fiber-based collocators. Qwest should not be allowed to choose line counts from the present and fiber-based

collocators from the past. The determination of "non-impaired" status should be made at the point in time that Qwest is claiming an office is "non-impaired," not from a combination of counts from different time periods that best suits Qwest, which is precisely what Qwest is attempting to do in the case of Salt Lake Main.

## B. QWEST'S SWITCHED BUSINESS LINE COUNTS SHOULD BE COUNTED CONSISTENT WITH ARMIS 43-08

**Q. DID QWEST USE ITS ARMIS DATA TO CALCULATE ITS SWITCHED BUSINESS ACCESS LINES AS DIRECTED BY THE FCC?**

A. No. Qwest started with its ARMIS data, but manipulated this data in a manner inconsistent with the TRRO. The result of Qwest's manipulation is a significant overstatement of its switched business line counts.

Paragraph 105 of the TRRO describes the methodology for counting business lines [footnotes omitted, emphasis added]:

> Moreover, as we define them, business line counts are an objective set of data that incumbent LECs already have created for other regulatory purposes. **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. We adopt this definition of business lines because it fairly represents the business opportunities in a wire center, including business opportunities already being captured by competing carriers through the use of UNEs. Although it may provide a more complete picture to measure the number of business lines served by competing carriers entirely over competitive loop facilities in particular wire centers, such information is extremely difficult to obtain and verify. Conversely, 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.

ARMIS 43-08 line counts are counted in terms of 4 kHz equivalents for analog circuits and 64 kbps equivalents for digital circuits.[42]

Qwest, instead of relying directly upon the ARMIS data as directed by the FCC, adjust the counts for digital lines to include 64 kbps capacity rather than 64 kbps equivalents.[43] For example, if Qwest served a business customer with a DS1 circuit and the customer was using 12 lines of the DS1s capacity, for ARMIS 43-08 purposes the business line count would be 12. In this case, Qwest has counted those lines as 24, even though only 12 lines are being used. This is clearly at odds with the intent of the TRRO.[44]

**Q. DID NOT QWEST CITE A NUMBER OF COMMISSION ORDERS SUPPORTING ITS VIEW OF HOW TO COUNT QWEST SWITCHED BUSINESS LINES?**

A. No, Qwest's testimony is misleading in this regard. Mr. Teitzel states: "This issue has already been adjudicated and resolved before a number of state commissions,"[45] and then lists only those decisions that favor Qwest, while ignoring contrary decisions and misleading the Commission as to the substance of the issues at stake. What Mr. Teitzel does not clarify is that there are actually two separate issues regarding the counting of digital lines, and with the exception of

[42] The ARMIS instructions for 2005 can be found at http://www.fcc.gov/wcb/armis/documents/2005PDFs/4308c05.pdf. Note the relevant part of the instructions regarding the counting of lines did not change from 2003 to 2005.
[43] Direct Testimony of David L. Teitzel on behalf of Qwest Corporation, Docket No. 06-049-40 ("*Teitzel Direct*"), March 24, 2006, page 5, lines 7 – 15.
[44] In addition Qwest added ARMIS line counts for Public Lines to the Qwest business line count total. These lines were not included in the FCC definition of switched business lines and should not be included here. I did not make any adjustments for the removal of these lines as their inclusion or exclusion does not impact the classification of Salt Lake Main.

Florida, the decisions cited by Mr. Teitzel deal only with the issue of how to count digital UNE loops,[46] not ILEC switched business lines. A careful reading of the excerpts from state commission decisions provided by Mr. Teitzel's testimony on pages 7 – 9 clearly reveals that the commissions of Illinois, Indiana and Ohio were discussing "UNE loops" not the "ARMIS 43-08 business lines."

Qwest fails to mention that, unlike Qwest, SBC did not take the same extreme position as Qwest, instead proposing to count ARMIS 43-08 business lines exactly as they are counted and reported to the FCC, and which in describing such data as "readily ascertainable," the FCC anticipated that ILECs would use. As the Indiana Commission found:

> SBC Indiana witness Chapman proposes that **the number be calculated exactly in the manner described by the FCC in the TRRO, using the same Automated Reporting Management Information System ("ARMIS") data that the FCC said should be used**. The CLECs propose an approach that would exclude (i) UNE loops used to serve residential customers, and (ii) UNE loops used to provide non-switched services to businesses. SBC Indiana opposes these limitations.[47]

The dispute in Indiana, Illinois and Ohio centered only on the counting of UNE loops because SBC did not find it appropriate to propose the manipulations to the

[45] *Teitzel Direct*, page 6, lines 20 – 21.

[46] The issue of counting digital UNE loops will be discussed in section III.C.

[47] *In the Matter of the Indiana Utility Regulatory Commission's investigation of Issues Related to the Implementation of the Federal Communication'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, page 15. The order can be viewed on the Indiana Commission web site at: http://www.in.gov/iurc/portal/Modules/Ecms/Cases/Docketed_Cases/ViewDocument.aspx?DocID=0900b631800a6212

ARMIS data that Qwest proposes here.[48] Likewise Verizon also proposes using the 43-08 ARMIS data without manipulation.[49]

**Q. HAVE ANY STATES IN THE QWEST REGION ISSUED DECISIONS ON THIS ISSUE?**

A. Yes, recently the ALJ in Washington found that Qwest's manipulation of the 43-08 ARMIS data was inappropriate.[50] The ALJ found in paragraphs 33 and 34:

> The FCC does not discuss modifying the ILEC-owned business lines reported in ARMIS 43-08 data, referring to the data as "already … created for other regulatory purposes," and providing a "simplified ability to obtain the necessary information." …
>
> The FCC's rule must be read consistently with the FCC's statements in the TRRO. To that end, the FCC's requirements for calculating, or tallying, the total number of business lines serving a wire center are most reasonably applied in part to ILEC-owned switched access lines, and in part to UNE loops. The first two listed requirements (i.e., that the access lines connect only actual customers and the number not include non-switched special access lines) are already considered in the switched access lines ILECs report to the FCC in ARMIS 43-08 data. …

## C. CLEC SWITCHED BUSINESS LINES SHOULD NOT INCLUDE RESIDENTIAL OR NON-SWITCHED LINES

**Q. FOR THE PURPOSES OF DETERMINING THE "IMPAIRMENT" STATUS OF A WIRE CENTER, THE FCC DEFINED A BUSINESS LINE AS AN ILEC-OWNED SWITCHED ACCESS LINE USED TO SERVE A**

[48] Table 4 at the end of this section, lists all of the state decisions that I am aware of and indicates how they decided on the switched business line count issues being discussed.
[49] See Exhibit DD-06, containing Verizon's response to a Washington Commission bench request confirming that they did not manipulate the ARMIS 43-08 data. Note that Bell South proposes manipulating the 43-08 ARMIS data in a manner similar to Qwest.
[50] Washington is the only state in the Qwest region to issue an order in the wire center proceedings. The Washington ALJ order is attached to this testimony as Exhibit DD-03.

**BUSINESS CUSTOMER.[51] DOES QWEST COUNT LINES CONSISTENTLY WITH THE FCC DEFINITION?**

A. No, despite the clear language of the FCC's definition Qwest includes some residential and non-switched lines in its count of switched business lines.[52] The first sentence of the FCC's business line definition states, "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." [Emphasis added][53] Despite the definition, when a CLEC leases a loop from Qwest that is not part of a UNE-P combination, Qwest includes this loop in its count of business lines, even if the CLEC is serving a residential customer with the loop. In response to a Joint CLEC data request Mr. Teitzel states, "The UNE loops referenced in subparts (g) and (e) above include all UNE loops in service (regardless of use to which the CLECs put these UNE loops)…"[54] In addition, when the CLEC leases a loop from Qwest, Qwest includes this loop in its count of business lines whether or not the CLEC uses this loop for switched services. In response to a Joint CLEC data request Mr. Teitzel confirms, "Qwest did not make any effort to remove non-switched line counts from the UNE loop counts, as such removal was not required by the TRRO."[55]

[51] 47 C.F.R. § 51.5 Terms and Definitions, Business Line.
[52] See Exhibit DD-01, JCDR 01-030(i) and JCDR 01-034.
[53] *Id.*
[54] See Exhibit DD-01 JCDR 01-030 part (i)
[55] See Exhibit DD-01 JCDR 01-034

**Q. WHAT IS QWEST'S BASIS FOR INCLUDING RESIDENTIAL AND NON-SWITCHED LINES IN ITS SWITCHED BUSINESS LINE COUNT?**

A. Qwest reads part of the business line count definition in isolation from the rest of the definition in order to include that CLEC residential and non-switched lines served via Qwest unbundled loops should be included in the switched business line count.

The FCC business line definition consists of four sentences. The first sentence introduces the definition and reads:

> 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. [Emphasis added]

The second sentence provides further information regarding the count of business lines:

> 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**, included UNE loops provisioned in combination with other unbundled elements. [Emphasis added]

Qwest reads this second sentence as though the first and third sentences do not exist and comes to the conclusion that business switched access lines includes "all UNE loops."

The third sentence clarifies the second sentence and reads:[56]

> Among these requirements, business line tallies (1) **shall include only those access lines** connecting end-user customers with incumbent LEC

[56] The final sentence deals with the methodology for counting digital lines and will be discussed in part C below.

> 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.

Qwest ignores the qualifications and relies upon the statement "all UNE loops" to mean that despite the rest of the FCC language and the methodology for counting Qwest's lines, CLEC lines should include residential as well as non-switched services.

Qwest's interpretation does not make sense. Consider the following example.

The population of white males in Utah shall include all persons of Hispanic descent.

Under Qwest's logic the white males in Utah should includes both Hispanic men and women. Obviously, such an interpretation does not withstand scrutiny.

## D. QWEST'S 2003 DATA DOES NOT SUPPORT QWEST'S CLAIMS OF "NON-IMPAIRMENT" FOR DS1 LOOPS

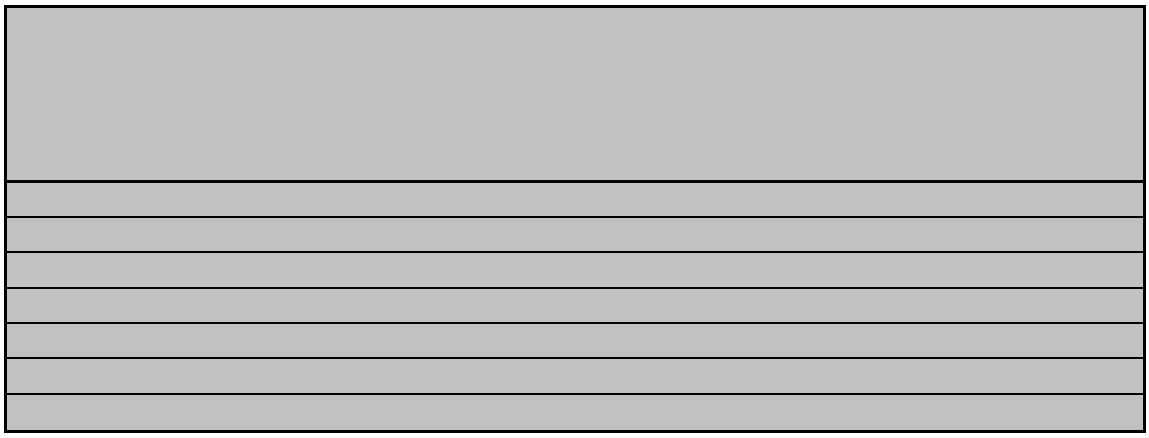
**Q. DOES THE DATA QWEST SUPPLIED FOR 2003 SUPPORT QWEST'S CLAIMS THAT UNDER THE FCC'S RULES DS1 UNE LOOPS ARE NO LONGER AVAILABLE IN THE SALT LAKE MAIN WIRE CENTER?**

A. No. While the Joint CLECs believe it is inappropriate to use the 2003 data, as discussed above, even if this data were used properly it would not support the claim that DS1 loops are "non-impaired" in the Salt Lake Main wire center. Table 4 below shows Qwest's 2003 data and the adjustments to this data based on this testimony. As can be seen, proper use of the 2003 data supports Qwest's claim for "non-impairment" for DS3 loops and also supports Tier 1 status for the

Salt Lake Main wire center, however, the data does not support "non-impaired" status for DS1 loops.[57]

**Table 4: Line Counts in Salt Lake Main based on December 2003 Data**

**[*** Begin Highly Confidential]**



**[End Highly Confidential ***]**

The table above shows each adjustment proposed by the Joint CLECs on an individual basis and then in combination. Below I describe each row of the table.

Qwest's Starting Values: These are derived from Highly Confidential Exhibit DLT-1, attached to the testimony of Mr. Teitzel.

Update to Feb 2005 Data: No adjustment was made here because Qwest has failed to provide Feb 2005 data. See Exhibit DD-01, JCDR 01-031 for Qwest's objection to providing this data.



[57] A wire center with 38,000 switched business lines qualifies for Tier 1 status as well as "non-impaired" status for DS3 loops. 60,000 switched business lines are required for "non-impaired" status for DS1 loops.

43-08 Adjustment: This adjustment reverses the manipulation Qwest made to its 43-08 ARMIS data and instead uses the data as it is filed with ARMIS. The information required to make this adjustment is contained in Exhibit DD-04, JCDR 01-030 Highly Confidential Attachment A.

Removal of UNE-L Residential Lines: Though the Joint CLECs believe it is inappropriate to include residential line counts in the switched business line data, no adjustment was made. First, this data is difficult to obtain as only a small number of the CLECs providing service in the Salt Lake Main wire center are part of the Joint CLEC coalition. Second, it is difficult to obtain CLEC records at the wire center level, since Qwest's bills do not include this information, from more than two years ago. Finally, this adjustment is likely to be small, as most CLECs purchasing unbundled loops do so to provide services to business customers. The Commission should require Qwest and the Joint CLECs to work together and with the Division to establish a process to reasonably estimate and remove the number of residential lines served over unbundled loops.

Removal of Non-Switched UNE-L lines: No adjustment was made to this category, because the data to accurately make this adjustment is not available. Carriers such as Covad purchase unbundled loops for purposes of offering DSL services. These loops are not used for voice services and should be removed from the switched business line counts. The Commission should require Qwest and the Joint CLECs to work together with the Division to establish a process to reasonably estimate and remove the number of non-switched lines served over unbundled loops.

Count of UNE-P and UNE-L Used Capacity: These numbers are estimates based on information provided by Qwest. Exhibit DD-04, JCDR 01-030 Highly Confidential Attachment C contains a list of high capacity loops and high capacity UNE-P services. I was able to develop a high capacity lines in use factor based on the ratio of Qwest's high capacity lines in use versus the total capacity of those lines.[58] I applied this ratio to the high capacity line counts Qwest provided for the CLECs to estimate the high capacity lines in use for the UNE-Loop and UNE-P data.

All Adjustments: This row shows the impact of all of the adjustments I was able to make in combination. The totals in this row demonstrate that even when using Qwest's 2003 data, Qwest does not meet the standards necessary to declare Salt Lake Main "non-impaired" with respect to DS-1 Loops.

## E. SUMMARY OF ALL KNOWN DECISIONS REGARDING SWITCHED BUSINESS LINES FROM ACROSS THE COUNTRY

**Q. HAVE OTHER STATE COMMISSIONS ADDRESSED THESE ISSUES AND WHAT HAVE THEY FOUND?**

A. Yes, a number of state Commissions have held proceedings on these issues, the most recent, and the first in the Qwest region, is Washington, where the ALJ issued a decision on April 20, 2006.[59] Table 6 below summarizes all of the state decisions of which I am aware. The row labeled CLEC position represents the

[58] In order to verify the reasonableness of this approach I also reviewed Eschelon DS1 data and developed a factor of billed lines to total capacity for DS1 circuits for Utah. The Eschelon factor is similar, though slightly less, than the factor developed from the Qwest data.

[59] The Washington ALJ decision is attached to this testimony as DD-03. Most, if not all, of the state decisions are available on the state commission websites and can be fairly easily found using the docket

position of the Joint CLECs in this docket. This table also shows the positions taken by the various RBOCs with regards to the issues discussed. N/A indicates that the issue was not discussed in the Commission's order. In these cases I believe it is correct to assume that the RBOC's position was used as a default. The Washington decision, although listed separately for Verizon and Qwest, is in fact, a single decision. The decision is listed separately for each ILEC however because Verizon and Qwest took slightly different positions on some of the issues.

**Table 6: Summary of State Commission Switched Business Line Count Decisions**

| State | RBOC | Docket | Decision Date | Vintage of Data | ARMIS 43-08 | Residential UNE Loops | Non-Switched UNE Loops | CLEC High Cap Loop Count |
|---|---|---|---|---|---|---|---|---|
| | | **CLEC Position** | | **Dec-04** | **As Is** | **Exclude** | **Exclude** | **Used Capacity** |
| | | | | | | | | |
| | | **AT&T (SBC) Position** | | **Dec-03** | **As Is** | **Include** | **Include** | **Full Capacity** |
| IL | ATT | Docket 05-0042 | 2-Nov-05 | N/A | As Is | Include | Include | N/A |
| IN | ATT | Case No. 42857 | 11-Jan-06 | N/A | As Is | Include | Include | N/A |
| MI | ATT | Case No. U-14447 | 20-Sep-05 | Dec-04 | N/A | Exclude | N/A | N/A |
| OH | ATT | Case No. 05-887-TP-UNC | 9-Nov-05 | N/A | N/A | Include | Include | N/A |
| TX | ATT | PUC Docket No. 31303 | 30-Mar-06 | Dec-03 | As Is | Include | Include | Full Capacity |
| | | | | | | | | |
| | | **Bell South** | | **Dec-04** | **Adjusted** | **Include** | **Include** | **Full Capacity** |
| FL | BS | Docket No. 041269-TP | 2-Mar-06 | N/A | Adjusted | Include | Include | Include |
| NC | BS | Docket No. P-55 SUB 1549 | 1-Mar-06 | Dec-04 | As Is | Exclude | N/A | Used Capacity |
| SC | BS | Docket No. 2004-316-C | 10-Mar-06 | N/A | Adjusted | Include | Include | Full Capacity |
| | | | | | | | | |
| | | **Qwest Position** | | **Dec-03** | **Adjusted** | **Include** | **Include** | **Full Capacity** |
| WA | Q | Docket UT-053025 | 20-Apr-06 | Dec-03 | As Is | Include | Include | Full Capacity |
| | | | | | | | | |
| | | **Verizon Position** | | **Dec-03** | **As Is** | **Include** | **Include** | **Full Capacity** |
| WA | V | Docket UT-053025 | 20-Apr-06 | Dec-03 | As Is | Include | Include | Full Capacity |

number and the date of the decision.

## IV. UPDATES TO QWEST'S WIRE CENTER LIST

**Q. PLEASE DESCRIBE QWEST'S PROCESS FOR MAKING UPDATES TO THE WIRE CENTER LIST AND THE PROBLEMS ASSOCIATED WITH THIS PROCESS.**

A. Ms. Albersheim, for Qwest, indicated that based on any Commission's decisions regarding "counting methodologies,"[60] Qwest will (1) provide CLECs and the Commission notice "when wire centers are reclassified;"[61] (2) CLEC will not "order impacted high-capacity UNEs" thirty days after the notice;[62] and (3) CLECs will "transition existing DS1 and DS3 UNEs to an alternative service" within ninety days.[63]

The procedure proposed by Qwest for adding wire centers to the Wire Center List is problematic in two significant aspects. First, Qwest's procedures are void of Commission review and approval of additions to the Wire Center List. This type of unilateral action by Qwest is why the Joint CLECs petitioned this Commission for this proceeding in the first place. Second, Qwest's procedures provide only thirty days notification to CLECs before changes are implemented. A thirty day notification is inadequate for a CLEC to properly plan and react to changes in UNE availability.

[60] Direct Testimony of Renée Albersheim on behalf of Qwest Corporation ("*Albersheim Direct*"), Docket No. 06-049-40, March 24, 2006, page 14, lines 19-20.
[61] *Albersheim Direct*, Page 15, lines 6 – 7.
[62] *Albersheim Direct*, Page 15, lines 8 – 9.
[63] *Albersheim Direct*, Page 15, lines 10 – 11. Note, for dark fiber Qwest proposes 180 days for transition to alternative arrangements.

**Q. THE COMMISSION WILL MAKE A NUMBER OF DETERMINATIONS IN THIS PROCEEDING REGARDING THE PROPER METHODOLOGY FOR COUNTING FIBER-BASED COLLOCATIONS AND LINES FOR THE PURPOSES OF DETERMINING WHETHER A WIRE CENTER BELONGS ON THE WIRE CENTER LIST. WHY IS FURTHER COMMISSION ACTION REQUIRED WHEN QWEST UPDATES THE WIRE CENTER LIST?**

A. The Commission's rulings in this proceeding will permit future wire center reviews to be largely ministerial exercises because of the definitional issues resolved in this current proceeding. However, CLEC review and Commission approval of any updates to the Wire Center List remains crucial going forward for a number of reasons. First, proper review of updates based on Qwest's fiber-based collocation data is necessary given that Qwest's default process is to count a CLEC as a fiber-based collocator when a CLEC does not respond to Qwest's request for verification. Qwest also tends to default to counting a carrier as a fiber-based collocator despite the results of its field verification. Finally, Qwest defaults in counting a carrier as a fiber-based collocator in some cases when the CLEC disagrees with this classification.

It is also important that CLECs are able to verify that Qwest counted switched business lines consistent with the findings of this Commission.

Qwest's proposal to block CLEC orders in offices Qwest deems as "non-impaired" reiterates the importance of having the Commission approve any

additions to Qwest's wire center list.[64] By blocking CLEC orders Qwest can bring a CLEC's business to a stop simply because Qwest claimed a wire center belonged on the wire center list.

**Q. WHAT IS THE CLEC PROPOSAL FOR MAKING UPDATES TO THE WIRE CENTER LIST?**

A. The Joint CLEC's propose the following process for Qwest to make updates to the wire center list. This process was outlined in the Joint CLECs' April 26, 2006 letter to the Commission, *TRRO/Request for Commission Review and Approval of Wire Center Lists,* Attachment A.

(1) Before Qwest files an request (along with supporting data) to this Commission to add a wire center to the wire center list Qwest would issue a notice to CLECs informing them of the filing, notifying them that the filing (which will be filed as confidential pursuant to the protective order) may contain a CLEC's confidential data, advising CLEC that it may obtain data in the docket by signing the protective order, and indicating that, if a CLEC objects, the CLEC should contact ***the Commission*** before a given date. Qwest should provide this notice to CLECs at least five business days before Qwest plans on making a filing to the Commission. These notices would be similar to the notices that ILECs currently send with respect to requests for CLEC-specific data (*see* example in Exhibit DD-07). The example of Qwest notice in Exhibit DD-07 shows that Qwest already has a process in place for notifying CLECs (including non-

[64] Qwest's proposal to block CLEC orders will be discussed in more detail in Section V.

party CLECs) when Qwest intends to provide CLEC-specific data to the other parties or the Commission pursuant to a protective order.

(2) Qwest should make a filing with the Commission and provide sufficient supporting data to the Commission and CLECs so that the data can be reviewed. Once sufficient data is provided CLECs would request any necessary follow up information. This exchange of information should take no more than 20 days assuming Qwest provides sufficient data with its initial filing.[65]

(3) Once Qwest the information exchange is complete and CLECs have reviewed the data CLECs should file exceptions, challenge the sufficiency of the data, or object to inclusion of any wire center on the list. If there is no objection, the Commission should approve the wire center list and send a notice containing the updated approved wire center list and post the approved list on the commission website. If there are any objections, the Commission should approve a list containing only any undisputed wire centers, resolve disputes as to disputed wire centers, and then update the list if dispute resolution requires later addition of any wire centers to the list.

[65] Qwest's filing should contain information it provided in this case with its direct testimony and in response to data requests. Qwest's full disclosure of relevant information will expedite the review process and alleviate Qwest's concern for timely review. For fiber-based collocations this should contain the names of the fiber-based collocators, indications as to whether the carriers verified their status as fiber-based collocators, indication as to whether any carrier objects to being classified as a fiber based collocator, results from any field verification Qwest may have undertaken and any other relevant data. Line count data should be consistent with the Commission's decision in this docket. In addition line count data should be provided with enough details so that calculations made to develop total line counts can be verified from the source data. In addition, Qwest should provided carrier specific data, in masked format, so that each interested carrier can review its own data.

This process should not be a prolonged process for a number of reasons. First, additions to the wire center list are likely to contain fewer wire centers than the wire centers being investigated in Qwest's initial filing. Second, the issues in the investigation to update the wire center list will be narrow. The Commission will already have decided certain disputes regarding the counting of business lines and the sufficiency of fiber based collocation data. Further, Qwest expanded the issues in this case by raising issues regarding non-recurring charges and the blocking of CLEC orders.

**Q. SHOULD QWEST BE REQUIRED TO PROVIDE INFORMATION FOR OFFICES THAT ARE CLOSE TO REACHING "NON-IMPAIRED" STATUS?**

A. Yes, the impairment status of a wire center is vitally important in informing CLEC investment decisions. CLECs should be informed when a wire center is within 5,000 lines, or within 1 fiber collocator, of changing designation.

**Q. QWEST IS PROVIDING CLECS WITH NINETY DAYS NOTICE TO TRANSITION FACILITIES IMPACTED BY WIRE CENTERS ADDED TO THE WIRE CENTER LIST. WHY IS THIS NOT SUFFICIENT?**

A. Qwest's process allows for a notice period and a transition period that in total allows a CLEC between 90 and 120 days for loops and transport, depending on the interpretation of Qwest's language[66] to find replacement facilities for the

[66] Note that it is unclear whether the clock on Qwest's 90 day transition period starts on day of notification or 30 days after notification. Both Ms. Albersheim's testimony and Qwest's TRO/TRRO Amendment are unclear in this regard. Qwest's TRO/TRRO Amendment states: "Thirty (30) Days after notification from Qwest, CLEC will no longer order impacted high capacity or Dark Fiber UNEs in or between those additional Wire Centers. CLEC will have ninety (90) Days to transition existing DS1 and DS3 UNEs to an

UNEs Qwest claims are no longer available. Qwest's transition period pales in comparison to the one-year transition period the FCC established in the *TRRO*,[67] which should be used for all future transitions.

The tariffed rates Qwest has proposed to charge for delisted UNEs are significantly higher than the UNE rate. For example, the DS1 UNE rate in UNE Zone 1 is $69.76, while the month-to-month interstate special access rate for DS1 Channel Terminations is $165.00, 2.4 times the UNE rate. Changes in costs will affect CLECs' business plans. Collocation builds are expensive and time consuming. The expected return from a collocation would be dramatically lower if high cap loops UNEs or UNE transport were suddenly to become unavailable. Uncertainty as to future UNE availability will deter CLEC investment in facilities. Providing CLECs with information on the status of wire centers with respect to business access lines and fiber-based numbers would allow them to rationally plan future investment.

## V. BLOCKING CLEC ORDERS

**Q. DO YOU HAVE ANY CONCERNS REGARDING HOW QWEST WILL IMPLEMENT THE TRRO WITH RESPECT TO UNE ORDERS?**

A. Yes. Qwest attempted to implement a Change Request through its Change Management Process that will change Qwest's ordering system to block CLEC orders for UNEs in wire centers that Qwest unilaterally believes are not

alternative service. CLEC will have one hundred eighty (180) Days to transition Dark Fiber transport to an alternative service." Section 2.8.4 of Qwest's TRO/TRRO Amendment (http://www.qwest.com/wholesale/downloads/2006/060331/TRO-TRRO-Amendment2-24-06.doc).

impaired.[68] Though Qwest did not raise this issue in the direct testimony of any of its witnesses, Qwest, in its petition to establish this docket asked the Commission to confirm that "Qwest is permitted to reject [the CLEC's] order."[69]

The FCC has clearly stated that ILECs "must immediately process" orders for UNEs from a CLEC who certifies that it has undertaken a "reasonably diligent inquiry, and, based on that inquiry, self-certify that, to the best of its knowledge," it is entitled to obtain the UNE.[70] Because Qwest's system change would block a CLEC's UNE order regardless of whether the CLEC had self-certified, the change violates the FCC's Order.

The FCC's position is eminently sensible. The service to the customer comes first. A customer's service should not be jeopardized. If the CLEC is mistaken about the status of the wire center, Qwest can seek redress and backbill the CLEC for the difference between the UNE rate and the Private Line rate. If Qwest is mistaken about the status of a wire center, no harm is done to the end-user customer.

Qwest's testimony does not address how its system change request complies with the FCC's Order. The Commission should require Qwest to follow the FCC's directive, which could not be clearer: "the incumbent LEC must provision the

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[67] *TRRO*, ¶ 5. Note that the FCC set an 18 month transition period for Dark Fiber Transport. In the Omaha Forbearance Order (Memorandum Opinion and Order FCC 05-170, WC Docket No. 04-233, September 26, 2005) the FCC established a six month transition period for carriers to establish alternative arrangements.
[68] *See* CR #SCR083005-01 (currently in deferred status) http://www.qwest.com/wholesale/cmp/cr/CR083005-01.htm. This is attached to this testimony as Exhibit DD-05
[69] *Qwest Corporation's Petition to Open a Commission Investigation and Adjudicatory Proceeding to Verify Qwest Wire Center data and Resolve Related Issues*, filed March 1, 2006, page 7.

UNE and subsequently bring any dispute regarding access to that UNE before a state commission or other appropriate authority."[71]

**Q. ARE THERE ANY SITUATIONS WHERE THE CLECS WOULD BE WILLING TO ALLOW QWEST TO BLOCK ORDERS?**

A. Although the TRRO does not compel CLECs to accept the blocking of orders, the Joint CLECs are prepared to agree to a process under which Qwest could reject orders, provided that 1) the rejection of orders is limited to facilities designated as non-impaired after party review of the underlying data and consistent with the Commission-approved process established in this proceeding; and 2) the terms, procedures and details for the rejection of such orders are known in advance and mutually agreed upon.

**Order rejection should be limited to wire centers on a Commission-approved list of non-impaired wire centers.**

Given the right of CLECs to self-certify, the rejection of UNE orders applies appropriately only pursuant to a process that gives CLECs the opportunity to 1) review the underlying data related to Qwest's non-impairment designations; and 2) challenge any such designation at the Commission and obtain an independent determination regarding the propriety of the designation. In other words, it is critical that CLECs have the opportunity, under Commission oversight, to review the inputs into a designation and that the rejection of orders be limited to wire centers on a Commission-approved list of non-impaired wire centers.

[70] *TRRO* at ¶ 234.
[71] *Id.*

The Commission-approved list should be the touchstone for the rejection of UNE orders with respect to current non-impairment designations and any future additions to the list of non-impaired wire centers. Otherwise Qwest would have the ability, based upon disputed claims, to cause substantial harm to a CLEC's business by rejecting a CLEC's legitimate UNE orders. Qwest must be committed to following a Commission's ruling on the wire center list (including future additions to that list), before CLECs can enter into discussions with Qwest about putting system modifications in place that would reject CLEC orders in "non-impaired" wire centers.

**The terms and procedures for rejecting orders must be predetermined and agreed to by CLECs**

The specific terms and procedures for rejecting orders must be known and mutually agreed upon by Qwest and CLECs. The devil is truly in the details. Therefore, it is imperative that the process for Qwest's rejection of UNE orders under the TRRO be acceptable to both Qwest and CLECs and not imposed unilaterally.

If Qwest unilaterally implemented a defective process or systems modification, without CLEC input, to reject orders and that defective process resulted in erroneous rejections, then CLECs would be in the same position that they would be in if Qwest erroneously rejected orders in violation of *TRRO* paragraph 234 for any other reason. Mutual agreement up front on the process will also avoid needless disputes that would likely come before the Commission in the context of a crisis. CLECs are willing to develop those procedures bi-laterally with Qwest in

interconnection agreement negotiations or as part of this proceeding. Addressing those details in this proceeding would probably be the more efficient approach and minimize the risk of delay in Qwest's ability to block CLEC UNE orders.

## VI. NON-RECURRING CHARGES

**Q. PLEASE PROVIDE AN OVERVIEW OF THE TRANSITION PROCESS QWEST HAS PROPOSED FOR CONVERTING UNE CIRCUITS INTO SPECIAL ACCESS OR PRIVATE LINE CIRCUITS.**

A. Qwest's product catalog ("PCAT") on its wholesale web site contemplates that it will transition circuits "'As Is' from UNE to Private Line/Special Access Services."[72] That is, the physical facility is the same, whether it is called a UNE or called a Private Line or a Special Access Service.[73]

End user customers served by UNEs are receiving service and do not expect any changes to it. Changing a UNE circuit to a private line circuit should be transparent to both the end user customer and the CLEC serving that customer.

Thus while the physical circuit and its use does not changed during a transition, the rate at which Qwest will charge the CLEC does change. That private line circuits cost much more than the physically equivalent UNE circuit is clear,[74] but

[72] *See* Attachment D (Qwest's On-Line PCAT "Rate Structure"), p. 2.

[73] For convenience, I will refer to both Private Line and Special Access Services as "private line."

[74] As stated previously the DS1 private line rate is 2.4 times the DS1 UNE rate. The Minnesota Commission recently opened a docket to investigate whether the rates Qwest is offering to CLECs for "non-impaired" UNEs, for which Qwest has an obligation to provide under Section 271 of the Act, are just and reasonable.

the necessity of changing the system that produces the bill in order to implement a rate increase is not at all clear.

Qwest claims that it is necessary to change the circuit ID so that Qwest can "accurately maintain records"[75] and help measure "the different service performance requirements that apply to UNEs and private line services."[76]

Qwest proposes to charge a $50.00 NRC[77] per circuit to the CLEC so Qwest can recover its cost of changing the circuit ID of the facility being converted. This change in circuit ID is done for the convenience of Qwest, at the inconvenience of the CLEC, and risks putting the CLEC customer out of service during this process.

To "convert" means "to cause to change in form, character, or function."[78] Converting from a UNE to a private line or special access circuit involves no change whatsoever in the "form, character, or function" of the facility. The physical facility and its functionality are identical whether it is purchased as a UNE or purchased as a private line or special access circuit. Nor does the end-user's service change in any way. The customer should continue to receive exactly the same service via a private line as the customer received via a UNE. The "conversion" of a UNE into a private line is not a network facility issue – it is

[75] Direct Testimony of Teresa K. Million on behalf of Qwest Corporation ("*Million Direct*"), Docket No. 06-049-40, March 24, 2006, page 6, line 6
[76] *Million Direct*, page 7, lines 3 & 4
[77] See Exhibit DD-01, JCDR 01-027.
[78] *The New Oxford American Dictionary*, Oxford University Press 2001.

an issue with Qwest's internal systems and how Qwest plans to move the billing for the facility from one system to another system.

To "convert" a UNE to a private line, consists of no more that Qwest wanting to bill CLECs higher monthly recurring charges while excluding performance data for former UNEs from UNE performance measurements. Consequently, the conversion process results from the choices Qwest makes about how to accomplish these results. Neither result is required by the TRRO.

**Q. WHY WOULD THE END USER CUSTOMERS SERVICE BE PLACED AT RISK AS RATES ARE CHANGED FROM THE UNE RATE TO THE PRIVATE LINE RATE?**

A. Qwest describes how the conversion from a UNE to a private line service could impact end user customers: "…because the circuit ID is changing, for example, mechanized steps in Qwest's systems view the outward action of the old circuit ID as disconnect activity. This could cause disruption to the CLEC's end-user customer's service unless it is prevented by the manual intervention steps designed in the conversion process."[79]

There is no reason why a CLEC's end user customer should be placed at risk, however the process by which Qwest plans on implementing this billing change, which includes a record change to the circuit ID, does just that.

It is important to understand that only CLEC's end users are being placed at risk. Qwest's end users are not affected by these changes. As a result, any errors that

impact the CLEC's end user customer have the potential of being a win-back situation for Qwest. The CLEC's end user is unaware of the TRO/TRRO and does not care what billing system Qwest uses to bill the CLEC.

**Q. WHY WON'T THE "MANUAL INTERVENTION STEPS" MENTIONED BY QWEST BE SUFFICIENT TO PROTECT THE CLEC'S END USER CUSTOMER?**

A. First, it should be recognized that the "manual intervention steps" described by Qwest are only necessary if Qwest insists on changing the circuit ID. If the circuit ID is not changed, then the "prevention" of customer service disruption is not necessary.

Second, every time manual intervention enters a process, the possibility for errors occurs. Qwest points out numerous situations where a failure in the manual intervention process could cause a disruption of service for the CLEC's end-user customer during the conversion. Below are areas where Qwest describes the manual intervention that must take place.

[Provisioning] "…manually reviewing WFADI and WFADOA, whose purpose is to ensure that work steps have not been loaded to the central office or the field **that would result in the interruption of service to the CLEC's end-user customer** during the conversion."[80]

[79] See Exhibit DD-01, JCDR 01-019.
[80] See Exhibit DD-01, JCDR 01-008 and JCDR 01-020.

[Service Delivery Coordinator ("SDC")] "For Common Language Serial numbered (CLS) circuit IDs, it is most efficient, and **minimizes the risk of the customer being taken out of service**, to reuse the serial number portion of the circuit ID whenever possible."[81]

"The SDC verifies multiple pieces of information provided on the service order by the customer to ensure that the activity to be performed is clear and that the circuit being converted is specifically identified in order **to avoid billing and service problems.**"[82]

[Designing] "The manual review and validation processes that the Designer performs are intended to interrupt an otherwise mechanized downstream flow that is initiated with the record-in and record-out orders in order to ensure that no physical changes in facilities or equipment **that would disrupt service to the CLEC's end-user customer** have occurred."[83]

Qwest has identified numerous manual steps that must take place for each order converting a UNE to a private line service. Each manual step is intended to prevent the disruption of the CLEC's end-user customer during the transition of the circuit. These steps would not be necessary if Qwest simply changed the rates it charges to CLECs, rather than insisting on a change in the circuit ID representing the facilities serving the end user customer.

[81] See Exhibit DD-01, JCDR 01-014
[82] See Exhibit DD-01, JCDR 01-016
[83] See Exhibit DD-01, JCDR 01-017

**Q. IS IT NECESSARY FOR QWEST TO CHANGE THE CIRCUIT ID TO CONVERT A UNE TO A PRIVATE LINE SERVICE?**

A. No, Qwest has mentioned three general reasons why it believes a change in the circuit ID is necessary for the conversion of a UNE to a private line service. The reasons cited by Qwest are: (1) Qwest needs the ability to maintain detailed and distinct records for UNEs versus private line circuits; (2) the unique circuit ID is a means of measuring the unique service performance that apply to UNEs and private line services; and (3) the FCC requires unique circuit IDs. Upon examination, not one of these reasons is valid. The bottom line is that Qwest would find it more convenient if the circuit ID were to change, while making the CLEC's life inconvenient. As mentioned, there is risk to the CLEC's end user customer's service. In addition, the CLEC must update circuit IDs in the CLEC's internal systems so that the CLEC can validated bills, report troubles, and implement moves, adds and changes.

***(1) Detailed and distinct records***

Qwest witness Million testifies that Qwest has two billing systems: CRIS (Customer Record and Information System) and IABS (Interactive Access Billing System).[84] Qwest bills UNEs out of its CRIS system and private lines and special access out of its IABS system. During the initial arbitrations Qwest insisted on

[84] Million, Direct Testimony at p. 4.

using its CRIS system for billing UNEs over the objections of MCI which proposed one system for intercarrier billing rather than two.[85]

Million does not testify that its CRIS system cannot accurately bill CLEC's higher rates for circuits. Such a claim would be simply be incredible given that UNE rates in Qwest's region have changed and Qwest has implemented both rate increases and decreases in CRIS.

Perhaps even more dramatic evidence of the capabilities of the CRIS system in this regard is Qwest's implementation of Qwest Platform Plus (QPP) agreements. QPP circuits are subject to annual rate increases. In fact, the rate changes involved with QPP are significantly more complex that the rate change involved in changing from UNE rates to private line rates. QPP rates differ depending upon whether the end-user customer is a residential or a business customer and upon whether the CLEC has met certain volume quotas. Qwest has accomplished these rate changes within CRIS by means of adding new Universal Service Ordering Codes ("USOC") that introduce additives to the underlying UNE rate that CLECs pay for the circuit. Qwest does not assess conversion charges upon its CLEC customers for increasing the amounts that CLECs pay for QPP circuits.

***(2) Performance measurement***

Qwest's second basis for claiming for the necessity of changing circuit identifiers also simply states a conclusion as well. Qwest states that "the unique circuit ID is

[85] *In the Matter of the Petition for Arbitration, Consolidation, and Request for Agency Action of MCIMETRO ACCESS TRANSMISSION SERVICES, INC.,* Pursuant to 47 U.S.C. § 252 (b) of the Telecommunications Act of 1996, **ARBITRATION ORDER**, Docket No. 96-095-01, Issued April 28,

maintained as a means of measuring the different *service performance requirements* that apply to UNEs and private line services."[86] And again, Qwest's actual experience with QPP suggests this conclusion is wrong too. Qwest measures service performance for QPP lines differently than it does for UNEs, and Qwest has accomplished this without changing the circuit identifiers. Further, "Prior to April 2005 Qwest did not require a change to the circuit IDs when a CLEC requested a conversions from Private Line / Special Access to EEL."[87] Despite this, Qwest indicates that "EEL circuits are being managed properly in the PID/PAP reporting in Utah."[88]

Tracking the appropriate circuits should not be a problem as a vast majority of the UNEs that are no longer available due to "non-impaired" status are in distinct wire centers or along specific transport routes.

***(3) FCC rules***

Qwest witness Million contends that 47 C.F.R. § 32.12(b) and (c) requires Qwest to change the circuit identifier.[89] Million opines that "[i]n order to sufficiently maintain its subsidiary records to support its accounting for UNEs versus its private lines services, Qwest must have accurate circuit identifiers that properly track circuits separately."[90]

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1998, Issue 5 - 36 (http://www.psc.state.ut.us/telecom/98orders/apr/9608703ao.htm)
[86] *Million Direct*, page 7, lines 3 – 4.
[87] See Exhibit DD-01, JCDR 01-022
[88] See Exhibit DD-01, JCDR 01-025
[89] *Million Direct,* page 6.
[90] *Id.* at pp. 6-7.

However, the FCC provisions cited only require Qwest to maintain orderly records with sufficient detail. The FCC does not prescribe how Qwest is to use circuit identifiers to maintain orderly records. Million's conclusory statement that accurate accounting and reporting requires changing circuit identifiers begs the question of whether changing the circuit identifier is necessary. Presumably Qwest is able to maintain orderly records for its QPP products without changing the circuit identifier of the underlying line. As previously stated, prior to April 2005, Qwest did not require a change to the circuit IDs when a CLEC requested a conversion from Private Line / Special Access to an EEL. When Qwest implemented its new process to change the circuit ID, CLECs were given the opportunity to opt out of the changes to their embedded base of circuits.[91]

***Conclusion***

Qwest's proposal to change the circuit ID is done for the convenience of Qwest, at the inconvenience of the CLEC and at risk to the end user customer. Further, Qwest proposes to charge the CLEC for changing the circuit ID.

The issue of changing circuit identifiers is important. Qwest's economic incentive is to increase its competitors' costs. Qwest can increase a CLEC's costs by undertaking unnecessary activity, or undertaking necessary activity in an inefficient manner, and requiring the CLEC to pay Qwest's costs. Qwest can also increase a CLEC's costs by undertaking activity that requires the CLEC to change its internal operations. By contending that it is necessary to change circuit

[91] See Exhibit DD-01, JCDR 01-022.

identifiers, Qwest buttresses its claim that "conversion" is necessary and that it involves costs. Further, when Qwest changes a circuit's identifier, the CLEC must change the identifier in its systems as well and, depending upon the nature of the change and the CLEC's systems, processes and procedures, the CLEC's costs for making the change can be greater or smaller. To validate Qwest billing, to do moves, adds or changes to an existing line, and to deal with service and repair issues, CLECs will have to record the new circuit identifiers in their systems. Making the change will involve costs, including the costs of dealing with mistakes in the new identifiers that affect customer service.

Qwest has failed to demonstrate that its proposed "conversion" is necessary. Qwest witnesses never address the question of whether they can accomplish the goals of increasing its charges for a circuit, keeping accurate records, and excluding circuits from performance measurements in other ways that are less costly and less potentially disruptive to end user customers. The fact that Qwest accomplished these goals with QPP, is strong evidence that the "conversion" Qwest wants to perform is unnecessary.

If the Commission determines that it is appropriate for Qwest to change the circuit ID during the conversion process, then every effort should be made to protect the CLEC's end-user customer and hold the CLEC harmless from any errors that may occur.

**Q. SHOULD QWEST BE PERMITTED TO ASSESS A CONVERSION CHARGE FOR CONVERTING UNE CIRCUITS TO SPECIAL ACCESS?**

A. No, for several reasons. First, although Qwest is no longer required to supply certain UNEs to CLECs, Qwest's decision not to do so is Qwest's decision alone. If there are any costs to the conversion, Qwest is the cost-causer. Economic efficiency is enhanced when the entity responsible for costs bears them, giving the cost-causer a reason to minimize costs.

Second, as the FCC recognized, ILECs have an incentive to impose "wasteful and unnecessary charges, such as termination charges, re-connect and disconnect fees, or non-recurring charges associated with establishing a service for the first time."[92] The FCC further found that conversion charges "could unjustly enrich an incumbent LEC as a result of converting a UNE or UNE combination to a wholesale service."[93] Qwest should not be allowed to impose unnecessary costs on its competitors.

Third, Qwest does not impose conversion charges on its own customers. Qwest expects CLECs which it requires to convert UNE to special access circuits to pay a significant non-recurring charge. Few if any competitive businesses would ask their customers to be charged for getting higher monthly recurring charges and getting a lesser service quality program while simultaneously necessitating changes to the customer's own internal records as well.

The California Public Utilities Commission found these concerns sufficient to prohibit the ILEC from assessing charges for converting UNE circuits to special access. The California Commission explained:

> We concur with the FCC's finding in ¶ 587 of the *TRO* . . . that because ILECs are never required to perform conversions in order to continue serving their own customers, such charges are inconsistent with Section 202 of the Act, which prohibits carriers from subjecting any person or class of persons to any undue or unreasonable prejudice or disadvantage. In the following paragraph, the FCC also reiterates that the conversions between wholesale services and UNEs are 'largely a billing function.' Given the FCC's finding cited above, it is inappropriate to charge a nonrecurring charge for record changes. Therefore, **we conclude that no charges are warranted for conversions and transitions that to not involve physical work . . . .** (Emphasis added).[94]

Finally, Qwest did not impose a conversion charge when customers transitioned from UNE-P to QPP. Qwest's conversion charge consequently penalizes facilities-based providers. Qwest should not be permitted to discriminate against facilities based CLECs in favor of CLECs that rely completely on Qwest's network.

**Q. IN ASSESSING A CONVERSION CHARGE, WHAT COSTS DOES QWEST SEEK TO RECOVER?**

A. Qwest seeks to recover costs involved in "assur[ing] itself that the data for the converted circuit is accurately recorded in the appropriate systems."[95] Qwest witness Million's testimony is that Qwest plans to change the billing for the

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[92] *TRRO* at ¶ 587.
[93] *Id.*
[94] *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*, Decision Adopting Amendment to Existing Interconnection Agreement (Jan. 26, 2006) (CA Arbitration Decision), p. 35.
[95] *Million, Direct*, page. 4.

CLEC's circuit from CRIS to IABS, change the circuit ID, and remove the circuit from Qwest's performance assurance plan. But for Qwest's insistence on changing the billing platform and changing the circuit ID, there would be no need for Qwest to "assure itself" that "the data for the converted circuit is accurately recorded."

Qwest intends to charge CLECs for costs imposed by Qwest's own decisions. In ordering UNEs, CLECs have paid to enter the correct information required by Qwest into Qwest's systems. Rather than simply bill CLECs more for circuits billed in CRIS, Qwest chooses to charge CLECs for unnecessarily moving the information to Qwest's IABs system. Consequently, Qwest is proposing to move CLEC circuits to a different billing system, risk disrupting service to CLEC customers, and require CLECs to change information in their own systems – all at the CLEC's expense.

**Q. IS QWEST'S DESIGN CHANGE CHARGE AN APPROPRIATE CHARGE?**

A. No. Qwest witness Million testifies that Qwest intends to charge a "Design Change" non-recurring charge. She claims that the functional areas and tasks involved in a design change "are similar" to the tasks required to transfer circuit records to IABS. Million further testifies that the Design Charge is "a conservative estimate" of the cost.[96] However, Qwest's definition of a Design

[96] *Million Direct,* page 7.

Change indicates that it is intended to recover for engineering activity and no engineering activity is necessary to record circuit information in IABS.[97]

Qwest's FCC Interstate Tariff #1 defines this "Design Change Charge" as:

> any change to an Access Order which **requires engineering review**. An engineering review is a review by Company personnel of the service ordered and the requested changes to determine what change in the design, if any, is necessary to meet the changes requested by the customer. Design changes include such things as a change of end user premises within the same serving wire center, the addition or deletion of optional features, functions, BSEs or a change in the type of Transport Termination (Switched Access only), type of channel interface, type of Interface Group or technical specification package."[98] (Emphasis added).

Because the UNE circuits are converted "as is," no physical change to the circuit is required. This change is a record change only in order to update the Qwest systems. The circuit is up and working as a UNE. Since there is no need to change the circuit ID, there is no need to "review" or "validate" the circuit design or to ascertain whether "physical changes to the circuit are needed."[99]

Ms. Million describes three positions involved in a conversion: a Service Delivery Coordinator (SDC), a Designer, and a Service Delivery Implementer, but no activity that any of them do associated with a conversion is "engineering design."

First, Qwest requires CLECs to place an order. The SDC processes the order to remove the circuit from the CRIS billing and put it into IABS billing and changes

[97] In response to JCDR 01-027 (see Exhibit DD-01), Qwest states that it plans to update the language describing the Design Change charge because "the language contained in the interstate tariff does not specifically describe the activities attendant with the conversion of a UNE to a Private Line." Changing the definition of the rate element does not make it any more appropriate.
[98] Qwest Tariff FCC No. 1, section 5.2.2C.

the circuit indentifier, both of which are solely for Qwest's convenience or advantage rather than being technically necessary.

Ms. Million first describers the Designer as conducting a review of a working circuit operating without trouble in order to determine whether "any physical changes to the circuit are needed."[100] A more unnecessary step could scarcely be imagined. Ms. Million also identifies two other tasks involving the Designer. She states that the Designer "assures that the design records for the converted circuit match the current UNE circuit" and that the Designer "reviews the circuit inventory in the Trunk Integrated Record Keeping System ("TIRKS") database to ensure accuracy and database integrity."[101] It appears that what the Designer does is take the opportunity to correct errors in Qwest's database at CLEC expense. CLECs have already paid installation charges when the UNE circuit was initially purchased. CLECs now are to be charged again to correct any errors in Qwest's systems from earlier activity.

The Service Delivery Implementer "has overall control for order provisioning."[102] Since no provisioning is required, there is nothing for the Implementer to control. The Implementer also "verifies the Record-In and Record-out orders and completes the update of the circuit orders in the WFA system."[103] In essence, the Implementer checks to see that the Coordinator's work was correct. However since the Coordinator principally processes CLEC orders before they go into

[99] *Million Direct,* page 5.
[100] *Million, Direct,* page 5.
[101] *Million, Direct,* page 5 (footnote omitted).
[102] *Million, Direct,* page 6.

Qwest's systems, it would seem more sensible to check the accuracy of the order before it is submitted. If an accurate order does not flow through to update Qwest's systems properly, that is a system issue and cost, not a conversion cost.

In other words, Qwest wants to impose an engineering charge on CLECs to recover the costs of undertaking unnecessary work that does not actually involve any engineering. The charge is inappropriate and the Commission should not allow it.

**Q. WHAT CONVERSION CHARGE WOULD YOU RECOMMEND?**

A. For the reasons I have outlined above, there should be no conversion charge. However, if the Commission chooses to allow Qwest to impose such a charge, it should be a TELRIC UNE rate reflecting the record work only nature of the conversion process.

The Washington Public Utilities and Transportation Commission found the appropriate rate for UNE conversions to Private Line was the TELRIC rate for conversions from Private Lines to UNEs.[104] The Minnesota TELRIC rate for conversions from Private Lines to UNEs is $1.25.[105] This Commission approved a charge of $8.48 for converting Private Lines to UNEs and it could reasonably decide that this rate should apply for conversions from UNEs to Private Lines.

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[103] *Million Direct*, page 6.

[104] *In the Matter of the Petition for Arbitration of an Amendment to Interconnection Agreements of Verizon Northwest, Inc. with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Washington Pursuant to 47 U.S.C. § 252(b) and the Triennial Review Order,* Report and Decision, Order No. 17, Doc. No. UT-043013 (July 8, 2005) at ¶ 429. (http://www.wutc.wa.gov/rms2.nsf/vw2005OpenDocket/9D2ACD4D768DABE888257084007B7673).

[105] See Sections 9.23.6.5 and 9.23.7.6 of Qwest's Minnesota SGAT (http://www.qwest.com/wholesale/downloads/2006/060113/MNSGATExhibitA12-21-05.xls)

**Q. DO THE COST STUDIES QWEST PROVIDED SUPPORT THE $50 DESIGN CHANGE CHARGE QWEST PROPOSES TO CHARGE FOR CONVERSIONS FROM UNES TO PRIVATE LINES?**

A. No, these cost studies suffer from the same flaws the as the cost studies Qwest filed in Docket No. 00-049-105. In that docket the Commission found that Qwest's estimates of time required to perform activities were overstated and ordered "a 40% across-the-board reduction to Qwest's estimates."[106] Qwest did not incorporate any of the changes from that order into the studies provided to the Joint CLECs for review.

**Q. IS QWEST ASKING THIS COMMISSION TO APPROVE THE DESIGN CHANGE CHARGE AS THE APPROPRIATE CHARGE FOR QWEST TO CHARGE CLECS FOR CONVERTING IMPACTED UNE CIRCUITS TO PRIVATE LINES?**

A. No, Qwest is not asking this Commission to determine a reasonable charge. Ms. Million states "Qwest asks that this Commission acknowledge Qwest's right to assess [the Design Change] charge for the work that it performs."[107] In other words, Qwest is asking this Commission to determine that it does not have jurisdiction over this charge. This Commission should reject these claims and establish an appropriate rate for the conversion of unbundled network elements to private line circuits.

[106] *In the Matter of the Application of QWEST CORPORATION for Commission Determination of Prices for Wholesale Facilities and Services*, ORDER, Docket No. 00-049-105, Issued June 6, 2002 (http://www.psc.state.ut.us/telecom/02orders/Jun/00049105o.htm)
[107] *Million Direct*, page 8, lines 12 – 14.

## VII. CONCLUSION

**Q. WHAT ARE YOUR RECOMMENDATIONS TO THE UTAH COMMISSION?**

A. I have the following recommendations for this Commission:

1) The Joint CLECs' recommendations regarding the "non-impaired" status of Qwest's wire centers should be adopted. Qwest did not supply sufficient information to verify its fiber-based collocation data. If, during the course of this proceeding, Qwest provides further information that verifies the fiber-based collocations in dispute, then the Joint CLECs will review this data and if necessary update their recommendations.

Qwest should be required to file proper switched business line count data. Qwest should update its line count data to be reflective of the implementation of the *TRRO* along with the information required to implement the proper counting of this data as outlined in this testimony.

2) Future additions to the wire center "non-impaired" list should require Commission approval. Qwest should make available to the Commission and CLECs the underlying data used by Qwest to determine that additional wire centers meet the FCC's "non-impaired" status. Qwest should not be allowed to unilaterally impose its view of what is "non-impaired." Further, Qwest should provide, on an on-going basis, a list of wire centers close to meeting the FCC's "non-impairment" criteria.

3) Qwest should not be allowed to block CLEC orders without the agreement and participation of CLECs in the process and necessary systems changes.

4) Qwest should not be allowed to place the CLEC's end-user customer at risk, for the convenience of Qwest, by changing the circuit ID on UNE circuits impacted by "non-impairment" determination. In addition, Qwest should not be allowed to charge CLECs for Qwest to perform tasks that Qwest is performing for its own benefit.

**Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

A. Yes.