

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of Qwest Corporation's )  
Petition for Commission Approval of 2007 ) DOCKET NO. 07-049-30  
Additions to Non-Impaired Wire Center )  
List and Motion for Expedited Issuance of ) REPORT AND ORDER APPROVING  
Protective Order ) TIER 2 DESIGNATION OF QWEST'S  
 ) MIDVALE MAIN WIRE CENTER  
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ISSUED: October 1, 2007

SYNOPSIS

The Commission approves Qwest Corporation's ("Qwest") designation of the Midvale Main central office as a Tier 2 non-impaired wire center and its addition as such to Qwest's non-impaired wire center list. The Commission further determines the effective date of said designation and addition to be September 7, 2007.

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By The Commission:

**I. PROCEDURAL HISTORY**

On June 22, 2007, Qwest Corporation ("Qwest") filed a Petition for Commission Approval of 2007 Additions to Non-Impaired Wire Center List and Motion for Expedited Issuance of Protective Order seeking the opening of a Commission docket for approval of Qwest's 2007 additions to its non-impaired wire center list and issuance of a protective order to govern disclosure of information relevant to Qwest's intended filing on June 29, 2007, of data supporting its list of additional non-impaired wire centers.

On June 29, 2007, Qwest submitted its Filing for Commission Approval of 2007 Additions to Non-Impaired Wire Center Designations, with Supporting Data ("2007 Wire Center Update"), seeking Commission approval of the Tier 2 non-impairment designation for its Midvale Main ("Midvale") and Orem Main ("Orem") wire centers. In support of its request,

Qwest filed the sworn affidavits of two witnesses along with several Highly Confidential exhibits, including data indicating Qwest's business line count for the Midvale and Orem wire centers.

Also on June 29, 2007, the Commission issued a Protective Order as requested by Qwest on June 22, 2007.

On July 10, 2007, the Commission issued a Revised Protective Order, in lieu of that issued June 29, 2007, which included procedures governing the disclosure and handling of "Highly Confidential" information.

On July 12, 2007, Eschelon Telecom of Utah, Inc. ("Eschelon") filed a Petition to Intervene in this matter.

On July 30, 2007, Eschelon filed an Objection to Qwest's Petition for Approval of 2007 Additions to Non-Impaired Wire Center List stating the procedural deadlines relating to approval of additions to the non-impaired wire center list contained in the Settlement Agreement filed for Commission approval in Docket No. 06-049-40 should not begin to run with respect to Qwest's filing for approval of additional non-impaired wire centers in this docket until the Commission has approved said Settlement Agreement. Also on July 30, 2007, Eschelon filed a Motion for a Standing Protective Order Based on Model Order seeking Commission issuance of a standing protective order to replace the Revised Protective Order.

On July 31, 2007, in Docket No. 06-049-40, the Commission issued its Report and Order Approving Settlement Agreement. The Settlement Agreement approved therein

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contains procedures and time lines intended to govern requests for Commission approval of additions to the non-impaired wire center list like those at issue in this docket.

On August 1, 2007, the Commission issued its Order Granting Intervention to Eschelon.

On August 6, 2007, DIECA Communications, Inc., d/b/a Covad Communications Company (“Covad”), Integra Telecom of Utah, Inc. (“Integra”), McLeodUSA Telecommunications Services, Inc. (“McLeodUSA”), and XO Communications Services, Inc. (“XO”) (hereinafter together with Eschelon jointly referred to as the “Joint CLECs”) each filed a Petition to Intervene in this docket.

Also on August 6, 2007, Qwest filed a memorandum stating that, in light of the Commission’s approval of the Settlement Agreement in Docket No. 06-049-40, Qwest did not object to the competitive local exchange carriers (“CLECs”) in Docket No. 07-049-30 having until August 30, 2007, to object to Qwest’s 2007 Wire Center Update.

On August 23, 2007, following a duly-noticed procedural conference, the Commission issued a Procedural Order extending to September 7, 2007, the deadline for parties to file objections to, and for the Division of Public Utilities (“Division”) to file comments regarding, Qwest’s 2007 Wire Center Update.

On August 28, 2007, the Commission issued an Order Granting Intervention to Covad, Integra, McLeodUSA, and XO.

On September 6, 2007, Qwest filed a memorandum stating that while Qwest had initially sought Tier 2 designation for its Midvale wire center based upon both business line

counts and the number of fiber-based collocations at that wire center, Qwest now seeks said designation based solely on business line counts. Qwest's request for Tier 2 designation of the Orem wire center, based only on business line counts, did not change.

On September 7, 2007, the Joint CLECs filed an Objection to Qwest Wire Center Designation ("Joint CLEC Objection") in which the Joint CLECs objected to Qwest's designation of its Orem central office as a Tier 2 wire center but did not dispute the designation of the Midvale central office as a Tier 2 wire center based solely on the number of business lines.

Also on September 7, 2007, the Division filed a memorandum stating the Commission should grant Tier 2 status to the Midvale wire center based on the number of business lines while recommending that a detailed investigation be conducted to review and analyze the data relating to the Orem wire center.

On September 25, 2007, at a duly-noticed procedural conference, the parties agreed to a procedural schedule to govern investigation of the requested Tier 2 designation of the Orem wire center. In addition, in response to questions from the Administrative Law Judge ("ALJ"), all parties concurred that while some dispute may remain regarding the exact business line count at the Midvale wire center no party disputes that the number of business lines at that wire center exceeds the 24,000 line threshold necessary for Tier 2 designation. Therefore, all parties concurred in the ALJ's suggestion that adjudication of the Midvale wire center request could proceed informally with Commission Order approving Tier 2 designation for said wire center. Parties also concurred in the ALJ's determination, based upon the procedures set forth in

the Settlement Agreement, as well as the process followed in this docket, that the proper effective date for said designation is September 7, 2007.

## **II. BACKGROUND, DISCUSSION, FINDINGS, AND CONCLUSIONS**

In its Triennial Review Remand Order (“*TRRO*”)<sup>1</sup>, the Federal Communications Commission defined a Tier 2 wire center as one with three or more fiber-based collocations or with 24,000 or more business lines.<sup>2</sup> In support of its 2007 Wire Center Update, Qwest filed certain Highly Confidential information supporting its assertion that the Midvale wire center business line count exceeds the 24,000 line threshold necessary for Tier 2 designation.<sup>3</sup>

Although they have filed no independent business line count for the Midvale wire center, the Joint CLECs make clear in their Joint CLEC Objection that they do not dispute Tier 2 designation of the Midvale wire center based solely on the number of business lines at that wire center. Furthermore, while counsel for the Joint CLECs stated during the September 25, 2007, procedural conference that the Joint CLECs do not necessarily accept Qwest’s business line count for Midvale, he also stated that the Joint CLECs do not challenge Qwest’s assertion that said business line count exceeds the 24,000 line threshold necessary for Tier 2 designation.

Likewise, the Division, while not offering its own accounting of business lines at Midvale,

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<sup>1</sup>*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 (rel. Feb. 4, 2005) (“*TRRO*”).

<sup>2</sup>*TRRO*, ¶ 118.

<sup>3</sup>Although this Order generally refers to Confidential or Highly Confidential information contained in witness testimony and exhibits, it does not disclose such information. The Commission has issued no separate Confidential or Highly Confidential order in this matter.

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recommends Commission approval of Tier 2 designation for Midvale based on the number of business lines at that wire center.

Regarding the effective date of Tier 2 designation for the Midvale wire center, section VI.F.2 of the Settlement Agreement approved in Docket No. 06-049-40 to govern updates to the non-impaired wire center list states that if no objection is raised to a new non-impairment or tier designation filed by Qwest the effective date of said designation will be thirty days after the filing date of the proposed designation. In the instant case, although Qwest nominally filed for Tier 2 designation of the Midvale wire center on June 29, 2007, parties were ultimately given until September 7, 2007, to file objections to Qwest's filing. Therefore, at the procedural conference on September 25, 2007, the ALJ proposed that the effective date of the Midvale wire center's Tier 2 designation, if approved, should be September 7, 2007. Qwest, the Joint CLECs, and the Division agreed that September 7, 2007, would be an appropriate effective date.

*Utah Administrative Code* Rule 746-110-1, authorizes the Commission to adjudicate a matter informally under *Utah Code Ann.* § 63-46b-5 when the Commission "determines that the matter can reasonably be expected to be unopposed and uncontested." It is clear from the discussion above that no dispute exists regarding Qwest's Tier 2 designation of the Midvale wire center with an effective date of September 7, 2007. We therefore view this matter as unopposed and uncontested and conclude it is in the public interest to proceed informally without hearing. Pursuant to Rule 746-110-2, we also conclude good cause exists to

waive the 20-day tentative period for an order issued in an informally adjudicated proceeding. Accordingly, this order will become effective on the date of issuance.

Our review of the evidence filed by Qwest on June 29, 2007, along with the written filings and verbal statements of the Joint CLECs and the Division, causes us to find that the Midvale wire center exceeds the 24,000 business line threshold required to support its designation as a Tier 2 wire center. We therefore approve Qwest's designation of the Midvale Main central office as a Tier 2 non-impaired wire center and approve its addition as such to Qwest's non-impaired wire center list. Furthermore, we find and conclude that said designation is effective as of September 7, 2007.

Wherefore, based upon the foregoing information, and for good cause appearing, the Administrative Law Judge enters the following proposed:

**III. ORDER**

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

- This matter be, and it is, converted to an informal proceeding pursuant to §63-46b-4(3), UCA 1953, as amended.
- Qwest Corporation's designation of its Midvale Main central office as a Tier 2 non-impaired wire center and its addition as such to Qwest's non-impaired wire center list is approved, effective September 7, 2007.

This Order constitutes a final order of the Commission with respect to those issued decided herein. Pursuant to *Utah Code Annotated* §§ 63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with

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the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of *Utah Code Annotated* §§ 63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

Dated at Salt Lake City, Utah, this 1<sup>st</sup> day of October, 2007.

/s/ Steven F. Goodwill  
Administrative Law Judge

Approved and Confirmed this 1<sup>st</sup> day of October, 2007, as the Report and Order of the Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary  
G#54862