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September 21, 2006

Annette Taylor
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550 Capitol St., NE
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Re: UM 1251

Dear Ms. Taylor:

Enclosed for filing please find an original and (5) copies of Qwest Corporation's Opening Post-Hearing Brief, along with a certificate of service.

If you have any question, please do not hesitate to give me a call.

Sincerely,

A handwritten signature in black ink that reads "Carla". The signature is written in a cursive, flowing style.

Carla M. Butler

CMB:

Enclosures

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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1251

In the Matter of TRRO/Request for
Commission Approval of Wire Center Lists
submitted on behalf of the Joint CLECs

QWEST'S OPENING POST-HEARING
BRIEF

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UM 1251

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Pursuant to the procedural schedule that Administrative Law Judge Allan Arlow issued on September 8, 2006, Qwest Corporation (“Qwest”) respectfully submits its opening post-hearing brief.

INTRODUCTION AND SUMMARY

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

Based on the FCC’s *TRRO* mandates and the FCC’s associated implementation rules, including the *TRRO*’s three-tier structure for wire center non-impairment based on the count of “business lines” or “fiber-based collocators” at a given wire center, Qwest has shown that one Oregon wire center (Portland Capitol) meets the FCC’s non-impairment criteria for non-impairment for DS1 and DS3 unbundled loops. Qwest has also shown that four Oregon wire centers (Eugene 10th Avenue, Medford, Portland Capitol and Salem Main) meet the FCC’s interoffice transport threshold for “Tier 1” non-impairment status, and that three Oregon wire centers (Bend, Portland Belmont and Portland Alpine) meet the FCC’s interoffice transport threshold for “Tier 2” non-impairment status

Although the Joint CLECs dispute that the Bend and Portland Alpine wire centers are Tier 2 wire centers (they claim these wire centers should be Tier 3 wire centers), such arguments are based on flawed analysis and flawed data, including inappropriate adjustments to Qwest’s

business line counts. The Joint CLECs also advocate the wrong vintage of data, contrary to the *TRRO*'s guidelines and the conclusions of the vast majority of state commissions that have addressed this issue. However, Qwest has shown that it has met the FCC's thresholds for all of the Oregon wire centers on its non-impaired wire center list. This conclusion is based on Qwest's correctly following the *TRRO* and FCC requirements for counting "business lines" and "fiber-based collocators" in paragraphs 102 and 105 of the *TRRO* and the FCC's associated implementation rules. Not surprisingly, the majority of state commissions have agreed with the positions that Qwest has taken on most of the disputed issues here. Accordingly, despite Joint CLEC concerns about Qwest's counting of business lines or the process to identify and investigate fiber-based collocators in Qwest wire centers, Qwest has shown that it has met the FCC *TRRO* requirements for all of the wire centers it has identified.

In addition, the Joint CLECs challenge the tier designation for the Eugene 10th Avenue, Salem Main and Medford wire centers based on the number of fiber-based collocators, yet they fail to substantiate their claims. They further take issue with the status of the Medford wire center due to a claim that a bankrupt collocator ceased operations, though Qwest has shown that if the CLEC did so, the ceasing of operation was after the March 11, 2005 *TRRO* effective date.

Further still, Qwest has proposed a simple, straightforward, expeditious and common sense (in short, a self-effectuating) process for the updating of non-impaired wire centers in the future. Although the Joint CLECs raise concerns about that process, Qwest's proposed process follows the FCC's intent for a self-effectuating process designed to remove unbundling obligations over time. Thus, if and when updates to the non-impaired wire center list are required, Qwest intends to update the wire center list using the same FCC counting methodology that Qwest has employed here. Accordingly, the Commission should reject the Joint CLECs' unprecedented and administratively burdensome proposals, such as (1) advance notice of wire

centers approaching a non-impairment threshold (based on a wire center being within 5,000 business lines or one fiber-based collocator of a threshold), (2) five-day prior notice of Qwest filing for future wire center classifications, (3) the effective date of an update, and (4) the length of a transition period.

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

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

PERTINENT PROCEDURAL HISTORY AND BACKGROUND

On February 15, 2006, a group of CLECs (the “Joint CLECs”) requested that the Commission open an investigation to (1) order Oregon ILECs like Qwest to provide underlying data subject to an appropriate protective order, (2) develop a Commission-approved initial list of “non-impaired” wire centers pursuant to the Federal Communications Commission’s (“FCC’s”) *Triennial Review Remand Order* (“*TRRO*”),¹ after party review and discussion of that data, and (3) implement a process of updating and approving the lists. Qwest responded on February 28,

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*”).

2006, largely agreeing that this investigation is necessary, and further submitting that the primary purpose of the docket should be to establish the number of business lines and fiber collocators in Oregon wire centers pursuant to the *TRRO*. Qwest also requested that the Commission issue an order compelling Qwest to produce certain CLEC-specific wire center data under the appropriate protective order so that Qwest could respond to the inquiries necessary for such investigation.

On March 2, 2006, Administrative Law Judge Christina Smith issued a notice of procedural conference for March 14, 2006. At that March 14th conference, Judge Smith then set a procedural schedule for this case, which was reflected in her March 15, 2006 conference report and which included a hearing scheduled for the week of July 10, 2006. Judge Smith also issued a protective order on March 10, 2006 and a modified protective order on March 24, 2006, as well as a series of four bench requests of Qwest regarding its business line counts to be answered with Qwest's testimony. The parties also filed a Joint Issues List on April 7, 2006.

Thereafter, Qwest filed its direct testimony on April 21, 2006. Specifically, Qwest filed the direct testimony of (1) Renee Albersheim (Exhibit ("Ex.") Qwest/1), who testified about the background and structure of the *TRRO* generally, and Qwest's process for updating its wire center list in the future, (2) Robert Brigham (Ex. Qwest/5), who testified about Qwest's interpretation of the FCC's *TRRO* methodology for counting business lines, (3) Rachel Torrence (Ex. Qwest/7), who testified about Qwest's identification of fiber-based collocators, and (4) Teresa Million (Ex. Qwest/12), who testified about the nonrecurring charge ("NRC") that Qwest seeks to impose on CLECs for the conversion of UNEs to alternative Qwest services. All but Ms. Million submitted exhibits as well, including confidential and highly-confidential exhibits. (Exs. Qwest/2-4 (Albersheim), Qwest/6 (Brigham) and Qwest/8-11 (Torrence).)

On May 19, 2006, the Joint CLECs filed the rebuttal testimony of Douglas Denney of Eschelon Telecom (Ex. Joint CLECs/1), with numerous exhibits (Exs. Joint CLECs/2-12).

Thereafter, on June 16, 2006, Qwest filed its response testimony of Ms. Albersheim (Qwest/13), Mr. Brigham (Qwest/14), Ms. Torrence (Qwest/18) and Ms. Million (Qwest/22), along with several exhibits (Qwest/16-21), including confidential and highly-confidential exhibits.²

On June 30, 2006, the parties filed a joint issues matrix and notified Administrative Law Judge Allan Arlow that they were likely to waive the evidentiary hearing, although they wanted to file supplemental testimony on certain issues. Judge Arlow agreed to this procedural schedule by adopting the Issues Matrix, modifying the schedule on July 5, 2006, cancelling the hearing on July 7, 2006, and allowing for the possibility of a half-day hearing on July 19, 2006. Thereafter, the Joint CLECs filed surrebuttal testimony of Douglas Denney (Ex. Joint CLECs/13, and Exs. Joint CLECs/14-16). The parties then agreed to waive the evidentiary hearing completely, but asked for and were given the opportunity to file brief supplemental response or surrebuttal testimony, which they did on August 30, 2006 (Qwest/25-27 and Joint CLECs/17-19).

Finally, the parties agreed to a post-hearing briefing schedule of September 21, 2006 for simultaneous opening briefs and October 10, 2006 for simultaneous response briefs.

BACKGROUND OF TRRO AND TRRO ANALYTICAL FRAMEWORK

I. Pre-TRRO (TRO and USTA II)

In 2001, the FCC initiated a proceeding to review its policies on unbundling under the Telecommunications Act of 1996 (“the Act”).³ The FCC sought “comment on how best to update its rules and make them more ‘granular’ to reflect competitive conditions in different

² In the meantime, the Joint CLECs also filed a motion to compel on June 9, 2006 seeking certain Qwest business line data based on Qwest’s December 2004 ARMIS 43-08 Report data, which Qwest opposed on June 26, 2006. The Commission later granted the motion to compel on July 26, 2006, and Qwest timely provided its supplemental data request responses to the Joint CLECs a few days later.

³ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Notice of Proposed Rulemaking, 16 FCC Rcd 22781 (2001) (“*Triennial Review NPRM*”).

markets.”⁴ The FCC’s intent was to ensure that its unbundling rules were faithful to the requirements of the Act, but at the same time that such rules reflected changes in the telecommunications marketplace and advances in technology. (Ex. Qwest/1, Albersheim/4-5.)⁵ Upon completion of the Triennial Review, the FCC published its Triennial Review Order (“TRO”) in October 2003.⁶ The TRO revised the FCC’s list of unbundled network elements (“UNEs”) and removed unbundling requirements for broadband services in order to encourage investment in broadband facilities. The TRO also established a significant role for state commissions to determine impairment in markets for dedicated transport and mass market switching. (*Id.*, p. 5.)

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

⁴ http://www.fcc.gov/wcb/cpd/triennial_review/.

⁵ *In the Matter of Review of Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, CC Docket No. 01-338, WC Docket No. 04-313, 20 FCC Rcd 2533, at 2 (2004).

⁶ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 19 FCC Rcd 16978, 17145 (2003) (“*Triennial Review Order*” or “*TRO*”).

sections of the *TRO*, and sought comment on a response to *USTA II*. After receiving such comments, the FCC issued the *TRRO* on February 4, 2005. (*Id.*, p. 6.)

II. The *TRRO*

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

Relevant to this proceeding, the *TRRO* clarified ILEC obligations to provide unbundled access to dedicated interoffice transport and high-capacity loops. The *TRRO* also clarified the FCC's "impairment" standard. Impairment is now evaluated as it relates to the capabilities of a "reasonably efficient competitor." *TRRO*, at ¶ 24. Using this standard, the *TRRO* established route-by-route unbundling requirements for dedicated interoffice transport depending on the number of "business lines"⁷ and "fiber-based collocators"⁸ in particular wire centers. For DS1 and DS3 loops, the FCC used a methodology similar to its treatment of high-capacity transport. That is, the FCC established a wire center-by-wire center unbundling requirement to determine whether a wire center is subject to actual or potential competition based on the number of business lines and fiber-based collocators in that wire center. (Qwest/1, Albersheim/6-7.)

The FCC in its *TRRO* also required ILECs like Qwest, as part of a transition plan, to file a list of "non-impaired" wire centers as of the *TRRO*'s effective date. See *TRRO*, ¶¶ 142-145, 195-198. (Qwest/1, Albersheim/7; Qwest/2 (February 4, 2005 letter from the FCC to Qwest).)

⁷ 47 CFR § 51.5 defines a "business line" as follows: "A business line is an incumbent LEC-owned switched access line used to serve a business customer, whether by the incumbent LEC itself or by a competitive LEC that leases the line from the incumbent LEC." (Qwest/1, Albersheim/6, fn. 6.)

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

Qwest thus filed a list of non-impaired wire centers in February 2005, and amended the list in July 2005. (Qwest/1, Albersheim/7; Ex. Qwest/3 (list of Oregon non-impaired wire centers).)⁹

B. TRRO wire center tier structure

The *TRRO* created a three-tier structure to classify wire centers based on their potential to support competitive transport and high-capacity loop deployment. The FCC generally described the likelihood of actual and potential competitive deployment at these tiers of wire centers as follows: (1) “Tier 1” wire centers are those with the *highest likelihood* for actual and potential competitive deployment, including wholesale opportunities; (2) “Tier 2” wire centers also show a *very significant but lesser likelihood* of actual and potential competitive deployment, and (3) “Tier 3” wire centers are those that show a *generally low likelihood* of supporting actual or potential competitive transport deployment. *TRRO*, at ¶ 111. (Qwest/1, Albersheim/8-9.)

C. TRRO non-impairment thresholds

1. High-capacity interoffice transport

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

⁹ Qwest submitted a revised list correcting a typographical error in the CLLI code of one Colorado wire center in August 2005, but the wire centers listed did not change. (Qwest/1, Albersheim/7, fn. 8.)

impairment for dark fiber interoffice transport on routes connecting wire centers where *both* of the wire centers are *either* Tier 1 *or* Tier 2 wire centers, and thus ILECs such as Qwest are not obligated to provide unbundled dark fiber interoffice transport on routes connecting either Tier 1 or Tier 2 wire centers. 47 CFR § 51.319(e)(2)(iv)(a). (*Id.*)

As for its specific thresholds in determining what constitutes a “Tier 1” wire centers for purposes of high-capacity *interoffice transport*, the FCC defines such Tier 1 wire centers as those with **four** or more fiber-based collocators, **or** with **38,000** or more business lines. *TRRO*, ¶ 12; see also 47 CFR § 51.319(e)(3)(i). (Qwest/1, Albersheim/9.) “Tier 2” wire centers are those with **three** or more fiber-based collocators, **or** with **24,000** or more business lines. *TRRO*, ¶ 118; see also 47 CFR § 51.319(e)(3)(ii). (*Id.*) The FCC considers all wire centers that are not Tier 1 or Tier 2 wire centers as “Tier 3” wire centers. *TRRO*, ¶ 123; see also 47 CFR § 51.319(e)(3)(iii). In other words, all wire centers with fewer than three fiber-based collocators or with fewer than 24,000 business lines are Tier 3 wire centers. (*Id.*, p. 10.) The FCC uses these tiers as indicators of non-impairment and bases its unbundling requirements for DS1, DS3 and dark fiber interoffice transport on these tiers. (*Id.*)

2. High-capacity loops

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

determined there is no impairment in any building within a service area of a wire center that contains **38,000** or more business lines *and* **four** or more fiber-based collocators, and thus ILECs such as Qwest are not obligated to provide unbundled DS3 loops in these wire centers. 47 CFR § 51.319(a)(5)(i). (*Id.*) Finally, the FCC determined there is no impairment for dark fiber loops, therefore, ILECs such as Qwest are no longer obligated to provide unbundled dark fiber loops. 47 CFR § 51.319(a)(6)(i). (*Id.*, p. 13; see also Qwest/5, Brigham/6-7.)

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

Finally, Qwest expects to update its list of non-impaired wire centers to the extent that additional wire centers meet the FCC criteria in the future. As noted above, the FCC determined that the rules in the *TRRO* are self-effectuating, and that “our unbundling rules are designed to remove unbundling obligations over time.” *TRRO*, ¶ 3. Thus, going forward, if updates to the list of non-impaired wire centers are required, Qwest intends to update the list of non-impaired wire centers using the same counting methodologies that Qwest has described in detail in this proceeding. (Qwest/1, Albersheim/14-15.) In fact, both the CLECs and Qwest agree there should be a single unified process that includes Commission involvement and approval when CLECs contest the designation of a wire center, and that any new proceeding should be narrow, and thus should not be prolonged or used as a means for delay. (Ex. Qwest/13, Albersheim/3-5.)

Accordingly, Qwest asks that any such process be expedited, and that the designation of new non-impaired wire centers be effective 30 days following the initial notification to CLECs that the impairment status for that wire center has changed, and in the event of a dispute between Qwest and a CLEC, Qwest should have the right to *back bill* CLECs to the effective date if the change in wire center status is subsequently approved, as the *TRRO* anticipates (*TRRO*, at fns. 408, 524, 630). (Qwest/13, Albersheim/3-4; Transcript (“Tr.”), pp. 13, 16-17¹⁰ (confirming that

¹⁰ The parties agreed, as part of the waiver of the evidentiary hearing, to use the transcript of the June 13,

Qwest would charge the UNE rate during the transition period until the services are converted to an alternative service, and then back-bill the difference between the UNE rate and the higher tariffed rate).¹¹ Finally, Qwest believes, and the Joint CLECs do not dispute, that the results of the docket should be *binding* on *all* CLECs in Oregon. (Qwest/13, Albersheim/3-4.)

Specifically, Qwest envisions a process similar to current tariff filing procedures. For example, Qwest would file the updates to the wire center list with the Commission and provide notice to all CLECs through the Qwest/CLEC Change Management Process (“CMP”) notification process that an additional wire center is non-impaired. (Qwest/1, Albersheim/16.)¹² As for the type of data Qwest would provide, Qwest intends to provide the same kind of supporting data that it used to support its initial list of non-impaired wire centers. (Qwest/13, Albersheim/4-6; Tr., pp. 11-12, 14-16, 25.) Parties would then have 30 days to raise objections to the Commission, and if no objections were raised, the wire center list would be deemed approved through operation of law. (Qwest/1, Albersheim/16; Qwest/13, Albersheim/10-11.)

Further, Qwest agrees that it would not “block” orders absent a final designation of non-impairment, either through operation of law, or by formal Commission approval when CLEC objections occur. (Qwest/13, Albersheim/6-7; Tr., pp. 12-13.)¹³ Qwest further agrees with the

2006 *TRRO* wire center proceeding in Utah as part of the record of this proceeding. The parties will file that transcript under separate cover.

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

¹² The CMP is a formal collaborative process between Qwest and CLECs for management to changes to Qwest’s Operational Support Systems, including pre-ordering, ordering, billing and maintenance and repair processes as mandated by the FCC’s 271 requirements. (Qwest/1, Albersheim/16, fn. 10.)

¹³ However, Qwest does not agree with the Joint CLECs that “the terms and procedures for rejecting orders must be predetermined and agreed by CLECs.” All that the parties must agree to is when orders may be rejected; and the parties are already in agreement that Qwest will not block orders for UNEs until a particular wire center is on a Commission-approved list of non-impaired wire centers. (Qwest/13, Albersheim/7.) Moreover, Qwest disagrees with the Joint CLECs’ argument about Qwest being required to immediately process orders from a CLEC who “self-certifies” that it is entitled to obtain the requested UNE. (Joint CLECs/1, Denney/42-44.) Qwest should have a right to provide notice to CLECs that Qwest intends to change the status of a wire center, thus putting CLECs on notice that its authorization to place an order is in dispute pending a Commission decision on the status of that

CLECs that wire center lists based on business lines would only be updated once a year, since ARMIS data is only prepared once a year. However, this once-a-year updating applies only to business lines, and not to updating the wire center list based on fiber-based collocators, since the collocation process is not connected to ARMIS. (Qwest/13, Albersheim/12-13; Tr., pp. 14, 59-60, 163-164 (Mr. Denney agrees).)

ARGUMENT

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

A. TRRO and FCC rule definitions of "business lines"

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

The BOC wire center data that we analyze in this Order is based on ARMIS 43-08 business lines, plus business UNE-P, plus UNE-loops. (Ex. Qwest/5, Brigham/3.)

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

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

(1) shall include only those access lines connecting end-user customers with incumbent LEC end-offices for switched services,

(2) shall not include non-switched special access lines,

(3) shall account for ISDN and other digital access lines by *counting each 64 kbps-equivalent as one line*. For example, a DS1 line corresponds to 24 64 kbps-equivalents, and therefore to 24 "*business lines*." (Qwest/5, Brigham/3-4 (emphasis added).)

wire center. In addition, there should be no need for separate proceedings before this Commission between Qwest and each CLEC that wishes to place a UNE order in a particular wire center that Qwest believes is non-impaired. Finally, CLECs cannot have it both ways in insisting, on the one hand, that Qwest not block orders in a disputed wire center (with which Qwest agrees), but, on the other hand, insisting that they be allowed to place orders in such disputed wire center. (Qwest/13, Albersheim/8-10.)

The FCC's directives are very clear: *all* ILEC lines that are used to serve business customers, whether they are provided on a retail *or* a wholesale basis, should be included in the business line count. (Qwest/5, Brigham/4.)¹⁴ The FCC's business line definition also recognizes that UNE loops are generic wholesale services and that an ILEC has no means of determining whether a CLEC is utilizing a UNE loop to serve a residential customer or a business customer. Thus, the FCC's rules (47 CFR § 51.5) clearly state that the sum of *all* UNE loops should be included in an ILEC's count of business lines. (*Id.*, pp. 4-5.) Further still, subsection (3) of the "business line" definition of 47 CFR § 51.5 clearly states that each 64 kilobit (64 kbps) channel¹⁵ within a high-capacity digital line, such as a DS1, should be counted as a separate business line. Since a DS1 line, for example, has a capacity of 1,544 kbps, a DS1 would be counted as containing 24 separate business lines. (*Id.*, p. 5.)¹⁶

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

¹⁴ The FCC definition in 47 CFR 51.5 *excludes* any business lines that are served by loop facilities not owned by the ILEC, such as lines served through CLEC-owned fiber facilities or through coaxial cable facilities owned by cable MSOs, wireless services used in lieu of Qwest's business lines, etc. (Qwest/5, Brigham/4, fn. 3.)

¹⁵ A 64 kilobit per second channel (64 kbps) is also known as a Voice-Grade Equivalent ("VGE") channel. Qwest reports access lines in its annual FCC ARMIS data in terms of VGEs in service. (Qwest/5, Brigham/4, fn. 4.)

¹⁶ As noted above, 47 CFR 51.5 specifically states that "a DS1 line corresponds to 24 64 kbps-equivalents, and therefore to 24 'business lines.'" (Qwest/5, Brigham/4, fn. 5.)

determining which wire centers meet the non-impairment thresholds established in the *TRRO*. (Qwest/5, Brigham/5-6.)¹⁷

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

1. December 2003 ARMIS data vintage

In developing wire center-specific counts of Qwest retail switched business lines in service, Qwest followed the FCC's directive of utilizing the most recent ARMIS Report 43-08 data that was available at the time that Qwest conducted its analysis.¹⁸ Accordingly, consistent with the FCC's business access line definition, Qwest's impairment analysis was based on the

¹⁷ Numerous state commissions, including California, Texas, Florida, Illinois, Indiana, Ohio, Georgia and South Carolina, have endorsed Qwest and other RBOC interpretations of the FCC guidelines in the *TRRO*. See e.g., *Application of Pacific Bell Telephone Company, d/b/a SBC California for Generic Proceeding to Implement Changes in Federal Unbundling Rules Under Sections 251 and 252 of the Telecommunications Act of 1996*, Application 05-07-024, Decision 06-01-143 (adopted January 26, 2006) ("*California TRRO Order*"), *Post-Interconnection Dispute Resolution Proceeding Regarding Wire Center UNE Declassification*, PUC Docket No. 31303, Order Approving Methodology to Determine AT&T Texas Wire Centers which are Non-impaired (issued April 7, 2006) ("*Texas TRRO Order*"); *Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes in Law*, by *BellSouth Telecommunications, Inc.*, Fla. PUC, Docket No. 041269-TP, Order No. PSC-06-0172-FOF-TP (March 2, 2006) ("*Florida TRO/TRRO Order*"), at p. 37; *Arbitration Decision, Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 with Illinois Bell Telephone Company to Amend Existing Interconnection Agreements to Incorporate the Triennial Review Order and the Triennial Review Remand Order*, ICC, Docket No. 05- 0442 (Nov. 2, 2005) ("*Illinois TRO/TRRO Order*"), at p. 32; *In the Matter of the Indiana Utility Regulatory Commission's Investigation of Issues Related to the Implementation of the Federal Communications Commission's Triennial Review Remand Order and the Remaining Portions of the Triennial Review Order*, Ind. URC, Cause No. 42857 (approved January 11, 2006) ("*Indiana TRRO Order*"), Issue 3, p. 16; *Arbitration Award, In re Establishment of Terms and Conditions of an Interconnection Agreement Amendment*, PUCO, Case No. 05-887-TP-UNC (Nov. 9, 2005) ("*Ohio TRO/TRRO Order*"), at 16; *Generic Proceeding to Examine Issues Related to BellSouth Telecommunications, Inc.'s Obligations to Provide Unbundled Network Elements*, Ga. PSC, Docket No. 19341-U (February 7, 2006) ("*Georgia TRRO Order*"), at pp. 19-20; *In re: Petition of BellSouth Telecommunications, Inc. to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law*, Docket No. 2004-316C, Order No. 2006-136 (issued March 10, 2006) ("*South Carolina TRRO Order*"), at p. 44.. The only state commission that Qwest is aware of that has ruled otherwise was the North Carolina Commission, which Qwest respectfully submits decided the issue incorrectly. See *In the Matter of Proceeding to Consider Amendments to Interconnection Agreements Between BellSouth Telecommunications, Inc. and Competing Local Providers Due to Changes of Law, Order Concerning Changes of Law*, NC PUC, Docket No. P-55, Sub. 1549 (March 1, 2006), at p. 5. (Qwest/5, Brigham/10-11, 12-18; Qwest/14, Brigham/5; see also Tr., pp. 130-134.)

¹⁸ Qwest filed December 2003 ARMIS data with the FCC in April 2004. This was the same data that was available on February 4, 2005 when the FCC directed Qwest and other RBOCs to submit their lists of wire centers that met the FCC's non-impairment criteria. Qwest did not file ARMIS data for 2004 until April 2005. Thus, use of Qwest's December 2003 ARMIS data is not only appropriate, but it is also fully consistent with the FCC's intent, as expressed at paragraph 105 of its *TRRO*, to base determinations on "an objective set of data that incumbent LECs already have created for other regulatory purposes." (Qwest/5, Brigham/9, fn. 7; Qwest/14, Brigham/2-4; Tr., pp. 32-37.) The Joint CLECs do not dispute that the FCC expressed its intent to base wire center non-impairment determinations on objective data that ILECs have already created for other regulatory purposes. (Tr., p. 163.)

retail switched business line counts at each wire center from its *December 2003* ARMIS 43-08 Report, and included all Qwest retail switched business lines in Oregon wire centers from this report. (Qwest/5, Brigham/8-9; Qwest/14, Brigham/2-10; Tr., pp. 32-37.)¹⁹ Further, based on the FCC's *TRRO* business line definition, Qwest included wholesale UNE business line data for December 2003.

2. Adjustments to business line data

a. 64 kbps VGE adjustment

However, in order to satisfy the FCC's directives, it was necessary to adjust the ARMIS 43-08 data to properly account for high-capacity loops. As noted above, subsection (3) of the

¹⁹ There is no merit to the Joint CLEC argument (Joint CLECs/1, Denney/15) that the vintage of business line data should be more recent than Qwest's use of December 2003 ARMIS 43-08 data. (See e.g., Qwest/14, Brigham/3-5, 5-10; Tr., pp. 218-219.)

First, the FCC clearly meant for Regional Bell Operating Companies ("RBOCs") like Qwest to utilize access line data that was finalized and readily available on February 4, 2005, when the FCC directed the RBOCs to submit their lists of wire centers meeting the *TRRO*'s non-impairment criteria. The only ARMIS data that was on file with the FCC on February 4, 2005 was *December 2003 data*. Qwest files its access line data to the FCC in April of each year for incorporation into its ARMIS report, and as such, it filed data for full year 2004 to the FCC in April 2005, nearly two full months after the FCC's February 4th order. It is not reasonable to argue that the FCC's clear directions meant that the FCC intended for RBOCs to use incomplete and unofficial data to determine wire center non-impairment. Simply stated, and contrary to the Joint CLECs' assertion, full year 2004 access line data was not finalized and available in ARMIS when the FCC required Qwest to complete its wire center non-impairment analysis. (Qwest/14, Brigham/2-3.) The fact that time intervened between Qwest's initial wire center non-impairment filing in February 2005 and now does not mean that December 2003 data is not appropriate as the basis for Qwest's initial list. (*Id.*, p. 3; Tr., pp. 32-37.)

Second, not only do the FCC rules not require that fiber collocation data and business line data be of the same vintage in determining wire center non-impairment (especially since only business line data is based on ARMIS data, while fiber collocation data is not), but the Joint CLECs agree that that both types of non-impairment need not be based on the same vintage of data. (Qwest/14, Brigham/9-10; Tr., p. 63.)

Finally, not surprisingly, only two state commissions (of at least nine) have used RBOC business line data other than December 2003 ARMIS data. (Qwest/14, Brigham/5.) The vast majority of states have agreed with Qwest's position. (*Id.*, pp. 5-8; see also Joint CLECs/1, Denney/31, Table 5.) Indeed, the only two state commissions in the Qwest region which has thus far addressed this issue are the Washington Utilities and Transportation Commission ("WUTC") and the Utah PSC ("UPSC"). In the WUTC proceeding, the presiding Administrative Law Judge issued an order finding Qwest's use of December 2003 ARMIS data to be in full compliance with the *TRRO*. See *Washington TRRO Order*, ¶¶ 23-24. (Qwest/14, Brigham/6.) More recently, the Utah Commission found that December 2003 data, based on Qwest's April 2004 ARMIS 43-08 report, was the appropriate vintage of data. See Report and Order, *In the Matter of the Investigation into Qwest Wire Center Data*, Docket No. 06-049-40 (issued September 11, 2006) ("*Utah TRRO Order*"), p. 14-15, and see generally pp. 12-15.

Accordingly, there is no basis to review "December 2004" or "2005" data for any wire center. This is especially so because the FCC's rules mandate that even if the number of business lines in a particular wire center eventually or subsequently declines below non-impairment thresholds for DS1 or DS3 loops, the non-impairment designation for that particular wire center *remains unchanged*. (Qwest/14, Brigham/8-9; Tr., p. 28.)

“business line” definition of 47 CFR § 51.5 clearly states that each 64 kilobit (64 kbps) channel within a high-capacity digital line, such as a DS1, should be counted as a separate business line. Since Qwest retail DS1 services such as ISDN-PRI have a capacity of 1,544 kbps, or 24 voice grade equivalents (“VGEs”), and since ARMIS data for DS1 services counts *actual* used channels rather than DS1 capacity, the ARMIS data must be adjusted so that each retail DS1 service is counted as 24 VGEs, consistent with the FCC’s rules.

This adjustment, along with the other adjustments that Qwest made, are consistent with the FCC’s directives in the *TRRO*, and despite Joint CLEC protestations of “manipulation of data,” there was no such manipulation. (Qwest/14, Brigham/16-19.)²⁰ In fact, the FCC use of ARMIS data implicitly includes some adjustment to the data, especially in the use of the data at the wire center level since it is reported at the state level. (Qwest/14, Brigham/26; Tr., pp. 47-48, 57, 61-62, 86-87.)²¹

Wholesale high capacity UNE loops must also be counted on a VGE basis. Thus, Qwest multiplied all DS1 unbundled loops in Qwest’s December 2003 wholesale database by a VGE factor of 24 (since there are 24 VGE channels in each high-capacity DS1 circuit), consistent with the FCC’s guideline (47 CFR § 51.5) that *all* 64 kbps channels in a digital circuit should be counted as separate business lines. (Qwest/5, Brigham/9; Qwest/14, Brigham/16-19.)²²

²⁰ In addition, at least four state commissions- in Florida, Texas, Georgia and South Carolina- have concluded that adjusting ARMIS data to reflect the full capacity of digital facilities fully complies with the *TRRO*. (Qwest/5, Brigham/10-11; Qwest/14, Brigham/18.)

²¹ The Utah Commission recently ruled that Qwest could make adjustments to reflect total 24 VGE channels for DS1 loops (and 672 channels for DS3 loops) for wholesale lines (UNE loops), but not for its retail lines. *Utah TRRO Order*, pp. 20-21, and see generally pp. 15-21.

²² Qwest also included enhanced extended loops (“EELs”) in its unbundled loop counts. An EEL essentially consists of an unbundled loop plus interoffice transport. A CLEC utilizes an EEL to provide service to a customer located in a particular wire center when the CLEC’s switching equipment is located in a different wire center. As such, EEL loops are appropriately included in the count of unbundled loops of the wire center in which the unbundled loop terminates. (Qwest/5, Brigham/18.) However, although other state commissions have allowed other RBOCs to include other services in the business line count, such as High-Speed Digital Service Lines (“HDSL”), Qwest conservatively did not include HDSL lines in its *TRRO* business line counts. (*Id.*, p. 19.)

b. Use of ICONN data

There is absolutely no merit for the Joint CLECs' "analysis" of Qwest's "ICONN" data (which they discuss at Joint CLECs/1, Denney/17-20 and Table 3), for a variety of reasons, not the least of which is that the Joint CLECs admitted that ICONN data should *not* be used to determine non-impairment status. (See Qwest/14, Brigham/10-16; Joint CLECs/1, Denney/19-20.) The Joint CLECs' calculations of Qwest's business lines misinterpret and misuse ICONN data, and do not comport with the FCC's *TRRO* business line definition, resulting in a significantly understated count that excludes a significant number of business lines (DS1 and DS3 retail and wholesale loops) that must be included in the *TRRO* business line analysis. (Qwest/14, Brigham/12-16.) The Joint CLEC ICONN "analysis" is also based on a vintage (March 2006) that is not germane to this docket. As such, the Joint CLEC "ICONN analysis" is fatally flawed and thus the Commission should reject the Joint CLECs' recommendations that are based on those ICONN calculations. (*Id.*) Finally, Qwest notes that after Qwest produced a supplemental response to its business line data to reflect December 2004 data, the Joint CLECs filed supplemental surrebuttal testimony. (Joint CLECs/17.) However, as the Joint CLEC witness admitted, there was not much difference between the 2003 and 2004 business line data, and thus no change in terms of the wire centers that the Joint CLECs dispute. (Joint CLECs/17, Denney/7; and generally Joint CLECs/17, Denney/2, 3-7.) Also from that testimony, it is clear that the Joint CLECs no longer rely on ICONN data. (*Id.*)

c. Residential and non-switched UNE loops should not be removed from *TRRO* business line counts

Qwest also included *all* UNE loops in a wire center in its business line counts, as the FCC had directed. *TRRO*, ¶ 105. Thus, consistent with the FCC's "business line" definition, Qwest did not attempt to "remove" UNE loops that may be used to serve residential customers or that may be used to provide "non-switched" services. Indeed, the clear language in the *TRRO* and

associated rules specifies that there is no basis to distinguish between “business” UNE loops and “residential” UNE loops in counting *all* UNE loops for determining the total number of business lines in a wire center. That is, wire center-level access line counts used to determine whether the non-impairment thresholds are satisfied must be “based on ARMIS 43-08 business lines, plus business UNE-p, *plus UNE-loops.*” *TRRO*, ¶ 105. (Emphasis added.) (Qwest/5, Brigham/11-16, Qwest/14, Brigham/27-28; Tr., p. 35.) Notably, the FCC did not include the adjective “business,” or any other qualifier, for UNE loops in its definition of “business lines,” either in the *TRRO* itself or in the FCC’s implementation rules, 47 CFR § 51.5. (Qwest/5, Brigham/11-12; Qwest/14, Brigham/27-28; Tr., p. 35.)²³

d. UNE-P “residential” access line adjustments

As the FCC’s guidelines in its *TRRO* require, Qwest also included business UNE-P lines in its wire center line counts, utilizing the same December 2003 data that it used for its ARMIS retail business line and UNE loop data. (Qwest/5, Brigham/20.) However, because Qwest’s wholesale UNE-P tracking systems were unable to distinguish between residential and business UNE-P lines in the December 2003 data, Qwest determined the number of “business UNE-P” lines in each wire center through the use of its directory listings database. (*Id.*, pp. 20-22.) Simply, Qwest deducted the number of directory listings associated with residential UNE-P access lines from the total number of UNE-P lines in service in the relevant Oregon wire centers

²³ A number of state commissions have agreed with Qwest and RBOC interpretations on this issue. See e.g., *California TRRO Order*, at pp. 10-11; *Texas TRRO Order*, at p. 30; *Florida TRRO Order*, at p. 37; *Illinois TRRO Order*, at p. 30; *Indiana TRRO Order*, at p. 16; *Ohio TRRO Order*, at p. 30; *Georgia TRO Order*, at pp. 19-20; *South Carolina TRRO Order*, p. 42. (Qwest/5, Brigham/11-16, 17-18; Qwest/14, Brigham/16-18.) Indeed, as the Joint CLECs’ Table 5 summary of state commission decisions (Joint CLECs/1, Denney/31) indicates, at least 9 of 11 state commission orders have agreed with Qwest and other RBOCs that UNE loop counts used to determine wire center non-impairment should not be reduced to account for UNE loops that may be used to serve residential customers, and no state commission has found that non-switched UNE loops should be excluded from the count of business lines to determine wire center non-impairment. (Qwest/14, Brigham/28-29.) It stands to reason, therefore, that there is no basis for the Joint CLEC recommendation (Joint CLECs/1, Denney/29) that Qwest “work together” with the Joint CLECs to establish a process to remove UNE loops serving residential customers and non-switched UNE loops from the business line total for Qwest’s wire centers in Oregon. (Qwest/14, Brigham/28.)

to determine the number of business UNE-P lines in service in December 2003. Qwest had previously used its white pages directory listings database to distinguish between residential and business UNE-P lines in the section 271 process, and thus it is a good (if conservative) proxy for determining business UNE-P lines. (*Id.*)

e. High-capacity UNE-P adjustments

Qwest used the same approach for high-capacity UNE-P circuits as it used for high-capacity retail and UNE loop circuits. For example, services such as “UNE-P DSS”²⁴ and “UNE-P ISDN PRI”²⁵ are served by a DS1 loop. Thus, Qwest multiplied the quantity of UNE-P circuits by a “VGE-equivalence” factor of 24 to reflect the number of 64 kilobit channels associated with these UNE-P DS1 lines. (Qwest/5, Brigham/23; Qwest/14, Brigham/25-26; Tr., pp. 35, 37-39.) As stated, all of these adjustments were appropriate and consistent with the *TRRO*. (*Id.*; see also, e.g., Tr., pp. 35, 37-39.)

C. The Joint CLEC adjustments are improper

The Joint CLECs propose certain adjustments to Qwest’s business line data. (See Joint CLECs/1, Denney/14-15.) Specifically, the Joint CLECs propose (1) use of February 2005 or December 2004 access line data, (2) use of what they call “43-08” access line counts for Qwest switched retail business lines, (3) removal of UNE loop lines used to serve residential subscribers, and removal of non-switched UNE loop line counts, and (4) use of “used capacity” for UNE-P and UNE loop lines to reflect actual channels in service. (*Id.*, pp. 14-15, and generally, pp. 15-30.)

²⁴ UNE-P DSS is UNE-P service provided in a “Digital Switched Service” digital PBX trunk configuration and includes a DS1 loop. (Qwest/5, Brigham/23, fn. 27.)

²⁵ UNE-P ISDN-PRI is UNE-P service provided in an “ISDN-Primary Rate” configuration and includes a DS1 loop. (Qwest/5, Brigham/23, fn. 28.)

However, as Qwest demonstrated, the Joint CLECs' "adjustments" to Qwest's data are in conflict with the *TRRO*. This is especially so because the Joint CLECs purport to represent "actual" high capacity switched business lines in service, rather than a number which includes the *full capacity* of high capacity digital business lines. These adjustments directly contrary to the *TRRO*'s requirements that an ILEC should count "each 64 kbps-equivalent as one line." In addition, the Joint CLECs undercount actual lines in some wire centers because they do not capture actual digital business channels in service originating from that wire center, since Qwest's tracking processes were not designed to track digital business channels by originating wire center. (Qwest/14, Brigham/25-30; Tr., pp. 37-39, 62-63, 81-83, 85-87.)²⁶ For the same reasons, the Joint CLECs' "adjustments" of Qwest's business UNE-P line counts, as well as of Qwest's DS1 and DS3 loop counts, to arrive at an estimate of "used capacity" do not comply with the *TRRO* and thus should also be disregarded. (Qwest/14, Brigham/21-22, 29.)

D. Non-impaired wire centers in Oregon

Based on Qwest's analysis of the data the *TRRO* requires, the only wire center in Oregon meeting the non-impairment standard for *DS1 and DS3 unbundled loops* is the Portland Capitol wire center. (Qwest/5, Brigham/7, 23; see also Ex. Qwest/6 (Qwest business access line counts for the Portland Capitol wire center); Qwest/14, Brigham/33; Tr., pp. 32, 35-36.) In addition, there are five Oregon wire centers (Eugene 10th Avenue, Medford, Portland Belmont, Portland Capitol and Salem Main) meet the FCC's threshold for Tier 1 non-impairment status for interoffice transport. This determination was based on both fiber collocation data and business line data to make the interoffice transport non-impairment determinations for those wire centers. (Qwest/5, Brigham/7-8, 23; Qwest/14, Brigham/33.) Finally, there are two Oregon wire centers

²⁶ Qwest showed the example of an ISDN-Primary Rate ("ISDN-PRI") subscriber having service originating in the Portland Capitol wire center, but having the actual ISDN channels associated with that service terminate in a different wire center (such as Portland Alpine), thus resulting in an undercounting of digital lines at the Portland Capitol wire center. (Qwest/14, Brigham/25-26.)

(Bend and Portland Alpine) in the “Tier 2” interoffice transport non-impairment designation. (Qwest/5, Brigham/7, 23; Qwest/14, Brigham/33.)

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

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

The *TRRO* defines a “fiber-based collocator” as any carrier, unaffiliated with the ILEC, that maintains a collocation arrangement in an ILEC wire center, with active electrical power supply, and that operates a fiber-optic cable or comparable transmission facility that (1) terminates at a collocation arrangement within the wire center; (2) leaves the ILEC wire center premises; and (3) is owned by a party other than the ILEC or an ILEC affiliate. See *TRRO*, ¶ 102.²⁷ Two or more affiliated fiber-based collocators in a single wire center are collectively counted as a single fiber-based collocator. *Id.*; see also 47 CFR § 51.5. Fixed-wireless collocation arrangements are included “if the carrier’s alternative transmission facilities both terminate in and leave the wire center.” *TRRO*, ¶ 102. Finally, a competitor’s collocation arrangement counts toward the qualification of a wire center for a particular tier irrespective of the services that the competing carrier offers. *Id.* (Ex. Qwest/7, Torrence/7-8.)

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

In order to identify the number of fiber-based collocators within its Oregon wire centers, Qwest took the criteria set forth in the *TRRO* (*TRRO*, ¶ 102) for determining a fiber-based collocator and adopted the *TRRO*’s definition for fiber-based collocators verbatim.²⁸ Thus,

²⁷ Dark fiber obtained from an ILEC on an indefeasible right of use (“IRU”) basis is treated as non-ILEC fiber-optic cable. *TRRO*, ¶ 102, fn. 292. (Qwest/7, Torrence/7.)

²⁸ The *TRRO* also set criteria regarding dark fiber users and fixed-wireless providers as fiber-based collocators. However, Qwest did not address them in its criteria because Qwest took a very conservative approach for the sake of increased accuracy, and thus it focused its attention on the majority of qualifying collocators, which were fiber-based collocators. Qualifying fixed wireless and dark fiber users operating with an indefeasible right of use (“IRU”) constitute a very small percentage of the total numbers of collocators, and thus identifying and verifying these types of collocators would have required an extensive research effort. Given the short timeframe within which Qwest had to accomplish its task, Qwest found it a more prudent approach to concentrate on compiling an accurate list of the types of collocators that constitute the vast majority of fiber-based collocators in Qwest’s wire

Qwest undertook two distinct efforts to identify the number of fiber-based collocators within its wire centers not only in Oregon, but in all of its other ILEC states. (Qwest/7, Torrence/10; Ex. Qwest/15, Torrence/3-6, 8-11.)

First, Qwest used its collocation tracking records and billing data as a baseline which coincided with the December 2003 ARMIS data. (Qwest/7, Torrence/10-12.)²⁹ After Qwest filed its initial list of wire centers with the FCC on February 18, 2005, Qwest sent a letter to each CLEC on March 29, 2005 advising them of the wire centers in which Qwest showed the CLEC to have a fiber-based collocation as reflected by the data on the initial list. In that March 29, 2005 letter, Qwest requested the CLEC make sure its records agreed with Qwest's records and, if there was a discrepancy, the CLEC should provide Qwest with documentation regarding the collocation at issue. (Qwest/7, Torrence/12.)

Thereafter, Qwest engaged in a comprehensive validation of the data it had compiled. As part of this validation process, Qwest incorporated CLEC responses to Qwest's March 29, 2005 requests for confirmation of data, and further, it conducted actual field verifications of wire

centers. (Qwest/7, Torrence/9-10.)

²⁹ Specifically, Qwest used an internal database that tracks all CLEC-submitted and approved collocation requests in order to develop a list of fiber collocations. This list was then edited to extract all collocations that did not have a record indicator for fiber entrance facilities. The resulting list was sent to Qwest's Collocation Project Management Center for verification that there was active power in those collocations. Qwest's Wholesale Markets team then validated the list against February 2005 billing data, thus confirming that the carrier was being billed for collocation. (Qwest/7, Torrence/11.)

Qwest central office technicians and state interconnection managers then further verified the resulting list. Because of the relatively short timeframe between the FCC's request and the time that Qwest was to file its list with the FCC, Qwest took a conservative and comprehensive approach that would result in a smaller but more accurate list. For example, Qwest did not include any collocations in its initial February 2005 list when network field personnel had been unable to confirm a particular collocation, such as based on their records or personal knowledge of their particular wire centers. Accordingly, Qwest did not include in its FCC filing any questionable collocations that it could not verify. (Qwest/7, Torrence/11.)

Finally, Qwest analyzed the resulting wire center list to ensure that multiple collocations at a single wire center by the same or affiliated carriers, or by multiple collocations by a single carrier, were counted as only one fiber-based collocator. Qwest counted the number of fiber-based collocators in any given wire center as of the date of the *TRRO*'s release, February 2005. Qwest then filed the resulting list with the FCC on February 18, 2005. (Qwest/7, Torrence/12.)

centers. (Qwest/7, Torrence/13.)³⁰ As part of this process, Qwest sorted all of its Tier 1 and Tier 2 fiber-based collocations by wire center, and for each wire center, it entered all of the pertinent information regarding all identified collocations into a template spreadsheet. Qwest developed the spreadsheet in order to facilitate the documentation of the certain *TRRO* collocation elements during its field verifications, such as verification of operator/carrier name, verification of active power and verification of fiber facilities. (Qwest/7, Torrence/14-15.)

Thereafter, in June 2005, Qwest directed its Oregon central office field personnel to physically inspect the identified wire centers. (Qwest/7, Torrence/15.)³¹ Qwest's physical verification of each wire center verified not only Qwest's inclusion of the collocators it originally identified, but further allowed Qwest to verify collocations that Qwest had not been able to include originally. (*Id.*) Qwest then revised its initial list of fiber-based collocators to reflect the information gathered through the physical field verifications, and filed the revised list of Qwest non-impaired wire centers with the FCC on July 8, 2005. (*Id.*) Qwest only included those fiber-based collocations that were operational on the effective date of the *TRRO*, March 11, 2005. (*Id.*, pp. 15-16.)³²

³⁰ Qwest undertook a second effort to validate the list of non-impaired wire centers because, although it was relatively confident in the accuracy of its initial list of non-impaired wire centers, it also recognized that due to its conservative approach, its wire center list might not necessarily be complete. As such, Qwest understood it might have undercounted the number of collocators, such as, for example, due to possible mergers and acquisitions that had not been properly communicated to Qwest. Thus, if Qwest had any question whether or not two particular carriers were affiliated, Qwest counted them as one collocator. In addition, Qwest's databases used to identify fiber-based collocations were designed for a much different purpose, and thus could have included different, but non-qualifying, collocations. Finally, some CLEC responses to the letters Qwest sent to collocating CLECs indicated that some changes to the initial list might be necessary. (Qwest/7, Torrence/13.)

³¹ These wire center personnel were directed to (1) verify the information for the fiber-based collocations identified and listed in Qwest's initial FCC filing, (2) add any fiber-based collocations that met the criteria but that had not been captured in Qwest's initial list, and to document the criteria, (3) investigate disputes or data, if any, that CLECs may have provided in their responses to Qwest's March 29, 2005 letter, and (4) provide any pertinent anecdotal information or comments they may have had regarding any of the collocations. (Qwest/7, Torrence/15.)

³² Accordingly, Qwest showed that its methodology to identify fiber-based collocators is sound and objectively applied. (Ex. Qwest/15, Torrence/3.) Qwest also showed that it had provided the CLECs with sufficient information to allow the CLECs to determine whether the carriers that Qwest had identified as fiber-based collocators were in fact fiber-based collocators. (*Id.*, pp. 3-6.) This is especially so because Qwest did all it could reasonably do to validate the existence of fiber-based collocators in a wire center. (*Id.*, pp. 12-16) Thus, a CLEC's

Finally, in its recent order, the Utah Commission disagreed with Qwest regarding the effective date of the non-impairment status in two Utah wire centers due to the July 2005 notice of non-impairment that Qwest made with its revised list of fiber-based collocators. See *Utah TRRO Order*, pp. 21-23. That is not an issue here in Oregon. Notably, however, the Commission agreed with Qwest on all other issues pertaining to Qwest's designation of fiber-based collocators in that state. Further, although the Joint CLECs in Utah presented similar arguments as those here regarding Qwest's process and methodology to identify fiber-based collocators, the Utah Commission apparently did not have any concerns about that process and methodology as it did not express any concerns about such process and methodology, nor did it agree with or adopt any of the Joint CLECs' complaints about these issues.

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

As stated, on July 8, 2005, Qwest filed its revised list of non-impairment wire centers in all states, including Oregon, with the FCC. The result of the review and field verifications led to changes in the total number of fiber-based collocators in three wire centers in Oregon. However, there was no change in tier designation at two of these three wire centers (Portland Capitol and Salem Main), as they remained Tier 1 wire centers. (Qwest/7, Torrence/17-18, and Table 1; Qwest/15, Torrence/12-16; see also Highly-Confidential Ex. Qwest/11.) However, the Portland Belmont wire center was misdesignated as a Tier 1 wire center, but should have remained a Tier 2 wire center. (See Qwest/15, Torrence/12-13; Highly-Confidential Ex. Qwest/20.)

failure to affirmatively respond to Qwest's request for information requesting validation, or its mere disagreement that it is a qualifying fiber-based collocator, especially in light of substantiation by other credible information, should not be a basis to exclude a carrier as a fiber-based collocator. (*Id.*, pp. 6-8.)

There is also no basis for the Joint CLECs' argument that Qwest's physical filed verifications were not conducted in an objective manner. (Qwest/15, Torrence/10-11.) Finally, Qwest showed that its fiber-based collocator identification methodology is sound and that it yields an accurate result. (*Id.*, pp. 12-16.) This is so despite that the Joint CLECs' approach seemed to be to take isolated pieces of Qwest's evidence out-of-context and attempted to use such isolated pieces of evidence to justify the removal of legitimate fiber-based collocators from the Oregon wire center list. (*Id.*, p. 16.)

The Joint CLECs also disagreed with Qwest with respect to two fiber-based collocators at the Medford wire center. (Joint CLECs/1, Denney/11-12; Joint CLECs/13, Denney/1-2, 3-4.) One dispute has to do with the fact that one collocator claimed it did not “own” its fiber, but rather, obtained it from Qwest and other carriers. However, this particular carrier’s admission that it used fiber obtained from a carrier other than Qwest is sufficient evidence to rebut its dispute that it is a fiber-based collocator, and thus this admission substantiated that Qwest properly designated it as a fiber-based collocator. (Qwest/15/Torrence/14, and see Highly-Confidential Ex. Qwest/17.)

The other dispute has to do with the fact that another collocator at the Medford wire center claims it is in the process of bankruptcy. However, as Qwest showed, the collocation was verified as being both fiber-based and operational as of the *TRRO* effective date, March 11, 2005. (Qwest/15, Torrence/14, and see Highly-Confidential Ex. Qwest/17.) Indeed, as Qwest later showed in its August 30, 2006 supplemental testimony of Ms. Torrence (Ex. Qwest/25) in response to the July 12, 2006 surrebuttal testimony of Joint CLEC witness Douglas Denney (Joint CLECs/13), not only was the collocation operational on March 11, 2005, but the declaration that the Joint CLECs submitted admitted that the collocation was operational on March 11, 2005. (Qwest/25, Torrence/3-5.)

D. Supplemental testimony re Medford collocator

As stated, the Joint CLECs filed surrebuttal testimony on July 12, 2006. The brunt of the testimony was that this particular collocator was not a fiber-based collocator because it was bankrupt, and there was only a *de minimus* amount of traffic after March 2005, and the particular CLEC was not accepting new customers. For this evidence, the Joint CLECs attached a declaration of the sole shareholder of that CLEC. (Joint CLECs/13, Denney/3-4; Exs. Joint CLECs/14-16.) However, as Qwest showed in its supplemental response testimony on August

30, 2006, the declaration of the CLEC's sole shareholder admitted that this particular CLEC still carried traffic after the March 11, 2005 *TRRO* effective date, and thus Qwest's verification of this collocation was correct. (Qwest/25, Torrence/3.) Moreover, Qwest was aware of the CLEC's bankruptcy proceedings, and the CLEC did not request that the collocation be decommissioned during that time frame, and as of June 2005, there were still more than 300 active circuits. It was not until September 2005 that Qwest confirmed the collocation was no longer serving customers and thus decommissioned the collocation in November 2005. (*Id.*, pp. 3-4.) Finally, there was additional evidence from the bankruptcy proceedings for this CLEC and its affiliate (both owned by the same sole shareholder) that indicated that the CLEC at issue was still operational throughout most of 2005. (*Id.*, pp. 4-5.) Accordingly, it is clear this particular CLEC was a fiber-based collocater as of the March 11, 2005 *TRRO* effective date and thus was properly designated as such.

III. QWEST'S WIRE CENTER UPDATE PROPOSAL IS REASONABLE

As Qwest mentioned, Qwest and the Joint CLECs largely agree on most issues regarding the process for updating the wire center non-impairment list in the future. However, there is still a dispute regarding certain recommendations that the Joint CLECs make regarding the timing and notice of future wire centers on the non-impairment list, as well as about the effective date for future non-impairment updates and the length of and rates to be charged during the transition period after a wire center has been deemed non-impaired. Qwest respectfully submits that the Commission should adopt Qwest's reasonable wire center update process proposal.

A. No "advance notice" threshold requirement is appropriate

First, Qwest vehemently disagrees with the Joint CLEC position (Joint CLECs/1, Denney/34) that Qwest provide *advance notice* when a wire center is "within 5,000 business lines" or "within one fiber-based collocater" of changing tier designation. There is no reason to

add the administrative burden of providing advance notice of a wire center being within 5,000 business lines or one fiber-based collocator of a threshold upon Qwest, especially since Qwest does not have a process in place for such notice. (Qwest/13, Albersheim/11-12; Tr., pp. 20-21, 24, 27, 39-43, 51-54, 59-61.) This is especially so since there is no such “advance notice” requirement in the *TRRO*, and no state commission has imposed such a requirement. (Qwest/13, Albersheim/11; Tr., pp. 139-140.) The Commission should not impose a separate Oregon threshold, in addition to the FCC threshold. (Qwest/13, Albersheim/11-12.)

Additionally, the thresholds that the Joint CLECs advocate are not meaningful, especially since 5,000 lines or one fiber collocator does not mean that a change in the impairment classification for that wire center is imminent. (Qwest/13, Albersheim/11.) For example, since Qwest must rely on ARMIS 43-08 data which is filed once per year (in April for the previous year’s data), Qwest can only propose updates to the wire center non-impairment list based on ARMIS data once per year. If the number of business lines in a wire center increased to within 5,000 of a non-impairment threshold in June, but subsequently declined to a number below 5,000 of a non-impairment threshold by December, advance notice could actually cause CLECs to take costly action to prepare for a wire center non-impairment reclassification that will not occur. Finally, advance notification could allow a CLEC to attempt to “game” the system by changing its business plans so that the wire center would be unlikely to meet the threshold. (*Id.*)

Indeed, Qwest notes that the Utah Commission agreed with Qwest that no such advance should be required. See *Utah TRRO Order*, p. 26, and generally pp. 24-26. The Commission ruled that that it agreed with Qwest and that the *TRRO* provides for no additional threshold reporting or notification, and that the Joint CLECs had failed to provide sufficient evidence to convince the Commission that such a process is reasonable, necessary, or would enhance competition. The Utah Commission further ruled that the wire center non-impairment list

updating process that it had described provides sufficient notice and transition protection to CLECs. Therefore, the Utah Commission declined to order the additional threshold notification that the Joint CLECs had requested. Qwest respectfully submits that this Commission likewise should reject this Joint CLEC recommendation or request.

B. No “prior notice” of a filing is necessary

Further, as to the timing and notice for updating such wire center lists in the future, Qwest believes a time period of *30 days* is sufficient time for CLECs to determine if they have an objection to Qwest’s non-impaired wire center designation. Thus, Qwest disagrees with the recommendation (Joint CLECs/1, Denney/39-41) that Qwest should provide *prior notice* five days before Qwest actually files a request with the Commission to update the wire center list.

First, the Joint CLECs do not explain why CLECs need more than 30 days to advise the Commission that they have an objection to the addition of any particular wire center to the non-impaired list. (Ex. Qwest/13, Albersheim/10-11.) A time period of 30 days is sufficient time for CLECs to determine if they have an objection to Qwest’s non-impaired wire center designation. (*Id.*) Moreover, although the Joint CLECs argue that they need five days advance notice because they need additional time to determine whether they need to object to having the data released to the public, this is not an issue. This is especially so because Qwest intends to protect any such data as it has in this case, such as through a standing non-disclosure agreement or protective order that can protect sensitive CLEC-specific data. (Tr., pp. 11-12.)

C. Qwest’s proposal for the effective date of future updates is appropriate

Qwest believes that the designation of new non-impaired wire centers should be effective 30 days after its initial notification to CLECs that the impairment status for that wire center has changed. Qwest agrees to file the updated non-impaired wire center list with the Commission and notify all CLECs through its Change Management Process (“CMP”) notification process.

Qwest also agrees to provide to CLECs the same type of supporting data that it used to support its initial list of non-impaired wire centers.³³ CLECs would then have 30 days to object to Qwest's list to the Commission. If no CLECs raise any objections, the wire center list would be deemed approved by operation of law. However, in the event a CLEC disputes Qwest's revised wire center list, but the Commission subsequently approves Qwest's changes to the list, Qwest would back-bill the CLEC to the effective date. (Qwest/1, Albersheim/14-16; Qwest/13, Albersheim/3-4; Tr., pp. 12, 16-17.) Indeed, Qwest has the right to back-bill under these circumstances as the FCC anticipated such a true-up procedure in the *TRRO*. See *TRRO*, fns. 408, 524, 630. (Qwest/1, Albersheim/17; Qwest/13, Albersheim/3-4; Tr., pp. 16-17.)³⁴

The Joint CLECs oppose Qwest's proposed process, claiming that the process gives Qwest an incentive to delay. However, it is the CLECs who may have an incentive in delaying the effective date of future wire center reclassifications because, once effective, CLECs would no longer be entitled to UNE pricing at the reclassified wire centers. (Qwest/13, Albersheim/3-5; see also Tr., pp. 172-173.) In contrast, Qwest is motivated to provide all necessary information to support its classifications decisions because without such information, reclassification of these wire centers would be delayed, and thus Qwest would be denied the opportunity to take advantage of the benefits of the *TRRO*. (See Qwest/13, Albersheim/4-6.)

³³ Qwest would submit sufficient detail along the lines of what it produced in this matter, including ARMIS line counts, and adjustments, total wholesale UNE loops per wire center, Qwest voice-grade equivalent calculations and UNE-P/QPP lines per wire center, as well as the names of fiber-based collocators and physical verification information. Obviously, this would not include testimony. (Qwest/13, Albersheim/4-6; Tr., pp. 11-12, 14-15, 25.)

³⁴ Qwest has agreed it would not block any CLEC orders at a given wire center absent the Commission's final designation that the particular wire center was non-impaired. (Qwest/13, Albersheim/6-7; Tr., pp. 12-13.) In addition, Qwest notes that the parties agree that the non-impairment wire center list can only be updated once a year based on changed business line counts (since those updates are based on annual ARMIS reports), but that updates to the list based on fiber-based collocators could occur throughout the year as the number of collocators changes (since the number of collocators is not based on annual ARMIS data). (Qwest/13, Albersheim/12-13; Tr., pp. 163-164 (Mr. Denney agrees).)

The Utah Commission recently concluded that “Qwest’s proposed 30-day waiting period reasonably balances a desire to expedite the process with the necessity of ensuring CLECs adequate time to object,” while reserving the Commission’s authority to establish an effective date for all such filings based on the facts and actions of the parties specific to that filing. *Utah TRRO Order*, p. 30. The Utah Commission further found that if the CLECs object, but ultimately the Commission finds that the CLECs’ objections are without merit, Qwest would be entitled to back-bill to the effective date for the CLECs’ use of Qwest’s facilities. *Id.*, pp. 30-31, and generally, pp. 28-31. Accordingly, Qwest respectfully submits that the Commission should adopt Qwest’s proposal for future wire center non-impairment updates.

D. Qwest’s 90-day transition period is appropriate

Finally, Qwest proposes a 90-day period for CLECs to transition existing DS1 and DS3 UNEs to an alternative service. Qwest has memorialized this time frame in its *TRO/TRRO* interconnection agreement amendment, which many CLECs have entered into. The *TRRO*’s 12-month and 18-month transition periods applied only to the *initial* wire center list, beginning with the *TRRO* effective date of March 11, 2005. Future wire center updates do not require such a transition period because there will be fewer newly classified non-impaired wire centers than in the initial non-impairment list. (Qwest/1, Albersheim/13; Qwest/1, Albersheim/13-14; Tr., pp. 13-14, 17-18.)

Although the Joint CLECs argue against Qwest’s proposal, permitting CLECs to continue paying UNE rates during any transition period would give CLECs the incentive to delay the transition of services until the end of the transition period, thereby denying Qwest the benefits of wire center reclassification that the FCC intended. There is simply no reason for the transition period for wire center updates to be the same as the transition for the initial wire center list. (Qwest/13, Albersheim/13-14; Tr., pp. 13-14, 17-18.)

The Utah Commission recently agreed with Qwest that the transition periods in the *TRRO* are rooted in the FCC's recognition that the initial list of non-impaired wire centers could be so large and constitute such a change in the way that CLECs procure necessary services and facilities that a lengthy transition period was appropriate. However, the Utah Commission found that because future updates should impact fewer wire centers, the 90-day transition period that Qwest proposes will provide CLECs an adequate opportunity to make business decisions regarding alternative facilities and services. Thus, the Utah Commission found that future updates to Qwest's non-impaired wire center list shall trigger a 90-day transition period beginning on the effective date of the updated list, and that Qwest can charge affected CLECs 115% of the UNE rate for non-impaired UNE services and facilities during that transition. *Utah TRRO Order*, p. 33. Qwest respectfully submits that this Commission should likewise find that future updates to Qwest's non-impaired wire center list should trigger a 90-day transition period beginning on the effective date of the updated list, and that Qwest can charge affected CLECs 115% of the UNE rate for non-impaired UNE services and facilities during that transition.

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

Finally, the last issue in the case is whether Qwest is entitled to assess nonrecurring charges ("NRCs") when converting a UNE to an alternative Qwest circuit, such as a private line or special access circuit. Since a CLEC which converts a UNE to an alternative Qwest circuit has *other business alternatives*, and thus *voluntarily* requests such a conversion, and because Qwest performs work activities in converting UNEs to private line circuits in wire centers meeting the FCC's non-impairment thresholds, Qwest is entitled to recover its Design Change charge as an NRC for conducting such work at the CLEC's request. (Ex. Qwest/12, Million/2-

3.)³⁵ Qwest will utilize an NRC to recover the costs that it incurs when implementing these conversions. (*Id.*, pp. 7-8.)³⁶

A. Work activities involved

As Qwest demonstrated, the conversion of a UNE circuit to a special private line circuit involves three functional areas within Qwest's ordering and provisioning organizations, and the personnel within these three functional areas involved with a conversion are the (1) Service Delivery Coordinator (SDC), (2) Designer and (3) Service Delivery Implementor. Qwest demonstrated that there are a variety of steps that it must undertake to assure itself that the data for the converted circuit is accurately recorded in the appropriate systems within each of these three job functions. (Qwest/12, Million/4-6.)³⁷ In addition, Qwest showed why the circuit identifier ("circuit ID") must be changed. The circuit ID must be changed for several reasons,

³⁵ This is especially so because in the case of the conversions of UNEs to alternative facilities, *but for* the conversion, Qwest would not have to incur the costs of performing the associated tasks. (Qwest/12, Million/2-3.) Thus, there is no merit to the Joint CLECs' argument that Qwest's conversion of UNEs to private line circuits is not required by the *TRRO*, or is for Qwest's convenience, or that there is no benefit to the CLECs. (Ex. Qwest/22, Million/4-5.) Obviously, if Qwest were to perform the activities associated with a conversion, but were not allowed to charge the CLEC for such activities, the cost burden would be unfairly shifted to Qwest and its end-user customers, thereby disadvantaging Qwest in a market the FCC has determined to be competitive. Thus, to the extent Qwest incurs costs to facilitate the CLEC's conversion from a UNE to a private line service, Qwest should be entitled to assess an appropriate charge. (*Id.*, p. 4.)

³⁶ Qwest notes that the Utah Commission recently agreed with Qwest that Qwest is entitled to levy an NRC to recoup its costs when a CLEC requests conversion of a UNE to a private service, but determined that Qwest should file cost information regarding the amount of the proposed charge. *Utah TRRO Order*, p. 36, and generally, pp. 33-36.

³⁷ Qwest will not go into all of the detailed work that Qwest must perform when a CLEC requests a conversion to an alternative circuit. However, at a minimum, the SDC, who is the primary contact for the CLEC, provides the CLEC end-to-end order coordination from request to order completion must review, and must confirm the data in the Access Service Request (ASR) and assure that the data is accurately transferred into two service orders required to change billing from the CRIS billing system to the IABS billing system. The SDC must also change the circuit identifier ("circuit ID") to reflect the fact that the circuit will now be recognized as a private line rather than a UNE circuit once the order is complete, and must check the accuracy of other data. (Qwest/12, Million/4-5.)

In addition, the Designer reviews and validates the circuit design and assures that the design records for the converted circuit match the current UNE circuit, as well as that no physical changes to the circuit are needed. The Designer also reviews the circuit inventory in the TIRKS database to ensure accuracy and database integrity in order to ensure there is no service interruption for the CLEC's end-user customer. (Qwest/12, Million/5.)

Finally, the Service Delivery Implementer has overall control for order provisioning, and verifies the orders and completes the update of the circuit orders in the appropriate system. (Qwest/12, Million/6.)

including the fact that FCC rules (47 C.F.R. §32.12(b) and (c)) require that telephone carriers accurately maintain records that track inventories of circuits,³⁸ and that the unique circuit ID is maintained as a means of measuring the different service performance requirements applying to UNEs and private line services. (*Id.*, pp. 6-7.)

Finally, the process for converting a UNE circuit to a private line circuit is transparent to a CLEC's end-user customer, and this process is used to avoid placing the end-user customer's service at risk. (Qwest/22, Million/3-4.) However, Qwest, having already spent hundreds of millions of dollars to enhance and modify its ordering, provisioning and inventory systems to appropriately track facilities it has been required to provide as UNEs, should not be required to spend millions more to further modify its systems to track these same facilities yet another way. Such costs would place an unfair burden on Qwest, especially when it already has systems and identifiers in place to track private line services and avoid service interruptions. (*Id.*, pp. 6-7.)

B. Qwest's Design Change charge

Finally, Qwest believes that the use of its tariffed Design Change charge should be used, instead of a unique charge for the UNE-to-private line conversion process. This is so because the Design Change charge involves functional areas and work tasks that are similar to those associated with the conversion of a UNE to a private line service or facility. In addition, it provides a conservative estimate of the costs that Qwest will incur when converting CLEC high-capacity loop and transport UNEs to their private line counterparts.³⁹ Similar activities take place when Qwest processes the orders for the conversion of a UNE to a private line circuit. Due

³⁸ This rule requires Qwest to maintain subsidiary records in sufficient detail to align specific circuits with the billing, accounting, and jurisdictional reporting requirements related to the services that these circuits support. (Qwest/12, Million/6.) Changing the circuit ID is not merely for the convenience of Qwest, as the Joint CLECs allege. (Qwest/22, Million/5-6.)

³⁹ The existing Design Change charge reflects the costs and activities for Qwest personnel reviewing ASRs, communicating with CLECs and intra-company contacts, validating rates and billing systems, checking certain systems and completing the service orders in Qwest's various billing and tracking systems. (Qwest/12, Million/7-8.)

to the systems involved in the separate tracking of UNE and private line services, as well as the additional manual efforts that Qwest undertakes to ensure there are no service disruptions for CLEC customers, the UNE-to-private line conversion orders are typically more costly to process than a typical Design Change.⁴⁰ The use of the existing Design Change charge avoids the complexity of adding a new charge to Qwest's billing systems, and gives CLECs the benefit of a very conservative charge when compared with the actual activities that Qwest undertakes during this conversion process. (Qwest/12, Million/7-8.)⁴¹

Accordingly, Qwest is not asking this Commission to determine the reasonableness of Qwest's tariffed Design Change charge. Rather, Qwest demonstrated the nature of the work activities that it will perform in processing the conversions from UNEs to private line circuits that will occur at those wire centers that the FCC has deemed non-impaired. Qwest believes that its existing tariffed Design Change charge represents an appropriate charge to CLECs for Qwest's processing of these conversions. In short, Qwest should have a right to assess such a charge for the work that it performs. (Qwest/12, Million/8.)

⁴⁰ Thus, any comparison between the conversion of DS1 and DS3 UNEs to private line circuits and the conversion of UNE-P to Qwest Platform Plus™ ("QPP") is not appropriate. This is especially so because in the case of QPP, the *loop portion* of the product (the portion that is identified by a circuit ID) *is still a UNE*, and is still identified by its telephone number, which does not change, for purposes of billing, maintenance and repair. In contrast, however, in the case of UNE-P, Qwest was not converting a UNE product to an existing tariffed equivalent because QPP did not previously exist. (Qwest/22, Million/7-8.)

⁴¹ Accordingly, and as Qwest has shown, the Joint CLEC argument that any NRC for a UNE-to-private line conversion should be rated at Total Element Long Run Incremental Cost ("TELRIC") is not appropriate. First, requiring a TELRIC rate for an NRC for a *tariffed interstate* private line service would be an inappropriate application of TELRIC rates and be outside the scope of this Commission's jurisdiction. Nonrecurring TELRIC charges should only apply to *UNEs*, and *not* to a tariffed private line service. (Qwest/22, Million/11-12; Tr. p. 114.) Second, the CLECs' discussion of TELRIC rates for private line-to-UNE conversions is limited to only two states. However, one of those states has historically set significantly lower NRCs and other rates than those set in other Qwest states (largely on studies not presented in those other states). Further, while the Utah Commission set the second-lowest rate for conversions in Qwest's 14-state region, it did so because the process would require little or no manual activity (unlike here, where there is a need to change circuit IDs), and thus that Commission had previously reduced Qwest's time estimates by 40%. In contrast, the TELRIC rates for private line-to-UNE conversions in Qwest's other 12 states range between \$22 and \$42, with the most prevalent rate being about \$37. (*Id.*)

CONCLUSION

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

Dated: September 21, 2006

Respectfully submitted,

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CERTIFICATE OF SERVICE

UM 1251

I hereby certify that on the 21st day of September 2006, I served the foregoing QWEST CORPORATION'S OPENING POST-HEARING BRIEF in the above entitled docket on the following persons via U.S. Mail, by mailing a correct copy to them in a sealed envelope, with postage prepaid, addressed to them at their regular office address shown below, and deposited in the U.S. post office at Portland, Oregon.

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