

Qwest

421 SW Oak Street
Room 810
Portland, OR 97204
Telephone: 503-242-5623
Facsimile: 503-242-8589
Email: Alex.Duarte@qwest.com



Alex M. Duarte
Corporate Counsel

June 30, 2006

Honorable Allan Arlow
Administrative Law Judge
Administrative Hearings Division
Public Utility Commission of Oregon
P. O. Box 2148
Salem, OR 97308-2148

Re: UM 1251- Parties' Joint Issues Matrix and Possible Waiver of Hearing Date

Dear Judge Arlow:

On March 14, 2006, the parties appeared before Administrative Law Judge Christina Smith for an initial prehearing conference, at which time the parties agreed to a procedural schedule. That procedural schedule agreement included a joint issues matrix to be filed on June 30, 2006 (today), as well as an evidentiary hearing during the week of July 10, 2006 (with the specific date to be determined later). Much of the procedural schedule was modeled after the procedural schedule that the same parties had agreed to in Utah, where the *TRRO* wire center case was on a faster schedule.

In any event, we later determined that when Judge Smith issued her Conference Report on March 15, 2006, it did not include the June 30, 2006 joint issues matrix date. Nevertheless, since (1) the parties and Judge Smith had agreed to submit a joint issues matrix, (2) the parties had prepared a similar joint issues matrix in Utah that could be readily modified for this docket, and (3) apparently Your Honor has since replaced Judge Smith as the Administrative Law Judge in the case (and thus might find the matrix helpful), Qwest and the Joint CLECs have agreed to file a joint matrix. Accordingly, enclosed with this letter is the parties' joint issues matrix.

In addition, since the March 14th conference, Joint CLEC attorney Greg Kopta of Davis Wright Tremaine has assumed primary responsibility for the case on behalf of the Joint CLECs. However, I understand from Mr. Kopta, who also conducted the Utah case on behalf of the Joint CLECs (while I conducted it on behalf of Qwest), that he is not available the week of July 10th. He has asked whether, to the extent that a hearing is necessary, it could take place during the week of July 17, 2006. Unfortunately, however, I am not available on any day that week other than Wednesday, July 19, 2006. Thus, Mr. Kopta and I have agreed that to the extent a hearing is necessary, and if Your Honor is available (and a hearing room is available), we would like to reserve the afternoon of Wednesday, July 19, 2006, for any possible hearing.

Further still, because most of the issues in this case are somewhat similar to the Utah *TRRO* wire center proceeding, the Joint CLECs and Qwest have agreed that a hearing may not be necessary, or if a hearing is necessary, that we would be willing to narrow the list of witnesses and subjects for cross-examination, and thus submit the case on the prefiled testimony, with the addition of any testimony from the Utah proceeding that the parties could rely upon from the Utah transcript (assuming, of course, that Your Honor is agreeable with such a procedure).

In any event, at present, the parties have agreed there is no need for cross-examination of Qwest witnesses Renee Albersheim (who filed testimony regarding the background and structure of the *TRRO* and Qwest's process for updating its wire center list in the future) and Theresa Million (who filed testimony regarding the nonrecurring charge that Qwest seeks to impose on CLECs for the conversion of UNEs to alternative Qwest services), as well as regarding any rebuttal testimony of CLEC witness Douglas Denney on those issues. In addition, Mr. Kopta is checking whether the Joint CLECs will have any testimony for Qwest witnesses Robert Brigham (who testified about Qwest's interpretation of the FCC's *TRRO* methodology for counting business lines) and Rachel Torrence (who testified about Qwest's identification of fiber-based collocators). Mr. Kopta has indicated the Joint CLECs soon hope to make a final decision on this issue, although I know Mr. Kopta is in a hearing today before the Washington Commission.

Finally, Mr. Kopta and I have also agreed that the parties likely would agree to waive the hearing if, *in lieu of cross-examination of Ms. Torrence's collocation testimony* (which is state-specific), and in light of the possibility of a factual dispute as to whether one particular carrier (which is presently bankrupt) qualifies as a fiber-based collocator at two of Qwest's wire centers on the *TRRO* effective date, both parties could file brief written surrebuttal testimony on this limited issue. This agreement, of course, would be subject to Your Honor's approval.

Thank you for your attention to this matter. If you have any questions regarding this matter, please feel free to call me at your convenience.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Alex M. Duarte', with a stylized, cursive script.

Alex M. Duarte

cc Service List (w/ encl.)

UM 1251- Joint Matrix
Investigation re Non-impairment of Qwest Wire Centers

Fiber Based Collocation	
	What time period is the proper data vintage for determining wire center non-impairment for the initial list of Oregon wire centers?
Qwest's Position	<p>December 2003 access line data is the proper vintage for any access line data used in determining the initial non-impaired wire center list. Qwest was required by the FCC to file its initial list of non-impaired wire centers and was instructed to use ARMIS 43-08 access line data that was already finalized and filed. In compliance with this requirement, Qwest completed its access line analysis and filed its initial wire center non-impairment list in February 2005, using December 2003 ARMIS data, which was the most recent data that was finalized and filed (2004 data was not filed in ARMIS until April 2005). Regarding the fiber collocation information, Qwest used the most current information available as of February 2005 in its initial filing. Subsequently, Qwest identified through a field validation process, completed in June 2005, several changes in the fiber collocation counts (this validation process also confirmed that fiber collocation arrangements in place on March 11, 2005 were also in place in December 2003) and filed a revised wire center non-impairment list with the FCC in July 2005 based on the March 11, 2005 validated information. In sum, the March 11, 2005 fiber collocation data and the December 2003 business access line data are the proper data vintages for determining non-impairment for the initial list of Oregon wire centers filed with the FCC. The fact that time has intervened since that filing and now does not affect the basis for determination of non-impairment for the initial set of wire centers.</p> <p>In addition, the Joint CLECs claim that in footnote 303 (referenced in paragraph 105) of the <i>TRRO</i>, the FCC “specifically refers to December 2004 ARMIS data.” They cite this as an indicator that the FCC meant for the non-impairment analysis to reflect December 2004 data. However, footnote 303 refers to the FCC Report 43-08 Report <i>Definitions</i> that were to be used in the preparation of December 2004 ARMIS data. These definitions do not contain actual 2004 ARMIS data as the Joint CLECs may imply, but simply provide instructions for the preparation of year end 2004 data that would be available in April 2005. Obviously, 2004 ARMIS data was not available in December 2004, and thus, “the BOC wire center data that we (the FCC) analyze in this order” could not possibly be based on 2004 ARMIS data, as the Joint CLECs imply.</p>
Joint CLECs' Position	<p>The effective date of the <i>TRRO</i> (March 11, 2005) is the proper time period at which data for Qwest's initial list should be investigated. Qwest relies on fiber-based collocation data from this time period, but its line count data is more than a year removed from the effective date of the <i>TRRO</i>.</p>

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	<p>This is inappropriate. Paragraph 105 of the <i>TRRO</i> discusses line count requirements. Footnote 303 to this paragraph specifically references the 2004 ARMIS filing requirements. ARMIS data vintage of December 2004 is more reflective of the effective date of the <i>TRRO</i>, The FCC intended ILECs to use up to date line counts, not line counts more than a year removed from the effective date of the <i>TRRO</i>.</p>
	<p>What is the proper data vintage for determination of non-impairment for wire centers not included in the initial non-impaired list?</p>
<p>Qwest's Position</p>	<p>Paragraph 105 of the <i>TRRO</i> requires the RBOCs to use "ARMIS 43-08 business lines" in this determination. Therefore, the most current ARMIS data on file with the FCC must be used when adding wire centers to the initial non-impaired wire center list. For example, the ARMIS data on file in June 2006 represents December 2005 access line data, and the December 2005 ARMIS data would be the appropriate data vintage were Qwest to seek non-impairment classification in June 2006 for a wire center not on the initial list. With regard to fiber collocation data, the most current information available when Qwest formally seeks non-impairment designation for wire centers not included in the initial <i>TRRO</i> non-impairment list should be used.</p>
<p>Joint CLECs' Position</p>	<p>Data vintage should coincide with the time that Qwest adds wire centers to the "non-impaired" list.</p>
	<p>Does the FCC require the same data vintage of business access lines and the fiber collocation counts in determining wire center non-impairment?</p>
<p>Qwest's Position</p>	<p>No. The FCC's requirement that BOCs utilize filed ARMIS 43-08 data limits Qwest to current data posted in the FCC's ARMIS database (which is typically at least one year in arrears), while more current fiber collocation information may be used.</p>
<p>Joint CLECs' Position</p>	<p>Yes. Counting data from two different time periods opens up the possibility for manipulation of data to achieve desired results. Qwest claims that it can only update ARMIS data on an annual basis. As a result, updates to Qwest's "non-impaired" wire center list, based on line counts, should only occur on an annual basis, when ARMIS data is updated. Updates based on fiber-based collocations can occur as fiber-based collocation data changes.</p>

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	<p>Has Qwest justified that Portland Capitol and Medford wire centers have at least four fiber-based collocators as defined by the FCC in the <i>TRRO</i> and should thus be classified as Tier 1 by this Commission. [Qwest claims four fiber-based collocators the in Portland Capitol and Medford. However, although Qwest only lists three fiber-based collocators in the Salem Main wire center, Qwest classifies this wire center as Tier 1 wire center based on line counts.]</p>
Qwest's Position	<p>Yes. As shown in Highly Confidential Exhibit Qwest/10 attached to the direct testimony of Qwest witness Rachel Torrence (which is Exhibit Qwest/7, at least four unaffiliated fiber collocators were present in these three wire centers when the analysis was completed for the initial set of non-impaired wire centers. The presence of each fiber collocation arrangement was verified by field inspections. The parties do not dispute that the Portland-Capitol wire center is a Tier 1 wire center or that the Portland Belmont is a Tier 2 wire center.</p>
Joint CLECs' Position	<p>The Joint CLECs have confirmed that the Portland Capitol wire center has at least four fiber-based collocators, however, the Medford wire center does not. One carrier in the Medford wire center was bankrupt and not operating as of the effective date of the <i>TRRO</i> and should not be counted as a fiber-based collocator.</p>

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Line Counts	
	Should CLEC UNE Loops used to serve residential customers be included in CLEC business line counts?
Qwest's Position	Yes. Paragraph 105 of the <i>TRRO</i> specifically states that "UNE loops" should be included in the line count without regard to the type of end user served by the loop.
Joint CLECs' Position	No. It makes no sense to include residential loops in business line counts. Parties should work to identify residential loops and remove these counts from the business loop counts.
	Should CLEC UNE Loops used for non-switched services be included in CLEC business line counts?
Qwest's Position	Yes. Paragraph 105 of the <i>TRRO</i> specifically states that "UNE loops" should be included in the line count without regard to the type of end user served by the loop.
Joint CLECs' Position	No. It makes no sense to include CLEC non-switched business lines in a switched business line count. Parties should work to identify non-switched lines and remove these counts from the CLEC switched business line counts.
	Should the full "DS0-level" channel capacity of DS1 and DS3 services be included in the business line count or should only used capacity be included?
Qwest's Position	Yes. The FCC's <i>TRRO</i> implementation rules at 47 C.F.R. § 51.5(3) specify "business line tallies 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." These rules clearly apply to retail and wholesale access lines.
Joint CLECs' Position	Unused capacity should not be included in either ILEC or CLEC switched business line counts. (The ILEC counts are addressed below.) Unused capacity is not potential revenue and is not serving any customers. It does not make sense to include this capacity in the CLEC switched business line counts.

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	<p>Should ARMIS line counts be used as defined by the FCC in its ARMIS reporting instructions (DS0 equivalent counts), or should the potential capacity of high capacity circuits be included in these line counts?</p>
<p>Qwest's Position</p>	<p>The FCC's rules requires that the total DS0-level capacity of high capacity DS1 and DS3 circuits should be included in the <i>TRRO</i> business line counts. The FCC's <i>TRRO</i> implementation rules at 47 C.F.R. § 51.5(3) specify "business line tallies shall account for ISDN and other digital access lines by counting each 64Kbps-equivalent as one line. For example, a DS1 line corresponds to 24 kbps-equivalents, and therefore to 24 business lines." These rules clearly apply to retail and wholesale access lines.</p>
<p>Joint CLECs' Position</p>	<p>Qwest ARMIS counts should be used as defined by the FCC in its ARMIS reporting instructions. Paragraph 105 of the <i>TRRO</i> is clear in this matter. Qwest's attempts to adjust the data should be rejected.</p>

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Updates (transition and blocking)	
Once non-impairment status of a wire center has been determined by the Commission, how much time should affected CLECs be allowed to convert to non-UNE services?	
Qwest's Position	90 days
Joint CLECs' Position	The FCC established a 1-year transition period for "non-impaired" UNE loops and transport (18 months for dark fiber). This same transition period should apply to UNEs impacted by additions to the wire center list.
How much advance notice should the CLECs be provided when future wire centers are proposed by Qwest to be reclassified as non-impaired?	
Qwest's Position	30 days
Joint CLECs' Position	The Commission should be required to approve additions to Qwest's "non-impaired" wire center list. Wire centers should become effective as determined by the Commission on a case-by-case basis.
When Qwest files notice of additions to "non-impaired" wire centers, what supporting information should Qwest provide with this filing?	
Qwest's Position	When proposing additions to the initial list of non-impaired wire centers, Qwest should provide "business line" counts based on the most current vintage of ARMIS data on file with the FCC, as well as the most current fiber collocation counts of unaffiliated providers with collocation arrangements meeting the <i>TRRO</i> 's non-impairment requirements in the wire centers at issue. [Note: "unaffiliated" means that the providers are unaffiliated with Qwest or with one another.]
Joint CLECs' Position	It is important that in order to expedite the implementation of additions to the wire center list that Qwest provided, supporting line count and fiber-based collocation data should be included along with its filing. The required information should include information similar to what Qwest has provided in this case. Line count data should be consistent with the Commission's order in this case. Detailed data, including any calculations Qwest made to underlying line count data should be provided. In addition, CLEC-specific data should be provided in a masked format so that CLECs have the opportunity to verify the correct use of their line count data. For fiber-based

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	collocations Qwest should provide the names of the fiber-based collocators; any correspondence with those collocators that attempts to verify the fiber-based collocation status, including identification of any disputes; the results of any field verification that Qwest performed, and other relevant information upon which Qwest relied to make its determination.
	Should Qwest be required to provide parties additional advance notice when access line or fiber collocation counts indicate that a particular wire center is nearing a non-impairment threshold?
Qwest's Position	No. This is not a requirement of the FCC's <i>TRRO</i> and would be administratively burdensome for Qwest. This would also be an unprecedented requirement that no state commission has required. The advance notice would not be meaningful in any event, and could facilitate CLECs' ability to take "creative advantage" of the situation by possibly changing business plans and network architectures to make it less likely that a wire center reaches a given threshold. For example, a given CLEC could "game" the system by choosing to utilize alternative network architectures in the near term, such as CLEC-to-CLEC connections, rather than to establish a fiber-based collocation, all for the purposes of denying Qwest the ability to include the wire center on the non-impairment wire center list and/or hoping to potentially avoid an increase to the CLEC's transport or loop costs.
Joint CLECs' Position	Yes. To facilitate efficient business planning, Qwest should provide a list of wire centers within 1 fiber-based collocation and/or 5,000 business lines of meeting a non-impairment threshold. Providing this information should not be a burden on Qwest as it counts lines on an annual basis and keeps track of fiber-based collocations in order to determine when it is able to update its "non-impaired" wire center list.
	When a wire center is classified as non-impaired by the Commission, what obligation if any does that place on CLECs to purchase alternative products to UNEs in a non-impaired wire center? What recourse would Qwest have if a CLEC tries to purchase UNEs in a non-impaired wire center?
Qwest's Position	When a wire center is classified as non-impaired, CLECs have the option of ordering replacement services (such as Special Access) from Qwest, constructing the alternative service infrastructure themselves or ordering replacement services from other non-Qwest providers. After the initial 30 day period from the date upon which parties are notified that a non-impairment threshold has been met, Qwest will reject CLEC order requests for UNE services classified as non-impaired in a particular wire center.

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<p>Joint CLECs' Position</p>	<p>CLECs shall not place UNE orders in Commission approved non-impaired wire centers. If a CLEC mistakenly places such an order, Qwest should notify the CLEC and the CLEC should move to an alternative service arrangement. The CLEC would be obligated to pay non-UNE rates for the circuit it incorrectly ordered as a UNE. Qwest may choose to work with CLECs to implement a method to reject orders in Commission approved “non-impaired” wire centers. Qwest should not be able to unilaterally reject orders without the CLECs agreement.</p>
	<p>When Qwest provides notice that it wishes to add a wire center to the “non-impaired” list, at what point should the addition become effective.</p>
<p>Qwest's Position</p>	<p>Qwest would file the update to the wire center list with this Commission and provide notice to all CLECs via the Change Management Process (“CMP”) notification process that an additional wire center is non-impaired. 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 the operation of law.</p>
<p>Joint CLECs' Position</p>	<p>Additions to Qwest's wire center list should become effective when ordered by the Commission. Once Qwest provides its proposed wire center additions, along with supporting data, CLECs should review the data, ask any follow up information and file a response, within 30 days, to the Commission indicating whether or not it agrees with Qwest's wire center additions. Based on Qwest's initial filing and CLEC's response the Commission will either approve, reject or require additional investigation of Qwest's wire center additions. The Commission will determine the appropriate effective of the new wire center additions based upon the filings by the parties.</p>

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Non-recurring conversion charges	
	Should Qwest be allowed to assess a nonrecurring charge for converting UNE services to alternative services (such as Special Access) in non-impaired wire centers?
Qwest's Position	Yes. The appropriate tariffed nonrecurring charge should apply to such conversions
Joint CLECs' Position	No. The conversion away from UNEs is at the discretion and to the benefit of Qwest.
	If the Commission determines that a nonrecurring charge is appropriate, does this Commission have jurisdiction over such a charge and if so, what should that charge be?
Qwest's Position	If a non-recurring charge for UNE/Special Access conversions already exists, that charge, by definition, has been found to be appropriate by the governing regulator (PSC or FCC). As stated above, this charge should be applied to such conversions. If the charge is contained in FCC tariffs, the FCC, not the PSC, would have jurisdiction over the charge.
Joint CLECs' Position	Yes, this Commission has jurisdiction over the transition away from UNEs. If the Commission determines that a charge is appropriate, it should use TELRIC rates for the similar function of transitioning from Private Line to UNEs.

CERTIFICATE OF SERVICE

UM 1251

I hereby certify that on the 30th day of June 2006, I served the foregoing PARTIES' JOINT ISSUES MATRIX and POSSIBLE WAIVER OF HEARING DATE 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.

*Covad Communications Co.
Gregory Diamond
7901 E. Lowry Blvd.
Denver, CO 80230

*Sarah Wallace
Davis Wright Tremaine
1300 SW Fifth Avenue
Suite 2300
Portland,, OR 97201

*Karen L. Clauson
Eschelon Telecom, Inc.
730 2nd Avenue S
Suite 900
Minneapolis, MN 55402-2489

Jay Nusbaum
Integra Telecom of Oregon, Inc.
1201 NE Lloyd Blvd.
Suite 500
Portland, OR 97232

William A. Haas
McLeod USA
Telecommunications Svcs, Inc.
P.O. Box 3177
6400 C. Street, SW
Cedar Rapids, IA 52406-3177

John M. Devaney
Perkins Coie, LLP
607 Fourteenth St., NW
Suite 800
Washington DC 20005-2011

*Rex Knowles
XO Communications Svcs., Inc
111 E. Broadway
Suite 1000
Salt Lake City, UT 84111

*Douglas Denney
Eschelon Telecom, Inc.
730 2nd Avenue S
Suite 900
Minneapolis, MN 55402-2489

Charles Best
Electric Lightwave, LLC.
P.O. Box 8905
Vancouver, WA 9868-8905

DATED this 30th day of June, 2006.

QWEST CORPORATION



By: _____
ALEX M. DUARTE, OSB No. 02045
421 SW Oak Street, Suite 810
Portland, OR 97204
Telephone: 503-242-5623
Facsimile: 503-242-8589
e-mail: alex.duarte@qwest.com
Attorney for Qwest Corporation