

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1251

In the Matter of )  
)  
COVAD COMMUNICATIONS )  
COMPANY; ESCHELON TELECOM OF )  
OREGON, INC.; INTEGRA TELECOM )  
OF OREGON, INC.; MCLEODUSA )  
TELECOMMUNICATIONS SERVICES, )  
INC.; and XO COMMUNICATIONS )  
SERVICES, INC. )  
)  
Request for Commission Approval of Non- )  
Impairment Wire Center List. )

RULING

DISPOSITION: MOTION TO COMPEL DATA REQUESTS  
GRANTED

**Procedural Background.** On June 9, 2006, Joint CLECs filed a Motion to Compel Qwest to Respond to Data Requests (Motion). Joint CLECs assert that the data sought “is reasonably calculated to lead to the discovery of admissible evidence.”<sup>1</sup> The data in question is the subject matter of data request Nos. 33 and 34 of 49, seeking wire center data from Qwest’s December 2004 ARMIS Report submitted to the FCC in April 2005.

According to the Joint CLECs, on April 28, 2006, Joint CLECs propounded 49 data requests to Qwest, including Request Nos. 33 and 34. Request 33 sought information previously provided by Qwest in Highly Confidential Attachment C and Confidential Attachment D, except updated through March, 2005, or if that data was not available, updated through December 31, 2004. Highly Confidential Attachment C provided UNE-L/EEL loop counts for each CLEC and Confidential Attachment D provides UNE-P loops by wire center. Request 34 sought information previously provided by Qwest in Confidential Attachments B, C and D, except updated through March, 2005, or if that data was not available, updated through December 31, 2004. Confidential Attachment B contained all business line counts in non-impaired wire

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<sup>1</sup> Motion, p. 1.

centers; Attachment C provided UNE-L loop counts for each CLEC and Attachment D provided the number of DS1 and DS3 circuits.<sup>2</sup>

Qwest declined to provide the data, citing ¶105 of the FCC's *Triennial Review Remand Order (TRRO)* for the principle of using only data from the December 2003 ARMIS Report. Qwest also objected to Request 34 as "vague, ambiguous and unclear."<sup>3</sup>

On June 26, 2006, Qwest Corporation filed its Response to the Joint CLEC's Motion to Compel Qwest to Respond to Data Requests (Response). Qwest asserts that the requests seek data that is not relevant to the case because the data that the FCC intended to be utilized in this proceeding is the December 2003 ARMIS 43-08 data "that Qwest submitted in February 2005 in support of its initial wire center list and is consistent with the data upon which the FCC relied in making its wire center non-impairment criteria determinations in its *TRRO* order."<sup>4</sup>

**Discussion.** The FCC adopted fiber-based collocation and business line counts as the triggers for determining whether impairment exists in a particular wire center. In ¶105 of the *TRRO*, the FCC defines business lines as ILEC "ARMIS 43-08 business lines, plus business UNE-P, plus UNE-loops."

As part of the overall findings of fact and conclusions of law in this docket, the Commission must decide in the absence of an unambiguously categorical FCC statement, what may reasonably be interpreted as the FCC's intentions with respect to which ARMIS data is to be utilized in state proceedings such as these; *i.e.*, should the Commission base its decision on the December 2003 ARMIS data or the most current ARMIS data available at the time the state proceeding occurs, consistent with public interest in the promotion of full and fair competition for telecommunications services in Oregon?

That decision does not need to be made at this time; rather the decision before the Commission is merely whether the later data should be available in the event that the Commission ultimately decides that it should be used and if, therefore, the data requested is "reasonably calculated to lead to the discovery of admissible evidence."

**Positions of the Parties.** The *TRRO* became effective March 11, 2005. The Joint CLECs contend that determinations made pursuant to that order should therefore be based on data that is contemporaneous with that date.<sup>5</sup> In support of its contention that the data it requests is relevant, Joint CLECs cite an order of the Administrative Law Judge (ALJ) at the Utah Commission granting their Motion to Compel Qwest to provide substantially similar data. The ALJ granted the motion on

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<sup>2</sup> *Id.*, p. 2.

<sup>3</sup> *Id.*, p 3.

<sup>4</sup> Response, p. 1.

<sup>5</sup> Motion, p. 3.

the grounds that “the requested data *may* be relevant...”<sup>6</sup> (Emphasis added.) Joint CLECs also cite a Michigan PSC case in which the ILEC, SBC, was found to be non-compliant with the 47 C.F.R. 51.319(a)(4) standards test because the data was not recent enough.

The age of the data must be close enough in time to reflect conditions at the time that SBC claims that the wire center is no longer impaired. In this case, the Commission finds that SBC should have used the 2004 ARMIS data, which was available, even if not fully edited and incorporated in a report to the FCC. The analysis requires using data gathered for ARMIS calculations, not the calculations themselves.<sup>7</sup>

Qwest argues that the use of December 2003 data is consistent with the FCC’s language and contends that the reference to ARMIS 43-08 data in ¶105 meant the data on file at the effective date of the order and that “Qwest’s February 2005 filing at the FCC used *December 2003* data. If the FCC had wanted the wire center lists to be based on subsequent data, it most certainly would have requested such data. However, the FCC did not request any subsequent data. Rather, it requested the wire center lists based on the most current data available *at that time* whose lists were filed in February 2005.”<sup>8</sup> (Emphasis in text.) In support of its position, Qwest cites the ruling of the Washington Commission which found that the December 2003 data was the most recent data on file with the FCC at the time it entered the *TRRO*, as well as recent similar rulings by the Texas and Ohio commissions and non-impairment proceedings in California, Illinois and Indiana that produced lists based upon December 2003 business line data.<sup>9</sup>

**Disposition.** The Motion to Compel will be granted. I find that the data sought is reasonably calculated to lead to the discovery of admissible evidence. While the Commission has yet to determine which data shall be used as the basis for its findings and conclusions, by making the information available, the Commission will be better able to evaluate its impact and relevance to the proceedings.

Dated at Salem, Oregon, this 26th day of July 2006.

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Allan J. Arlow  
Administrative Law Judge

UM1251DataRequestsRuling

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<sup>6</sup> *Id.*, Exhibit C, *In the Matter of the Investigation into Qwest Wire Center Data*, Public Service Commission of Utah, Docket No. 06-049-40, issued May 19, 2006, p. 3.

<sup>7</sup> Case No. U-14447, p. 5, Order issued September 20, 2005, full citation omitted.

<sup>8</sup> Response, p. 3.

<sup>9</sup> *Id.*, pp. 6-7, and cases cited therein.