

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1251

In the Matter of)
)
COVAD COMMUNICATIONS COM-)
PANY; 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.)

ORDER

**DISPOSITION: APPLICATION FOR RECONSIDERATION
AND CLARIFICATION GRANTED**

Introduction. This case involves matters relating to future availability of certain Unbundled Network Elements (UNEs) in the provision of telecommunications services to the public and the interplay of federal and state regulation of telecommunications. For a number of years subsequent to the passage of the federal Telecommunications Act of 1996 (the Act), Incumbent Local Exchange Carriers (ILECs) were required to provide Competitive Local Exchange Carriers (CLECs) with access to certain of the ILECs’ telecommunications facilities and services on an unbundled basis. The Act deemed this necessary because alternative facilities from other providers were not sufficiently available within the service areas of wire centers where the CLECs operated to permit adequate competition to flourish. CLECs were permitted to use UNEs in various combinations, either in conjunction with their own facilities or on a resale basis, to offer telecommunications services to the public.

Section 251(d)(2) of the Act obligates ILECs to provide access to UNEs if CLECs will otherwise be impaired in the provision of competing telecommunications services. From a wire center perspective, the following question was raised: “What constitutes a sufficient number of alternative telecommunications facilities providers within a wire center serving area so that CLECs are not impaired in their ability to compete without access to unbundled ILEC facilities and thus, the provision of those facilities on an unbundled basis will no longer be mandated?”

On February 4, 2005, the Federal Communications Commission (FCC) released its Triennial Review Remand Order (*TRRO*),¹ which answered that question, at least in part. The *TRRO* established a default date of March 11, 2006, terminating ILECs' obligations to offer unbundled high-capacity (DS1/DS3/dark fiber) loops and unbundled high-capacity (DS1/DS3/dark fiber) interoffice transport in those wire centers certified by the ILECs to satisfy the *TRRO* impairment analysis criteria. The criteria were the number of business lines and the number of fiber-based collocators in each wire center.²

The *TRRO* requires ILECs to designate their wire centers as impaired or unimpaired. CLECs are then afforded the opportunity to challenge those designations. In challenging a wire center designation, a CLEC was required to "undertake a reasonably diligent inquiry into whether the wire center[s] in question meet[s] the criteria and then self-certify to the ILEC that the CLEC was entitled to access to the aforementioned UNEs." Upon making that showing, the *TRRO* requires that the ILEC must "immediately process" the UNE order. If the ILEC contests the CLEC's access to the UNE, it may subsequently bring a dispute before a state commission or other authority. If the ILEC prevails, the CLEC may be back-billed for the time period when it should have paid a higher non-UNE rate.³

This proceeding arose out of Qwest's petition submitting its list of non-impaired wire centers in Oregon, and the subsequent challenge to those wire center designations by Covad Communications Company; Eschelon Telecom of Oregon, Inc.; Integra Telecom of Oregon, Inc.; McLEODUSA Telecommunications Services, Inc.; and XO Communications Services, Inc. (Joint CLECs). The Joint CLECs also object to the procedures Qwest proposes to follow under the *TRRO*.

On March 20, 2007, the Commission issued Order No. 07-109 granting in part and denying in part Qwest's petition. At page 13, the Commission ruled, that with respect to each new wire center Qwest wished to add to the non-impaired list, Qwest was to provide "detailed wire center-specific information...equivalent in scope and particularity to that which was provided in this proceeding pursuant to CLEC data requests." The Commission also instructed Qwest and the CLECs to jointly submit "a revised list of wire centers, including their classification and the bases therefor, supported by appropriate data, consistent with the findings and conclusions of the Order," "a document setting forth the procedures for the evaluation and implementation of future wire center classifications consistent with the findings and conclusions of the Order" and "a cost study...to establish a nonrecurring charge for the conversion of Unbundled Network Elements to tariffed special access services."⁴

¹ *In re Unbundled Access to Network Elements*, WC Docket No. 04-313, CC Docket No. 01-338, FCC No. 04-290, Order on Remand.

² *Id.*, ¶¶ 146, 155, 166, 174, 178, 182 and 195.

³ *Id.*, ¶ 234.

⁴ Order, p. 20, Ordering Clauses 2-4.

On April 18, 2007, Qwest and the Joint CLECs filed a motion for extension of time. In that motion, the parties noted that the ordering clause in Order No. 07-109 relates both to Issue 4 (and its four sub-issues), as well as Issue 5, which directs the parties to develop order processing procedures consistent with the terms of the Order.

On April 19, 2007, Qwest filed a revised list of wire centers, including their classification and supporting data. Qwest also submitted a cost study designed to calculate non-recurring charges associated with the conversion of UNEs to tariffed special access services. On the same day, the Commission granted the joint motion for extension of time.

On May 21, 2007, Qwest filed an Application for Reconsideration and/or Clarification.⁵ Qwest asked the Commission to clarify whether Qwest needed to file information at the level of specificity in the Commission's Bench Requests, or the level required by the CLECs' original data requests. Qwest also asked the Commission to clarify that portion of Order No. 07-109 regarding the evaluation and implementation of procedures at non-impaired wire centers. Pending reconsideration, Qwest stated that it would not reject or block CLEC UNE orders at non-impaired wire centers.

On June 22, 2007, before the Commission ruled on the Qwest Application, Qwest and the Joint CLECs filed a Joint Motion for Approval of Settlement Agreement and Narrative Supporting Agreement. On June 27, 2007, the parties filed a Notice of Joint Filing and Amended Request for Order Approving Settlement Agreement (Settlement Motion), which replaced entirely the June 22, 2007, submission.

Qwest and the Joint CLECs represent that they have reached resolution of the disputed issues in this case and seek Commission approval of the settlement, which is part of a multi-state resolution of their disputes on the open issues. Each of the issues for which Qwest has sought reconsideration and/or clarification has been resolved among the parties in their settlement agreement.

Pursuant to OAR 860-014-0095(3)(d), the Commission finds that Qwest's application, and the Settlement Motion subsequently filed by the parties, constitute good cause for further examination of matters essential to our decision.

ORDER

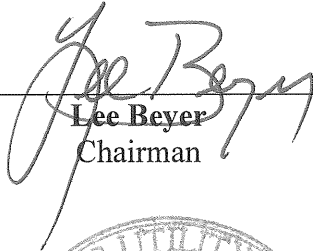
IT IS ORDERED that:

1. The Application for Reconsideration and/or Clarification filed by Qwest Corporation is GRANTED. This docket shall also remain open to consider the Notice of Joint Filing and Amended Request for Order Approving Settlement Agreement.

⁵ Qwest styled its Application as a Motion. However, see OAR 860-014-0095.

2. Ordering Clause 2 of Order No. 07-109 requiring Qwest Corporation to submit a revised list of wire centers, indicating their classification and the bases therefor, supported by appropriate data, is RESCINDED.
3. Ordering Clause 3 of Order No. 07-109 requiring Qwest Corporation to submit a document setting forth the procedures for the evaluation and implementation of future wire center classifications is RESCINDED.

Made, entered and effective JUL 23 2007.



Lee Beyer
Chairman



Ray Baum
Commissioner





John Savage
Commissioner

A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.