

FILED WITH
Executive Secretary

JUN 20 2008

IOWA UTILITIES BOARD

DATE: June 20, 2008

SUBJECT MATTER: Petition for Commission
Approval of Non-Impaired
Wire Center Lists Pursuant to
the Triennial Review Remand
Order, and Motion for
Expedited Issuance of
Protective Order

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INITIAL FILING: ~~No~~ YES

DOCKET NO.: INU-08-2

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

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Executive Secretary

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IOWA UTILITIES BOARD

IN RE:

QWEST CORPORATION'S PETITION FOR
COMMISSION APPROVAL OF NON-
IMPAIRED WIRE CENTER LISTS
PURSUANT TO THE TRIENNIAL REVIEW
REMAND ORDER, AND MOTION FOR
EXPEDITED ISSUANCE OF PROTECTIVE
ORDER

Docket No. _____

INTRODUCTION AND SUMMARY

Qwest Corporation ("Qwest") hereby petitions the Iowa Utilities Board ("Board") to open an investigation to develop a Board-approved initial list of non-impaired wire centers, pursuant to the FCC's *Triennial Review Remand Order* ("TRRO"),¹ to allow party review and discussion of that data, and to implement a process of updating and approving the lists. Qwest submits that the primary purpose of this docket is to review the number of business lines and fiber-based collocators in certain Iowa wire centers that meet the non-impairment criteria outlined by the FCC in its *TRRO*. In addition, Qwest requests that the Board issue on an expedited basis a protective order based on the model protective order attached hereto as Attachment B.

¹ Order on Remand, *In the Matter of Review of Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, WC Docket No. 04-313 (FCC rel. February 4, 2005) (hereafter "TRRO").

Specifically, as described below, Qwest submits that findings from the Board on these narrow issues will facilitate Qwest and CLEC's ability to implement the FCC's regulatory framework for unbundled dedicated transport and high-capacity loops set forth in the *TRRO* in Iowa. In addition, Qwest requests that the Board issue findings and make determinations on other issues that relate directly to and will be affected by the findings on business line count and fiber-based collocator data. Qwest's request that the Board take action on the issues described in this petition is supported by the FCC's endorsement in the *TRRO* of an ongoing role for state commissions in these matters that relate to the change of law provisions in interconnection agreements between Qwest and CLECs and to Sections 251 and 252 of the Telecommunications Act of 1996 ("the Act"). *See e.g., TRRO*, ¶¶ 233, 234.

Qwest respectfully requests that an initial prehearing conference be held as soon as feasible, and that the Board establish an expedited process and schedule for addressing these issues. In the discussion that follows, Qwest explains the need for expedited resolution of these issues and describes the type of binding, adjudicatory proceeding the Board should conduct to ensure that the regulatory framework established by the *TRRO* is implemented expeditiously and with clarity.

BACKGROUND

I. The FCC's Impairment Criteria for Dedicated Interoffice Transport and High-Capacity Loops

The necessity for this proceeding arises from the structural framework the FCC established in the *TRRO* for determining whether high-capacity dedicated transport and high-capacity loops meet the "impairment" requirement for unbundled network elements ("UNEs") set forth in Section 251(d)(2) of the Act. The primary significance of these impairment determinations is that they dictate whether high-capacity transport and loops qualify as

Section 251(c)(3) UNEs that Qwest must provide to CLECs at rates based on the FCC's TELRIC ("total element long-run incremental cost") pricing methodology or whether they are no longer within Section 251(c)(3) and are governed by the non-TELRIC pricing standard in Sections 201 and 202 of the Communications Act of 1934.²

Under the *TRRO* framework, CLECs are deemed not to be impaired without access to DS1 transport on routes connecting a pair of wire centers where both wire centers contain at least four fiber-based collocators or at least 38,000 business access lines. *TRRO*, ¶ 126.³ For DS3 transport and dark fiber transport, there is no impairment on routes connecting a pair of wire centers where both wire centers contain at least three fiber-based collocators or at least 24,000 business lines. *TRRO*, ¶¶ 118, 129, 133.⁴

The impairment criteria for high-capacity loops also are based on a capacity-specific approach that distinguishes between DS1 and DS3 capacity. For DS1 loops, CLECs are not impaired in any building within the service area of a wire center containing 60,000 or more business lines and four or more fiber-based collocators. *TRRO*, ¶ 178. CLECs are not impaired

² Under this standard, rates must not be unjust, unreasonable, or unreasonably discriminatory. Responsibility for administering the Section 201-02 pricing standard rests with the FCC. *See, e.g.*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *In the Matter of 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 Dkt. Nos. 01-338, 96-98, 98-147, FCC 03-36 at 664 (FCC rel. Aug. 21, 2003) ("*Triennial Review Order*" or "*TRO*"), *vacated in part, remanded in part, U.S. Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA IP*").

³ The wire centers meeting these criteria are referred to as "Tier 1 wire centers." They are the wire centers "with the highest likelihood for actual and potential competitive deployment, including wholesale opportunities." *TRRO*, ¶ 111.

⁴ The FCC defines wire centers with three or more fiber-based collocators or 24,000 or more business lines as "Tier 2 wire centers." *TRRO*, ¶ 118. According to the FCC, the presence of three or more fiber-based collocators "establishes that multiple carriers have overcome the costs of deployment in a wire center, signifying that substantial revenues exist in the wire center to justify deployment." *Id.*

without access to DS3 loops in any building within the service area of a wire center containing 38,000 or more business lines and four or more fiber-based collocators. *TRRO*, ¶ 174.

II. Qwest's Initial Identification of Non-Impaired Wire Centers

To implement the FCC's impairment framework, Qwest undertook a detailed, multi-step process designed to generate accurate wire center data and to permit CLECs to verify these data. On February 18, 2005, Qwest responded to a request from the FCC's Wireline Competition Bureau with a submission designating the wire centers in Qwest's operating areas as Tier 1, Tier 2, or Tier 3 based on the criteria in the *TRRO*.⁵ This submission also identified the wire centers in Qwest's operating areas that meet the non-impairment thresholds for DS1 and DS3 loops.⁶

After providing this information to the FCC, Qwest attempted to develop a cooperative process with the CLECs and state commissions to ensure the accuracy of its wire center data. Under the protection of a nondisclosure agreement, Qwest provided CLECs and state commission staffs access to the confidential data underlying its February 18 submission. These data included, on a wire center-specific basis, numbers of switched business lines, UNE-P lines, UNE loops, and fiber collocators. Qwest also provided to each carrier upon whose data it relied in the February 18, 2005 submission a list of the wire centers where, according to Qwest's

⁵ A copy of this February 18, 2005 letter to the FCC is attached as Attachment C. Because the list of wire centers that was attached to the original letter is quite voluminous and is not necessary to this petition, Qwest is not including that list with Attachment C.

⁶ Qwest based the counts of switched business access lines on its most recent ARMIS Report 43-08 data, which were current as of December 2003. To develop an estimate of the business UNE-P lines in each wire center, Qwest relied on the percentage of white page listings for each wire center that are business, not residential. Qwest determined the number of collocation arrangements that meet the *TRRO*'s definition of "fiber-based collocator" based on billing data that were current as of February 2005 and physical inspections of wire centers.

records and investigation, the carrier has fiber-based collocation. These carriers were given the opportunity to review and, if appropriate, contest the accuracy of Qwest's data.

As a further step toward verification, Qwest conducted an additional internal review of the collocation and line count data used for its February 18, 2005 submission. Based on this additional review, which included another comprehensive evaluation of collocation arrangements in Qwest's wire centers, Qwest refined its list of wire centers. In another submission to the FCC on July 8, 2005 Qwest provided a revised list of wire centers.⁷ Qwest continued reviewing its wire center data after this submission, leading to a third submission on August 18, 2005 that made minor corrections to the wire center data.⁸

III. State Commission Proceedings in Other States

Thereafter, on February 15, 2006, a coalition of CLECs ("the Joint CLECs")⁹ submitted a letter to various state commissions in Qwest's 14-state ILEC region (not including Iowa) requesting proceedings for the purpose of establishing a list of non-impaired wire centers by determining the business line counts and numbers of collocators in wire centers in those states, explaining that these determinations were necessary to implement the FCC's rulings in the *TRRO* relating to unbundled dedicated transport and high-capacity loops. The

⁷ A copy of this July 8, 2005 letter to the FCC is attached hereto as Attachment D. Qwest is not including the list of wire centers that was provided with the original submission because that list also is voluminous and is not necessary to this petition.

⁸ This third submission to the FCC, on August 18, 2005, is attached as Attachment E.

⁹ The Joint CLECs were Covad Communications Company, Eschelon Telecom, Inc., McLeodUSA Telecommunications Services, Inc., Integra Telecom and XO Communications Services, Inc. Integra and Eschelon have since merged into one company, called Integra.

commissions docketed these requests.¹⁰ These commissions opened dockets to investigate these issues, which included evidentiary hearings, post-hearing briefs and commission orders regarding these issues.

IV. Settlement Agreements Approved by Certain Commissions

In 2007, Qwest and the Joint CLECs negotiated and executed a multi-state settlement agreement in the *TRRO* wire center dockets addressed all issues in those *TRRO* wire center dockets in Qwest's region.¹¹ Qwest filed the multi-state settlement agreement in all of those states, along with its petitions for approval of its 2007 additions to the non-impaired wire center list in those states, and all but one of these commissions later approved the agreement in 2007 and 2008. In Minnesota, the Public Utilities Commission approved the settlement agreement on October 5, 2007.¹² A copy of the parties' multi-state settlement agreement that certain state commissions approved is attached as Attachment A.

¹⁰ Some or all of the Joint CLECs were parties to similar Joint CLEC filings at the state utility regulatory commissions in Arizona (Docket Nos. T-03632A-06-0091, T-03406A-06-0091, 03267A-06-0091, T-03432A-06-0091, T-04302A-06-0091 and T-01051B-06-0091), Colorado (Docket No. 06M-080T), Minnesota (Docket Nos. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211 and P-999/CI-06-685), Oregon (docket UM 1251) and Utah (Docket 06-049-40). The Washington Utilities and Transportation Commission (WUTC) investigated Qwest's initial non-impairment list in an existing docket (number UT-053025) established to review the impacts of the *TRRO* on local competition.

¹¹ Some or all of the Joint CLECs were parties to similar Joint CLEC filings at the state utility regulatory commissions in Arizona (Docket Nos. T-03632A-06-0091, T-03406A-06-0091, 03267A-06-0091, T-03432A-06-0091, T-04302A-06-0091 and T-01051B-06-0091), Colorado (Docket No. 06M-080T), Minnesota (Docket Nos. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211), Oregon (docket UM 1251) and Utah (Docket No 06-049-40). The Washington Utilities and Transportation Commission (WUTC) investigated Qwest's initial non-impairment list in an existing docket (number UT-053025) established to review the impacts of the *TRRO* on local competition.

¹² *In the Matter of CLEC Request for Commission Approval of ILEC Wire Center Impairment Analysis*, Docket No. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211 and *In the Matter of a Commission Investigation Identifying Wire Centers in Which Qwest Corporation Must Offer High-Capacity Loop or Transport UNEs at Cost-Based Rates*, Docket No. P-999/CI-06-685.

As set forth in the multi-state settlement agreement that certain state commissions approved in the original *TRRO* wire center dockets, the parties to the settlement agreement agreed that Qwest may request the addition of non-impaired wire centers based in whole or in part upon line counts at any time up to July 1st of each year, based on prior year line count data, and using an agreed-upon methodology.¹³ The parties to the multi-state settlement agreement also agreed that at least five (5) business days prior to filing new non-impairment or tier designations for Commission review, Qwest will request a protective order from the Board to govern the handling of confidential information during this new non-impairment proceeding. The parties also agreed to seek from the Board approval of a standing protective order based on an agreed-upon model protective order. This is the process that various commissions have used in numerous *TRRO* non-impaired wire center list dockets (both the original *TRRO* non-impaired wire center list dockets filed in 2006 and the wire center list “update” dockets in 2007). Qwest and the Joint CLECs in the initial *TRRO* non-impaired wire center proceedings had negotiated and agreed to this protective order as a basis for any protective order issued by commissions in future proceedings in order to allow Qwest to file confidential wire center information regarding “business line” counts and the number of “fiber-based collocators” as defined in the FCC’s *TRRO*, and the various commissions then approved such settlement agreements. Although no party is bound by the multi-state settlement agreement in Iowa, Qwest is willing to recommend that the Board follow it and thus Qwest is attaching the model protective order as Attachment B to this petition.

¹³ With respect to fiber-based collocators, Qwest may request the addition of non-impaired wire centers to the Commission-approved wire center list at any time based on the number of fiber-based collocators.

V. Qwest's Request for Approval of Non-impaired Wire Center List in Iowa

As mentioned, Qwest did not file a petition for approval of its non-impaired wire center list before the Board in 2006, when it was involved in the wire center proceedings in the other states. However, Qwest is now filing its petition for such approval of the wire centers identified on page 9 of this petition.¹⁴ Consistent with this process and the requirements of the initial *TRRO* Order and the multi-state settlement agreement that numerous state commissions approved in 2007 and 2008, Qwest intends to file with the Board, on Friday, June 27, 2008, the data supporting its list of non-impaired wire centers in Iowa, along with a request for Board approval of the list.

Alternatively, if the Board chooses not to use a process consistent with that agreed to by the parties in the multi-state settlement agreement, Qwest requests that the Board fully investigate these wire center data issues, and any related issues that the Board may deem appropriate. Regardless of the approach the Board takes, and assuming that the Board has issued the requested protective order described above by June 27, 2008, Qwest will also provide the data supporting the updated list to all CLECs that have signed the protective order.

To facilitate this process and to be consistent with the requirement in the settlement agreement that Qwest seek Board approval of a protective order at least five (5) business

¹⁴ These wire centers have been on the non-impaired wire center list since 2005, and will continue to be on the list, based on Qwest's original 2003 ARMIS data supporting those non-impairment determinations.

days prior to filing changes to the list, Qwest also seeks the Board's expedited issuance of either a standing protective order or a new protective order based on the model protective order attached as Attachment B. Expedited issuance of the protective order will permit CLECs that sign the protective order to begin reviewing the confidential wire center data promptly after Qwest files the data on June 27th.

The wire centers that Qwest is seeking approval for its list of non-impaired wire centers in Iowa based on the confidential data that it will file on June 27, 2008 are as follows:

STATE	WIRE CENTER	CLLI	TIER	NON-IMPAIRMENT FOR
IA	Des Moines	DESMIADT	Tier 2	DS3 Transport & DF
	Davenport	DVNPIADT	Tier 2	DS3 Transport & DF
	Sioux City	SXCYIADT	Tier 2	DS3 Transport & DF
	Ashworth	DESMIAAW	Tier 2	DS3 Transport & DF

VI. Reasons for Opening an Investigation if the Board Does Not Choose to Use Processes Consistent with the Multi-State Settlement Agreement

In the event the Board determines not to use processes and procedures consistent with the multi-state settlement agreement reached between Qwest and the Joint CLECs in those numerous other states as the manner in which wire centers will be determined to be non-impaired, then Qwest respectfully requests that the Board open an investigation to fully explore these issues. If the Board does so, Qwest respectfully requests the Board address the following issues.

A. The Board Should Conduct an Expedited Adjudicatory Proceeding

If the Board opens a full investigation of these issues, Qwest respectfully submits the Board should conduct an expedited proceeding to review and establish wire center line counts and numbers of fiber collocators per wire center. In the discussion that follows, Qwest describes the framework the Board should adopt for the proceeding to ensure that all necessary issues are

resolved expeditiously and with the certainty required for Qwest and CLECs to implement the *TRRO* as the FCC intended.

1. *The proceeding must be binding on Qwest and all CLECs in the state.* Qwest believes that the proceeding should be binding on every registered local exchange carrier in the state, including those that receive notice of the proceeding but choose not to participate. Unless the Board resolves the wire center counts and related issues through binding rulings, implementation of the *TRRO* will be delayed and time-consuming, and costly disputes will be inevitable. Moreover, it would be a highly inefficient use of the Board's and the parties' resources to conduct a non-binding proceeding with rulings that any dissatisfied party could elect to ignore, or attempt to contest in a separate proceeding.

In addition, to maximize the efficiency of the proceeding and to eliminate future disputes, the Board should provide notice of the proceeding to all local exchange carriers registered in the state, not just the carriers with which Qwest has interconnection agreements. The notice should state expressly that the proceeding is binding on all registered local exchange carriers.

2. *The proceeding should be expedited.* To avoid any delays in implementing the *TRRO*, the Board should invoke any available procedures for expedited resolution of the issues described in this petition. As part of this expedited approach, the Board at its initial prehearing conference should schedule an adjudicatory hearing as soon as possible.

3. *The Board should conduct an adjudicatory proceeding.* Because the issues involving the number of business lines and fiber-based collocators are generally factual in nature, the Board should conduct an adjudicatory proceeding. Qwest proposes a proceeding under which it would present an opening round of testimony containing wire center data for line counts and fiber collocators, and the CLECs would present response testimony indicating if they

have a good faith basis for contesting Qwest's data. If the CLECs have such a good faith basis, they would offer data of their own or other evidence responding to Qwest's data. Qwest would submit reply testimony addressing any CLECs challenges to Qwest's data. Through this process, Qwest expects that the parties could significantly limit any disagreements concerning the wire center data. More important, an adjudicatory proceeding will result in a definitive determination by the Board concerning the business line counts and numbers of fiber collocators in wire centers and will thereby give Qwest and the CLECs alike the certainty they need going forward.

4. *The Board should adopt an appropriate protective order.* Because this proceeding will involve large amounts of confidential information, the Board should adopt an appropriate protective order. In particular, confidentiality protection is needed for the types of CLEC-specific data that Qwest must file and produce to CLECs. Qwest suggests that prior to or during the initial procedural conference, all interested parties should discuss and attempt to agree upon an appropriate protective order. Qwest and the Joint CLECs in the multi-state proceedings have already agreed to a certain form of a protective order as part of the settlement agreement in other states, and thus, if a full investigation is required before this Board, Qwest believes that the parties will be able to agree to a form of a protective order in relatively short order.

B. In Addition to Determinations Relating to Wire Center Data, the Board Should Resolve Other Issues That Will be Affected by Those Determinations

The Board's resolution of the wire center data issues is essentially a counting exercise, with the Board being asked to review data and determine the number of business lines and fiber-based collocators in wire centers. Qwest is not asking the Board to make any impairment determinations relating to high-capacity transport and loops, as the D.C. Circuit's decision in *USTA II* establishes that the FCC alone has authority to make those determinations. *See USTA II*, 359 F.3d at 568. However, application of the FCC's *TRRO* criteria to the line counts and

collocator counts the Board adopts will permit Qwest and the CLECs to make their own wire center-specific impairment determinations, consistent with the FCC's expectation that the *TRRO* would be largely self-effectuating. *See, e.g., TRRO*, ¶¶ 233, 234. In addition to changing the rates that will govern CLEC purchases of high-capacity transport and loops, a determination that there is no impairment in a particular wire center where a CLEC is purchasing one of these network elements will trigger at least two other issues relating to the conversion of the element from a Section 251 UNE to a non-251 element. The Board should address these issues as part of this proceeding.

First, the Board should confirm Qwest's right to assess a nonrecurring charge (NRC) at applicable tariffed rates for converting impacted high-capacity loop and transport facilities in non-impaired wire centers to alternative products. Qwest incurs costs in converting UNE transport or high-capacity loops to alternative facilities or arrangements, and, accordingly, it should be permitted to assess an appropriate tariffed charge. Multiple CLECs have implicitly recognized Qwest's right to assess this charge, as evidenced by their decisions to enter into amendments to their interconnection agreements containing the charge. Qwest also notes that Qwest and the Joint CLECs agreed to an NRC for conversion activity in their settlement agreement in other states.

Second, the Board should address the process for future updates of Qwest's list of non-impaired wire centers. This process should be streamlined and efficient. Again, the settlement agreement between Qwest and the Joint CLECs in other states has a description of a process that Qwest believes is streamlined and efficient, and which is consistent with the FCC's directive that carriers implement that framework expeditiously and in a self-executing manner.

Thus, the Board should require Qwest to provide notice to the CLECs of additions to the list of non-impaired wire centers and, if the CLECs seek additional information, should direct Qwest to provide the CLECs with the methodology by which Qwest determined that a wire center meets the *TRRO*'s non-impairment criteria relating to numbers of business lines and fiber collocators. The CLECs should thereafter be given 90 days to transition DS1 and DS3 UNEs (180 days for impacted Dark Fiber facilities) to an alternative service.

At the prehearing conference, the Board should direct the parties to propose a streamlined process in their testimony – similar to that described here -- that will govern changes to the list of non-impaired wire centers.

MOTION FOR EXPEDITED ISSUANCE OF A PROTECTIVE ORDER

Finally, Qwest moves for the expedited issuance of a protective order. The reason that a protective order is needed in this new proceeding is that the information that Qwest will file on June 27, 2008 will include certain highly-confidential wire center data, including highly-confidential CLEC-specific data. Qwest and the Joint CLECs in the settlement agreement in the other states have agreed these data should be protected by a protective order that contains protections and limits disclosures of highly-confidential information. Specifically, Qwest seeks this protective order because Qwest will be filing CLEC-specific wire center data in this proceeding for the purposes of counting business line counts and fiber-based collocators in specific wire centers, and because the parties have agreed that a protective order is needed here.

Accordingly, Qwest submits with this petition (Attachment B) a model protective order that the parties in the multi-state proceedings have agreed to in their settlement agreement (based on a Minnesota protective order). Qwest respectfully requests that the Board issue either a

standing protective order, or a new protective order, based on the model protective order in Attachment B, or any protective order that it deems appropriate, as soon as possible.

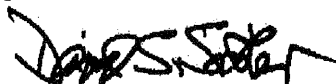
CONCLUSION

For the reasons stated, Qwest respectfully requests that the Board conduct an investigation to address the issues described herein on an expedited basis.

Dated: June 20, 2008

Respectfully submitted,

QWEST CORPORATION



By: _____

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ITS ATTORNEYS

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on the following persons and parties as required by the rules of the Iowa Utilities Board.

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Dated this 20th day of June 2008.

Jeanne Frantone