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Mary S. Hobson
Attorney & Counselor
999 Main, Suite 1103
Boise, ID 83702
208-385-8666

IDAHO PUBLIC
UTILITIES COMMISSION

April 17, 2009

VIA HAND DELIVERY

Jean D. Jewell, Secretary
Idaho Public Utilities Commission
472 West Washington
Boise, ID 83702-5983

RE: Docket No. QWE-T-08-07

Dear Ms. Jewell:

Enclosed for filing with this Commission are nine (9) copies of the Direct Testimony and non-confidential exhibits of Qwest witnesses Renee Albersheim, Rachel Torrence, and Victoria Hunnicutt. Qwest's Confidential Exhibits 5, 8, 9 and 10 are being filed separately and under an Attorney's Certificate.

If you have any questions, please contact me. Thank you for your cooperation in this matter.

Very truly yours,



Mary S. Hobson

Enclosures
cc parties of record

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing **DIRECT TESTIMONY OF QWEST WITNESSES RENEE ALBERSHEIM, RACHEL TORRENCE, and VICTORIA HUNNICUTT** (together with exhibits as noted) was served on the 17th day of April, 2009 on the following individuals:

Jean D. Jewell
Idaho Public Utilities Commission
472 West Washington Street
P.O. Box 83720
Boise, ID 83702
Telephone (208) 334-0300
Facsimile: (208) 334-3762
jjewell@puc.state.id.us

- Hand Delivery (confidential exhibits filed separately)
- U. S. Mail
- Overnight Delivery
- Facsimile
- Email

Weldon Stutzman
Deputy Attorney General
Idaho Public Utilities Commission
472 W. Washington
PO Box 83720
Boise, ID 83720-0074
Email: Weldon.Stutzman@puc.idaho.gov

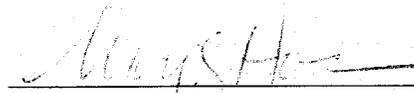
- Hand Delivery (all exhibits)
- U. S. Mail
- Overnight Delivery
- Facsimile
- Email

Douglas K. Denney
Director, Costs & Policy
Suite 900
730 Second Avenue South
Minneapolis, MN 55402
E-mail: dkdenney@integratelecom.com

- Hand Delivery
- U. S. Mail (all exhibits)
- Overnight Delivery
- Facsimile
- Email

Michael Singer Nelson
Associate General Counsel
Suite 160
867 Coal Creek Circle
Louisville, CO 80027
E-mail: mnelson@360.net

- Hand Delivery
- U. S. Mail (all exhibits)
- Overnight Delivery
- Facsimile
- Email



Mary S. Hobson
Attorney for Qwest Corporation

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IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF QWEST)
CORPORATION'S PETITION) CASE NO. QWE-T-08-07
FOR APPROVAL OF NON-IMPAIRED)
WIRE CENTER LISTS PURSUANT TO)
THE TRIENNIAL REVIEW REMAND)
ORDER)
_____)

DIRECT TESTIMONY OF RENÉE ALBERSHEIM
QWEST CORPORATION

APRIL 17, 2009

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ATTACHED EXHIBITS

- | | |
|------------------------|--|
| Exhibit Qwest-1 | Letter from FCC Requesting Initial List of Wire Centers |
| Exhibit Qwest-2 | Current List of Non-Impaired Wire Centers in Idaho |
| Exhibit Qwest-3 | Wire Center Tier Structure |
| Exhibit Qwest-4 | <i>TRRO</i> Settlement Agreement |
| Exhibit Qwest-5 | HIGHLY-CONFIDENTIAL Business Line Count Data |

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I. IDENTIFICATION OF WITNESS

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION WITH QWEST CORPORATION.

A. My name is Renée Albersheim. I am employed by Qwest Services Corporation, parent company of Qwest Corporation ("Qwest"), as a Staff Witnessing Representative. I am testifying on behalf of Qwest. My business address is 1801 California Street, 24th floor, Denver, Colorado, 80202.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND EMPLOYMENT EXPERIENCE.

A. I have been working in Qwest's Global Wholesale Markets organization since December 2003. Before December 2003, I had worked in Qwest's Information Technologies Wholesale Systems organization since joining Qwest in October 1999. As a Staff Witnessing Representative, I provide support for Qwest's responses to regulatory issues associated with the 1996 Telecommunications Act, FCC orders, state commission decisions, and other legal and regulatory matters.

Prior to becoming a Qwest employee, I worked for 15 years as a consultant on many systems development projects and in a variety of roles, including the following: programmer and systems developer, systems architect, project manager, information center manager and software training consultant. I worked on projects in a number of different industries, including: oil and gas; electric, water and telephone utilities;

1 insurance; fast food; computer hardware; and the military. I also designed and developed
2 a number of applications, including electronic interfaces. During that time, I worked on
3 several of Qwest's Operations Support Systems ("OSS") as a consultant on Human
4 Resources and Interactive Access Billing Systems ("IABS") projects.

5 In addition to working full-time at Qwest, I also earned a Juris Doctor degree
6 from the University of Denver College of Law and passed the Colorado Bar Examination
7 in October 2001. Prior to attending law school, I received a Master of Business
8 Administration in Management Information Systems from the University of Colorado
9 College of Business and Administration in 1985 and a Bachelor of Arts degree from the
10 University of Colorado in 1983.

11 **Q. HAVE YOU TESTIFIED BEFORE THE COMMISSION BEFORE?**

12 A. I filed written testimony with the Commission in a cost docket, Docket
13 No. QWE-T-01-11, but I have not appeared at a hearing in Idaho.

14 **Q. HAVE YOU TESTIFIED BEFORE OTHER STATE**
15 **REGULATORY COMMISSIONS?**

16 A. As a witness for Qwest's Global Wholesale Markets organization, I have
17 filed written testimony and appeared before the commissions in Arizona, Colorado, Iowa,
18 Minnesota, New Mexico, Oregon, Utah, Washington and Wyoming. In my job as a
19 witness on matters dealing with Qwest's interconnection agreements and operations

1 support systems, I have also submitted written testimony in North Dakota, South Dakota,
2 Montana, and Nebraska.

3
4 **II. PURPOSE OF DIRECT TESTIMONY**

5 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?**

6 A. The purpose of my testimony is to put this case into context by giving a
7 high-level summary and the appropriate background for the case, as well as to introduce
8 Qwest's other witnesses who will testify in more detail about the specific issues in the
9 case. For example, I will explain the impact of the Telecommunications Act of 1996 and
10 the origins of the FCC's Triennial Review Remand Order ("*TRRO*") that is at issue in this
11 proceeding. I will also explain the unbundling and the changes to unbundling mandated
12 by the *TRRO*, and will discuss the portion of the *TRRO* that is being addressed by the
13 Commission in this proceeding. I will also describe the Settlement Agreement that was
14 reached between Qwest and a joint group of Competitive Local Exchange Carriers
15 ("*CLECs*"), and that was approved by state public utilities commissions in five states,
16 and explain how it is relevant here. I will also describe the methodology established in
17 the Settlement Agreement that Qwest used to develop counts of business access lines in
18 Idaho wire centers. And finally, I will explain how this methodology can be used by this
19 Commission to establish procedures for future *TRRO* proceedings.

1 **III. A BRIEF HISTORY OF TRO/TRRO**

2 **Q. WHAT IS THE TELECOMMUNICATIONS ACT OF 1996?**

3 A. The Telecommunications Act of 1996 (“the Act”) was a significant change
4 in the law governing telecommunications in the United States.¹ The Act’s primary
5 purpose was to promote competition in local telephone service markets, thereby giving
6 consumers a choice of local service providers.

7 **Q. HOW DID THE ACT CREATE COMPETITION FOR LOCAL**
8 **TELEPHONE SERVICE?**

9 A. Among other things, the Act required Incumbent Local Exchange Carriers
10 (“ILECs”) such as Qwest² to unbundle, or break apart, the physical functional
11 components of their telephone networks, and lease these components, or piece parts,
12 known as Unbundled Network Elements (“UNEs”), to Competitive Local Exchange
13 Carriers (“CLECs”).

14 **Q. WHAT IS A WIRE CENTER?**

15 A. Very simply, a wire center is the physical structure (a building) where a
16 telephone company connects local phone lines to its telephone network. A wire center is
17 also sometimes known as a central office. The wire center usually contains one or more
18 telephone switches, which connect the various parts of the telephone network together

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§151 et seq.

² Qwest was known as US WEST at the time the Act was passed.

1 and route calls to their final destinations. In Idaho, most communities have a single wire
2 center. However, Boise, because of its relative size, has three wire centers serving the
3 community.

4 **Q. HOW ARE WIRE CENTERS RELEVANT TO THIS**
5 **PROCEEDING?**

6 A. As I will discuss in detail below, the FCC implemented the *TRRO* based
7 on its analysis of the level of competition within wire centers (in other words, based on
8 the number of certain telephone lines and the number of competing telephone companies
9 operating within a wire center).

10 **Q. WHAT IS AN UNBUNDLED LOOP?**

11 A. An unbundled loop is a UNE (network element). In its most basic form, a
12 loop is a pair of wires that connect an end-user's (or customer's) telephone to a telephone
13 company switch, which then connects the end-user to the rest of the company's telephone
14 network in order to route calls to their final destinations. If a CLEC (Qwest competitor)
15 leases an unbundled loop from an ILEC (such as Qwest), the CLEC can connect the end-
16 user to its own switch.

17 **Q. ARE THERE DIFFERENT KINDS OF UNBUNDLED LOOPS?**

18 A. Yes. There are different "sizes" or capacities of unbundled loops. The loop that I
19 described above, for a single end-user, is known as a DS0, or a "voice-grade" loop. In
20 simplest terms, this is one telephone line. These lines can be grouped together into larger

1 capacities. The next larger capacity is known as a DS1. A DS1 is equivalent to 24 DS0s,
2 or 24 lines. The next larger capacity is known as a DS3. A DS3 is equivalent to 672
3 DS0s (i.e., 672 telephone lines, or 28 DS1s (28 X 24 = 672)). DS1 and DS3 unbundled
4 loops are also known as “high-capacity” loops.³

5 **Q. HOW ARE UNBUNDLED LOOPS RELEVANT TO THIS CASE?**

6 A. As I will discuss in detail below, the *TRRO* determines whether or not
7 Qwest is still required to provide unbundled loops to CLECs in certain wire centers.

8 **Q. WHAT IS UNBUNDLED INTEROFFICE TRANSPORT?**

9 A. For purposes of the *TRRO*, unbundled interoffice transport is a physical
10 facility that a CLEC can lease from Qwest to create a transmission path from one Qwest
11 wire center to another Qwest wire center. Such a transmission path would be used by a
12 CLEC to carry its telecommunications traffic between two wire centers.

13 **Q. ARE THERE DIFFERENT KINDS OF UNBUNDLED**
14 **INTEROFFICE TRANSPORT?**

15 A. Yes. Just like unbundled loops, interoffice transport facilities come in
16 different sizes or capacities. The capacities relevant to this case are DS1 and DS3
17 interoffice transport facilities. These facilities are also known as high-capacity transport
18 facilities.

³ This description has been simplified. There are other technical specifications which determine whether a loop can carry voice traffic. Such technical detail is not necessary to this discussion.

1 **Q. HOW IS UNBUNDLED INTEROFFICE TRANSPORT RELEVANT**
2 **TO THIS CASE?**

3 A. As I will discuss in detail below, the *TRRO* determines whether or not
4 Qwest is required to provide unbundled transport between two or more wire centers to
5 CLECs.

6 **Q. WHAT IS UNBUNDLED DARK FIBER?**

7 A. Dark fiber is fiber optic cable through which no light is being transmitted,
8 and therefore no signal is being carried. Once dark fiber is connected to the proper
9 electronics to allow the transmission of light, the fiber is then known as lit fiber. ILECs
10 were formerly required by the Act to make unbundled dark fiber available to CLECs.
11 Dark fiber can be used for both loops and transport.

12 **Q. HOW IS UNBUNDLED DARK FIBER RELEVANT TO THIS**
13 **CASE?**

14 A. As I will discuss in detail below, the *TRRO* determines whether or not
15 ILECs are still required to provide dark fiber to CLECs.

16 **Q. HOW ARE UNBUNDLED NETWORK ELEMENTS (UNES)**
17 **PRICED?**

18 A. The Act requires ILECs to base the prices for UNES on an economic cost
19 concept known as Total Element Long Run Incremental Costs (“*TELRIC*”). Put simply,

1 the price of a UNE is based on a forward-looking cost to provide the UNE. These costs
2 are generally established in cost dockets presided over by state utilities commissions.

3 **Q. HOW IS PRICING IMPACTED BY THIS CASE?**

4 A. If a UNE is eliminated under the standards of the *TRRO*, Qwest is no
5 longer obligated to provide that UNE at a TELRIC rate, although Qwest may still offer an
6 equivalent service at a market-based price (in other words, not at the forward-looking
7 TELRIC cost). Under these circumstances, the CLEC then has the option of purchasing
8 the commercial equivalent for the UNE from Qwest, purchasing the service or facility
9 from another provider, or self-provisioning the service or facility itself.

10 **Q. DID THE ACT INCLUDE PROVISIONS TO REVIEW THE STATE**
11 **OF COMPETITION?**

12 A. Yes. The Act requires the FCC to review the state of competition every
13 three years.⁴ This is known as a triennial review.

14 **Q. PLEASE BRIEFLY DESCRIBE THE GENESIS OF THE FCC'S**
15 **FIRST TRIENNIAL REVIEW.**

16 A. In 2001, the FCC initiated a proceeding to review its policies on
17 unbundling under the Act.⁵ The FCC sought "comment on how best to update its rules

⁴ 47 U.S.C. § 257(c).

⁵ *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*").

1 and make them more ‘granular’ to reflect competitive conditions in different markets.”⁶
2 The FCC’s intent was to ensure that its unbundling rules were faithful to the requirements
3 of the Act, but at the same time reflected changes in the marketplace for
4 telecommunications services and advances in technology, and remove unbundling
5 obligations in response to these changes.⁷

6 **Q. WHAT WAS THE RESULT OF THE FIRST TRIENNIAL**
7 **REVIEW?**

8 A. Upon completion of the Triennial Review, the FCC published its *Triennial*
9 *Review Order* (“TRO”) in October 2003.⁸ This order created a revised list of unbundled
10 network elements or “UNEs” (a revised list of network elements that ILECs like Qwest
11 were required to continue to offer to CLECs at TELRIC (forward-looking) costs). The
12 *TRRO* also removed unbundling requirements for broadband services in order to
13 encourage investment in broadband facilities, and established a significant role for state
14 utilities commissions to determine “impairment.”⁹

⁶ http://www.fcc.gov/wcb/cpd/triennial_review/.

⁷ *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).*

⁸ *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”).*

⁹ “Impairment” is a term used by the FCC to describe the state of competition in a given market. If the FCC describes a market as “impaired,” that means the FCC sees impediments to competition in that market such that ILECs are required to continue to offer UNEs at TELRIC prices to CLECs in order to

1 **Q. DID THESE NEW RULES COMPLETE THE TRIENNIAL**
2 **REVIEW PROCESS?**

3 A. No. A number of impacted parties appealed the *TRO* to the D.C. Circuit
4 Court of Appeals. The court upheld a number of the rules that the FCC had established in
5 the *TRO*, but most relevant to this proceeding, the court vacated and remanded the FCC's
6 findings of nationwide impairment for "mass market switching" and dedicated
7 transport.¹⁰ The court also vacated the FCC's delegation of authority to state
8 commissions to conduct granular impairment analysis as established in the *TRO*. *United*
9 *States Telecom Ass'n v. FCC*, 359 F.3d 554 (2004) ("*USTA II*"). The court determined
10 that the FCC did not properly relate the possibility of competitive deployment of facilities
11 in one market to the actual deployment of facilities in similar geographic markets. *Id.* at
12 575.

13 **Q. HOW DID THE FCC RESPOND TO THE *USTA II* DECISION?**

14 A. In August 2004, the FCC issued an Interim Order and Notice of Proposed
15 Rulemaking ("*NPRM*") eliminating a number of sections of the *TRO*, and sought

continue to foster competition. Conversely, if the FCC describes a market as being "non-impaired," the FCC considers that market to be open to competition such that ILECs like Qwest are not required to continue to offer UNEs at TELRIC prices to CLECs.

¹⁰ Access to ILEC switching (the use of an ILEC switch, so that a CLEC would not have to deploy its own switch) was originally a UNE, and as such was used by the FCC to measure impairment in the *TRO*. In the *TRRO*, the FCC determined that ILECs were no longer required to unbundle switching. So the availability of mass market switching is not at issue in this case.

1 comment on a response to *USTA II*. The FCC then published the *TRRO* on February 4,
2 2005.¹¹

3 **Q. WHAT RULES ESTABLISHED BY THE *TRRO* ARE RELEVANT**
4 **TO THIS PROCEEDING?**

5 A. Among other things, the *TRRO* clarifies the obligations of ILECs like
6 Qwest to provide unbundled access to dedicated interoffice transport and high-capacity
7 loops. The *TRRO* also clarifies the “impairment” standard. Impairment is now evaluated
8 as it relates to the capabilities of a “reasonably efficient competitor.” *TRRO*, at ¶ 24. If a
9 market is considered “impaired,” there is not sufficient competition in that market to
10 relieve an ILEC of its unbundling obligations. Using this standard, the *TRRO* determines
11 whether unbundling is required for dedicated interoffice transport on a route-by route
12 basis, depending on the number of “business lines”¹² and “fiber-based collocators”¹³ in

¹¹ *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*”).

The *TRRO* was affirmed by the D. C. Circuit Court of Appeals on June 16, 2006. See *Covad Commns. Co. v. FCC*, 2006 U.S. App. LEXIS 14826 (D.C. Cir. June 16, 2006). The decision is also available at <http://www.cadc.uscourts.gov/bin/opinions/allopinions.asp>.

¹² 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.”

¹³ 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.” Please see the Direct Testimony of Rachel Torrence for further details regarding fiber-based collocators.

1 particular wire centers. For DS1 and DS3 loops, the FCC uses a methodology similar to
2 its treatment of high-capacity transport. Specifically, the FCC establishes a wire center-
3 by-wire center analysis method to determine whether a given wire center is subject to
4 actual or potential competition based on specific criteria, including the number of
5 business lines and the number of fiber-based collocators in that wire center. These new
6 criteria, and the associated analyses methods, will be discussed in greater detail in the
7 next section.

8 **Q. DID THE FCC REQUIRE ILECs TO TAKE ANY IMMEDIATE**
9 **ACTION IN RESPONSE TO THE *TRRO*?**

10 A. Yes. Based on the transition plan outlined in the *TRRO* at paragraphs 142
11 through 145 and paragraphs 195 through 198, ILECs such as Qwest were required to file
12 a list of non-impaired wire centers coincident with the effective date of the *TRRO*, March
13 11, 2005. Qwest also received a letter from the FCC requesting the list of non-impaired
14 wire centers. This letter is attached as Qwest Exhibit 1. Qwest filed a list of non-
15 impaired wire centers in February 2005. The current list of non-impaired wire centers in
16 the state of Idaho is attached as Qwest Exhibit 2.

17 **Q. WHAT HAPPENS WHEN A WIRE CENTER IS DETERMINED TO**
18 **BE NON-IMPAIRED?**

19 A. If a wire center is determined to be non-impaired for certain UNEs, this
20 means that, per the FCC's rules, there is sufficient competition in that wire center and
21 thus Qwest is no longer obligated to provide those UNEs at TELRIC rates in that wire

1 center. The CLEC can purchase an alternative tariffed or commercial service or facility
2 from Qwest, or a service or facility from another competitor; alternatively, the CLEC can
3 choose to self-provision the service or facility.

4 **Q. GIVEN THAT THE FCC HAS ESTABLISHED THE RULES FOR**
5 **DETERMINING NON-IMPAIRMENT, WHY HAS QWEST COME BEFORE**
6 **THE COMMISSION?**

7 A. Qwest is not asking the Commission to issue an order regarding the *TRRO*
8 rules themselves. The FCC intended the unbundling rules established in the *TRRO* to be
9 largely self-effectuating and implemented through negotiations between ILECs and
10 CLECs. *TRRO*, at ¶ 233. Rather, Qwest is asking the Commission to approve the list of
11 wire centers in Idaho that Qwest has determined to be non-impaired in order to
12 implement the rules that the FCC established in the *TRRO*.

13 Following a discussion of the new impairment standards that the FCC established,
14 I will also discuss the terms of the Settlement Agreement reached by Qwest and various
15 CLECs (including Integra, an intervenor CLEC in this docket) in some of the larger states
16 in Qwest's ILEC territory in which Qwest had brought *TRRO* proceedings to implement
17 the *TRRO*. I will also describe the methodology for counting business lines, and I will
18 introduce the witnesses who will discuss Qwest's data in support the methodology for
19 counting fiber-based collocations and the pricing for conversions.

20

1 **Q. WHAT CRITERIA DID THE FCC USE TO DETERMINE WHICH**
2 **WIRE CENTERS CAN BE CLASSIFIED AS TIER 2 WIRE CENTERS FOR**
3 **HIGH-CAPACITY TRANSPORT?**

4 A. The FCC defines “Tier 2” wire centers as those with three or more fiber-
5 based collocators, or with 24,000 or more business lines. 47 CFR § 51.319(e)(3)(ii).
6 These thresholds suggest that multiple carriers have overcome the costs of deployment
7 and that there are revenues available to substantiate deployment. *TRRO*, at ¶ 118.

8 **Q. WHAT CRITERIA DID THE FCC USE TO DETERMINE WHICH**
9 **WIRE CENTERS CAN BE CLASSIFIED AS TIER 3 WIRE CENTERS FOR**
10 **HIGH-CAPACITY TRANSPORT?**

11 A. The FCC considers all wire centers that are not Tier 1 or Tier 2 wire
12 centers as “Tier 3” wire centers. 47 CFR § 51.319(e)(3)(iii). Put another way, all wire
13 centers with fewer than three fiber-based collocators or with fewer than 24,000 business
14 lines are Tier 3 wire centers.

15 **Q. WHAT IS THE SIGNIFICANCE OF THE FCC’S WIRE CENTER**
16 **TIER STRUCTURE FOR HIGH-CAPACITY TRANSPORT?**

17 A. The FCC uses these tiers as indicators of non-impairment and bases its
18 unbundling requirements for DS1, DS3 and dark fiber interoffice transport on these tiers.
19 Please see Qwest Exhibit 3 for an illustration of the wire center tier structure and the non-
20 impairment criteria.

1 **Q. WHAT ARE THE UNBUNDLING REQUIREMENTS FOR DS1**
2 **TRANSPORT?**

3 A. The FCC determined that there is no impairment for DS1 interoffice
4 transport between two Tier 1 wire centers. As a result, ILECs such as Qwest are not
5 obligated to provide unbundled DS1 interoffice transport on routes connecting two Tier 1
6 wire centers. 47 CFR § 51.319(e)(2)(ii)(A).

7 **Q. WHAT ARE THE UNBUNDLING REQUIREMENTS FOR DS3**
8 **TRANSPORT?**

9 A. The FCC concluded that there is no impairment for DS3 interoffice
10 transport on routes connecting wire centers where both of the wire centers are either Tier
11 1 or Tier 2 wire centers. The FCC determined that competitive transport facilities have
12 been or can be deployed between such wire centers, and that significant revenue
13 opportunities make such deployments economically feasible. Therefore, ILECs such as
14 Qwest are not obligated to provide unbundled DS3 interoffice transport on routes
15 connecting either Tier 1 or Tier 2 wire centers. 47 CFR § 51.319(e)(2)(iii)(A).

16 **Q. WHAT ARE THE UNBUNDLING REQUIREMENTS FOR DARK**
17 **FIBER TRANSPORT?**

18 A. The FCC concluded that there is no impairment for dark fiber interoffice
19 transport on routes connecting wire centers where both of the wire centers are either Tier
20 1 or Tier 2 wire centers. The FCC determined that competitive transport facilities have
21 been or can be deployed between such wire centers, and that significant revenue

1 opportunities make such deployments economically feasible. Therefore, ILECs such as
2 Qwest are not obligated to provide unbundled dark fiber interoffice transport on routes
3 connecting either Tier 1 or Tier 2 wire centers. 47 CFR § 51.319(e)(2)(iv)(A).
4

5 **V. NON-IMPAIRMENT THRESHOLDS FOR UNBUNDLED DS1 AND DS3**
6 **LOOPS**

7 **Q. DID THE FCC USE THE WIRE CENTER TIER STRUCTURE TO**
8 **ESTABLISH NON-IMPAIRMENT THRESHOLDS FOR HIGH-CAPACITY**
9 **LOOPS?**

10 A. No. However, the FCC uses a methodology similar to its treatment of
11 high-capacity transport in that it establishes a wire center-by-wire center unbundling
12 requirement to determine whether a wire center is subject to actual or potential
13 competition for high-capacity loops, based upon the number of business lines and the
14 number of fiber-based collocators in the wire center.

15 **Q. WHAT IS THE IMPAIRMENT THRESHOLD FOR UNBUNDLED**
16 **DS1 LOOPS?**

17 A. Per the FCC, there is no impairment for DS1 loops within a service area of
18 a wire center that contains 60,000 or more business lines and four or more fiber-based
19 collocators. 47 CFR § 51.319(a)(4)(i). Therefore, ILECs such as Qwest are not obligated
20 to provide unbundled DS1 loops in these wire centers.

1 **Q. WHAT IS THE IMPAIRMENT THRESHOLD FOR UNBUNDLED**
2 **DS3 LOOPS?**

3 A. The FCC determined that there is no impairment for DS3 loops within a
4 service area of a wire center that contains 38,000 or more business lines and four or more
5 fiber-based collocators. 47 CFR § 51.319(a)(5)(i). Therefore, ILECs such as Qwest are
6 not obligated to provide unbundled DS3 loops in these wire centers.

7 **Q. IS THERE AN IMPAIRMENT THRESHOLD FOR UNBUNDLED**
8 **DARK FIBER LOOPS?**

9 A. No. The FCC determined that there is no impairment for dark fiber loops
10 on a nationwide basis. Therefore, ILECs such as Qwest are no longer obligated to
11 provide unbundled dark fiber loops in any wire center. 47 CFR § 51.319(a)(6)(i).

12

13 **VI. QWEST'S PROCEDURES FOR ESTABLISHING NON-IMPAIRED WIRE**
14 **CENTERS**

15 **Q. HAS QWEST ESTABLISHED PROCEDURES FOR COUNTING**
16 **FIBER-BASED COLLOCATORS AND THE NUMBER OF BUSINESS LINES IN**
17 **A WIRE CENTER?**

18 A. Yes. Qwest and the participating CLECs in the other states that held
19 earlier non-impaired wire center dockets agreed to procedures for counting business lines
20 and fiber-based collocators in the Joint Settlement Agreement, which I will discuss in
21 detail in section VII of this testimony. In that section, I will also describe the

1 methodology that Qwest used to determine business line counts in this case based on the
2 Settlement Agreement.

3 Then, in Section VIII of this testimony, I will discuss the business line count
4 methodology.

5 The FCC-based methodology for counting fiber-based collocators will be
6 discussed in detail by Qwest witness Rachel Torrence.

7 **Q. WHAT IS THE RESULT OF A DETERMINATION OF NON-**
8 **IMPAIRMENT FOR DS1 OR DS3 TRANSPORT OR FOR CERTAIN HIGH-**
9 **CAPACITY LOOPS?**

10 A. Put very simply, the associated circuits that were leased by CLECs as
11 UNEs will need to be converted from UNEs to alternative Qwest services, or to
12 wholesale services obtained from another carrier, or be self-provisioned by the CLEC
13 itself.

14 **Q. WHICH QWEST WITNESS WILL DISCUSS THE ACTIVITIES**
15 **ASSOCIATED WITH CONVERSIONS TO ALTERNATIVE QWEST**
16 **SERVICES?**

17 A. Qwest witness Victoria Hunnicutt will discuss the activities associated
18 with the conversions of UNEs to alternative Qwest services, including Qwest's
19 assessment of a nonrecurring charge for these conversions.

20

1 **VII. PROCESS FOR UPDATING LIST OF NON-IMPAIRED WIRE CENTERS**
2 **BASED ON A MULTI-STATE SETTLEMENT AGREEMENT**

3 **Q. QWEST IS PRESENTING AN INITIAL LIST OF NON-IMPAIRED**
4 **WIRE CENTERS IN THIS CASE. SHOULD QWEST BE ALLOWED TO**
5 **UPDATE THE LIST OF NON-IMPAIRED WIRE CENTERS?**

6 A. Yes, Qwest should be allowed to update the list of non-impaired wire
7 centers as often as necessary. While Qwest and the CLECs agreed in the Settlement
8 Agreement that business line updates will only be done once a year, given that the data
9 upon which business line counts are based (the FCC's Automated Reporting
10 Management Information System ("ARMIS") data) is only prepared and submitted to the
11 FCC once per year, the status of fiber-based collocations are not limited in this way. For
12 example, at any point in time, a new fiber-based collocation could be placed in a wire
13 center, thereby changing the status of that wire center to non-impaired.¹⁴

14 **Q. DOES QWEST EXPECT TO UPDATE ITS LIST OF NON-**
15 **IMPAIRED WIRE CENTERS IN THE FUTURE?**

16 A. Yes, Qwest expects to update its list of non-impaired wire centers to the
17 extent that additional wire centers meet the FCC criteria in the future. As noted above,

¹⁴ The FCC anticipated such changes as well. "We recognize that some high-capacity loops with respect to which we have found impairment may in the future meet our thresholds for non-impairment. For example, as competition grows, competitive LECs may construct new fiber-based collocations in a wire center that currently has more than 38,000 business lines but 3 or fewer collocations. In such cases, we expect incumbent LECs and requesting carriers to negotiate appropriate transition mechanisms through the section 252 process." *TRRO*, at fn. 519.

1 the FCC determined that the rules in the *TRRO* are self-effectuating, and that “our
2 unbundling rules are designed to remove unbundling obligations over time.”
3 *TRRO*, at ¶ 3. Indeed, in the five states in which the Settlement Agreement has been
4 approved, Qwest has updated its list of non-impaired wire centers over the past two years,
5 using the terms of the Settlement Agreement as guidance for those updates.

6 Thus, going forward, if updates to the list of non-impaired wire centers are
7 required, Qwest intends to update the list of non-impaired wire centers using the same
8 FCC counting methodologies described in this proceeding.

9 **Q. IN THE STATES WHERE QWEST FIRST BEGAN *TRRO***
10 **PROCEEDINGS, DID QWEST AND THE PARTICIPATING CLECs REACH A**
11 **SETTLEMENT AGREEMENT IMPLEMENTING THE *TRRO*, INCLUDING**
12 **THE PROCESS FOR UPDATING THE NON-IMPAIRED WIRE CENTER**
13 **LISTS?**

14 A. Yes. Qwest and the CLECs¹⁵ who were involved in the *TRRO*
15 proceedings in certain other states (known as “the Joint CLECs”) reached a multi-state
16 Settlement Agreement (“Settlement Agreement”) that established the initial wire center
17 lists in those states, and further established an agreed-upon process for updating the lists
18 going forward. This Settlement Agreement was approved in five of the six states
19 included within the agreement, and has been used to update the non-impaired wire center

¹⁵ The Joint CLECs included Integra (an intervenor here), Eschelon (which is now part of Integra), Covad, McLeodUSA, Onvoy, POPP, TDSM and XO.

1 lists in those states since its approval.¹⁶ I have attached the Settlement Agreement as
2 Qwest Exhibit 4. It was also attached to Qwest's Petition, which initiated this docket.

3 **Q. WHY IS QWEST PRESENTING A SETTLEMENT AGREEMENT**
4 **USED IN OTHER STATES TO THIS COMMISSION?**

5 A. Qwest believes that the Settlement Agreement provides a template that
6 this Commission can use to implement the *TRRO* in Idaho.

7 **Q. PLEASE DESCRIBE THE SETTLEMENT AGREEMENT**
8 **GENERALLY.**

9 A. The Settlement Agreement contains seven sections, each aimed at
10 providing terms to implement the *TRRO*. These sections are:

- 11 • Section I- Introduction – describes the basis for the Settlement
12 Agreement.
- 13 • Section II- Definitions – contains defined terms used within the body
14 of the Settlement Agreement.
- 15 • Section III- Initial Commission-Approved Wire Center List – contains
16 the parties' agreed-upon initial list of wire centers to be submitted for
17 approval to the six states included in the Settlement Agreement.
- 18 • Section IV- Non-Recurring Charge for Conversions Using the Initial
19 Wire Center List and For Future Commission-Approved Additions to

¹⁶ The Settlement Agreement was approved in Arizona, Minnesota, Oregon, Utah and Washington. The Agreement was not approved in Colorado and the case is still pending.

1 That List – sets forth the conversion charge that the parties agreed
2 upon for services converted to alternative Qwest services in non-
3 impaired wire centers.

4 • Section V- Methodology – describes the agreed-upon process for
5 counting business lines and fiber-based collocators to determine wire
6 center eligibility for non-impairment.

7 • Section VI- Future Qwest Filings to Request Commission Approval of
8 Non-Impairment Designations and Additions to the Commission-
9 Approved Wire Center List – describes the set of procedures to be
10 used when Qwest seeks to add wire centers to the non-impaired list.

11 • Section VII- Other Provisions – describes the attachments to the
12 settlement and provides for adoption of the Settlement Agreement into
13 interconnection agreements.

14 **Q. DOES THE SETTLEMENT AGREEMENT INCLUDE TERMS TO**
15 **IMPLEMENT THE AGREEMENT WITHIN THE PARTIES'**
16 **INTERCONNECTION AGREEMENTS WITH QWEST?**

17 A. Yes. The agreement includes three attachments, two of which provide for
18 interconnection agreement amendments, and one which was designed specifically to
19 insert language into Eschelon's interconnection agreement, which was in arbitration
20 when the Settlement Agreement was reached. These attachments were filed with
21 Qwest's Petition in this proceeding.

1 **Q. DOES THE SETTLEMENT AGREEMENT DEFINE THE**
2 **METHODOLOGY TO BE USED TO COUNT BUSINESS LINES AND FIBER-**
3 **BASED COLLOCATORS FOR THE PURPOSE OF DETERMINING NON-**
4 **IMPAIRMENT?**

5 A. Yes. Section V of the Settlement Agreement outlines the methodology
6 that the parties have agreed to use for the purposes of counting business lines and fiber-
7 based collocators. The parties have agreed that this methodology complies with the rules
8 established by the FCC in the *TRRO*. As noted above, Rachel Torrence will provide
9 testimony regarding the methodology used to determine whether two wire centers in
10 Idaho (the Boise Main and Boise West wire centers) qualify as non-impaired based on the
11 number of fiber-based collocators in those wire centers. I will provide testimony below
12 regarding the methodology used to identify the same two wire centers in Idaho (Boise
13 Main and Boise West) as non-impaired on the basis of the number of business lines.

14 **Q. DOES THE SETTLEMENT AGREEMENT GIVE CLECs THE**
15 **OPPORTUNITY TO DISPUTE CHANGES MADE TO THE LIST OF NON-**
16 **IMPAIRED WIRE CENTERS?**

17 A. Yes. Although Qwest does not believe that any party should have the
18 opportunity to re-litigate the methodology set forth by the FCC, the parties to the
19 Settlement Agreement agreed that the Settlement Agreement weighs the need for
20 resolution of disputes with the need to keep the list of non-impaired wire centers up-to-

1 date. The Settlement Agreement therefore allows an expedited process that provides
2 CLECs with the opportunity to dispute additions to the non-impaired wire center list.

3 **Q. PLEASE DISCUSS THE DETAILS PROVIDED BY THE**
4 **SETTLEMENT AGREEMENT REGARDING THE PROCESS TO ADD A WIRE**
5 **CENTER TO THE LIST OF NON-IMPAIRED WIRE CENTERS?**

6 A. Section VI of the Settlement Agreement details the process the parties
7 have agreed to use to add wire centers to the non-impaired list in the future. The
8 Settlement Agreement includes the following provisions for future filings:

- 9 • Qwest may request additions of non-impaired wire centers at any time
10 based solely on the number of fiber-based collocators.
- 11 • Qwest may request additions based in whole or in part on line counts
12 until July 1 of each year, based on prior year data.
- 13 • At least five days prior to a filing, Qwest will request a protective
14 agreement for confidential information. The Settlement Agreement
15 includes a model protective order.¹⁷
- 16 • Qwest will provide notice to all impacted CLECs at least five days
17 prior to filing.

¹⁷ Attachment E to the Settlement Agreement is a template protective order used to allow all the parties to view the highly-confidential data that is used by Qwest to verify non-impairment. Qwest understands that Idaho generally prefers protective agreements instead of protective orders. Qwest believes that a standard protective agreement, such as the one agreed to by the parties in this case, will work in place of the standard protective order attached to the Settlement Agreement.

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- Qwest will file supporting data outlined in detail in the Settlement Agreement sufficient to support the counts of fiber-based collocators and/or line counts.
- Once a filing has been made, parties will have 30 days to raise objections with the applicable state commission to Qwest's request.
- If there are no objections filed, the effective date for non-impairment will be 30 days after the filing date, unless the state commission orders otherwise, and the parties will jointly request an expedited non-impairment designation from the commission.
- The CLECs agree that they will not order non-impaired facilities in the wire centers on the non-impaired list as of 15 days from the effective date of the non-impairment designation.
- If any party disputes Qwest's proposed non-impairment designations, the parties have agreed to ask the state commission to use its best efforts to resolve the dispute within 60 days of the date of the objection.
- If there are no objections filed with the state commission, the parties have agreed that they will jointly request an expedited order approving the undisputed designations.
- CLECs agree not to place orders for non-impaired facilities in wire centers identified on the state commission-approved wire center list 15

1 days after the effective date of the commission order adding such wire
2 centers to the list.

3 **Q. HAS THE SETTLEMENT AGREEMENT ESTABLISHED**
4 **PROCEDURES FOR TRANSITIONING HIGH-CAPACITY UNEs WHEN**
5 **ADDITIONAL WIRE CENTERS ARE FOUND TO BE NON-IMPAIRED?**

6 A. Yes. CLECs will have 90 days to transition high-capacity loops and
7 transport to alternative services from the effective date of the initial commission order or
8 a commission order approving additional wire centers. CLECs will then have 180 days
9 to transition non-impaired dark fiber.

10 **Q. WHAT WAS THE BASIS FOR THE TRANSITION PERIOD USED**
11 **IN THE SETTLEMENT AGREEMENT, AND CAN IT BE CONSIDERED**
12 **SUFFICIENT TO ALLOW CLECs TO TRANSFER SERVICES WHEN WIRE**
13 **CENTERS ARE ADDED TO THE NON-IMPAIRED LIST?**

14 A. The FCC recognized that the initial transition to new services would
15 require significant effort due to the large number of impacted wire centers and therefore it
16 allowed a one-year initial transition. The one-year period outlined in the *TRRO* was to
17 begin upon the effective date of the *TRRO*, March 11, 2005. Thus, that transition period
18 has already expired as of March 11, 2006. The FCC did not make any statements with
19 regard to transition periods for subsequent wire centers. However, it follows that since
20 far fewer wire centers will qualify for non-impairment with each subsequent filing, the
21 transition for additions to the non-impaired wire center list should be shorter than the

1 initial transition. Likewise, there will also be a much smaller subset of services to
2 convert to alternative (non-UNE) services. Accordingly, the Settlement Agreement
3 includes transition periods that Qwest and the Joint CLECs believe are reasonable.

4 **Q. SHOULD A DISPUTE PROCEEDING BE ALLOWED TO DELAY**
5 **THE ADDITION OF NEW WIRE CENTERS TO THE LIST OF NON-IMPAIRED**
6 **WIRE CENTERS?**

7 A. No. The Settlement Agreement includes terms to expedite disputes in
8 order to avoid protracted delays in the addition of wire centers to the non-impaired list
9 when supporting data proves that such additions are warranted.

10 **Q. SHOULD RECLASSIFICATION OF A NON-IMPAIRED WIRE**
11 **CENTER BE PART OF A FUTURE INQUIRY?**

12 A. No, there is no need to include such an inquiry within the scope of this (or
13 any future docket) because in the rules implementing the *TRRO*, the FCC specifically
14 determined that wire centers may not be reclassified once they have been designated as
15 non-impaired.¹⁸

¹⁸ For DS1 loops, see 47 CFR §51.319(a)(4)(i) ("Subject to the cap described in paragraph (a)(4)(ii) of this section, an incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to a DS1 loop on an unbundled basis to any building not served by a wire center with at least 60,000 business lines and at least four fiber-based collocators. *Once a wire center exceeds both of these thresholds, no future DS1 loop unbundling will be required in that wire center*"). (Emphasis added.)

For DS3 loops, see 47 CFR §51.319(a)(5)(i) ("Subject to the cap described in paragraph (a)(5)(ii) of this section, an incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to a DS3 loop on an unbundled basis to any building not served by a wire center with at least 38,000 business lines and at least four fiber-based collocators. *Once a wire center exceeds*

1 **VIII. METHODOLOGY FOR COUNTING BUSINESS LINES BASED ON THE**
2 **SETTLEMENT AGREEMENT**

3 **Q. IN THE TRRO, DID THE FCC PROVIDE A DEFINITION OF**
4 **“BUSINESS LINES” FOR PURPOSES OF DETERMINING WHETHER A**
5 **PARTICULAR WIRE CENTER MEETS THE THRESHOLD TEST FOR NON-**
6 **IMPARIMENT?**

7 A. Yes. At paragraph 105 of the *TRRO*, the FCC defined “business lines” as
8 follows:

9 The BOC wire center data that we analyze in this Order is based on
10 ARMIS 43-08 business lines, plus business UNE-P, plus UNE-loops.
11

12 Further, the FCC’s rules regarding implementation of *TRRO* requirements (47
13 CFR § 51.5) define “business line” as follows:

14 A business line is an incumbent LEC-owned switched access line used to
15 serve a business customer, whether by the incumbent LEC itself or by a
16 competitive LEC that leases the line from the incumbent LEC. The
17 number of business lines in a wire center shall equal the sum of all
18 incumbent LEC business switched access lines, plus the sum of all UNE

both of these thresholds, no future DS3 loop unbundling will be required in that wire center”). (Emphasis added.)

For DS1 and DS3 loops, see also 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, p. 94, footnote 466 (FCC rel. February 4, 2005) (“Therefore, once a wire center satisfies the standard for no DS1 loop unbundling, the incumbent LEC shall not be required in the future to unbundle DS1 loops in that wire center. Likewise, once a wire center satisfies the standard for no DS3 loop unbundling, the incumbent LEC shall not be required in the future to unbundle DS3 loops in that wire center.”).

For dedicated DS1 and DS3 transport, see 47 CFR §51.319(e)(3)(i) (“ Once a wire center is determined to be a Tier 1 wire center, *that wire center is not subject to later reclassification* as a Tier 2 or Tier 3 wire center.”) and 47 CFR §51.319(e)(3) (ii) (“ Once a wire center is determined to be a Tier 2 wire center, *that wire center is not subject to later reclassification* as a Tier 3 wire center.”). (Emphasis added.)

1 loops connected to that wire center, including UNE loops provisioned in
2 combination with other unbundled elements. Among these requirements,
3 business line tallies:

4
5 (1) Shall include only those access lines connecting end-user customers
6 with incumbent LEC end-offices for switched services.

7
8 (2) Shall not include non-switched special access lines.

9
10 (3) Shall account for ISDN and other digital access lines by counting each
11 64KBPS-equivalent as one line. For example, a DS1 line corresponds to
12 24 64 kbps-equivalents, and therefore to 24 "business lines."
13

14 **Q. IN THE *TRRO*, DID THE FCC INDICATE A PREFERENCE FOR**
15 **THE METHODOLOGY TO BE USED TO COUNT BUSINESS ACCESS LINES?**

16 A. Yes. The FCC envisioned a streamlined and simple process for
17 determining business line counts. The FCC stated that "business line counts are an
18 **objective** set of data that incumbent LECs **have already created** for other regulatory
19 purposes," and that "by basing our definition in an ARMIS filing required of incumbent
20 LECs, and adding UNE figures, which must also be reported, we can be confident in the
21 accuracy of the thresholds, and a simplified ability to obtain the necessary information."
22 *TRRO*, ¶ 105. (Emphasis added.)¹⁹ Clearly, the FCC's intent is that incumbent LECs
23 should use data "already created for other regulatory purposes," and should follow the
24 FCC's simple and unambiguous definition to count business lines in determining which
25 wire centers meet the non-impairment thresholds established in the *TRRO*.

¹⁹ The ARMIS filing is a report that every ILEC must file with the FCC by April 1st regarding various measures, including the number of business lines that the ILEC has at each of its wire centers.

1 **Q. IS THE METHODOLOGY ESTABLISHED IN THE**
2 **SETTLEMENT AGREEMENT CONSISTENT WITH THE GUIDELINES**
3 **ESTABLISHED BY THE *TRRO* FOR COUNTING BUSINESS LINES?**

4 A. Yes. Section V(A) of the Settlement Agreement establishes a
5 methodology for counting business lines that Qwest and the Joint CLECs agreed is
6 consistent with the FCC's rules established in the *TRRO*.

7 **Q. BASED ON BUSINESS LINE AND FIBER COLLOCATION DATA**
8 **AS OF DECEMBER 2007, WHICH WAS FILED WITH QWEST'S PETITION IN**
9 **THIS CASE IN JUNE 2008, ARE ANY QWEST WIRE CENTERS IN IDAHO**
10 **CLASSIFIED AS NON-IMPAIRED FOR DS1 AND DS3 UNBUNDLED LOOPS?**

11 A. Yes. Based on business line and fiber collocation data for December
12 2007, the Boise Main wire center has met the non-impairment threshold for DS3
13 unbundled loops.²⁰

14 **Q. THE ABOVE QUESTION REFERS TO DATA FROM DECEMBER**
15 **2007. SHOULD MORE RECENT DATA BE USED?**

16 A. No. First, according to the terms of the Settlement Agreement, which
17 Qwest is asking this Commission to adopt, Qwest is allowed to file a request for non-

²⁰ Please note that Qwest's Petition in this case inadvertently failed to mention non-impairment for DS3 loops in the Boise Main wire center. However, since Qwest's Petition indicated that it would demonstrate that the Boise Main wire center met both standards for Tier 1 status in that it had more than 38,000 business lines and four or more fiber-based collocators, under the standards of the *TRRO*, a finding that access to DS3 loops is non-impairment in Boise Main necessarily follows from that evidence.

1 impairment based on business lines only once a year, based on data collected in
2 December of the prior year, and reported to the FCC in its ARMIS report by April 1st of
3 the subsequent year. In fact, the Settlement Agreement gives Qwest until July 1st of the
4 subsequent year to make its filing. So, consistent with the terms of the Settlement
5 Agreement, Qwest filed its Petition in this proceeding in June 2008, based on data
6 collected in December 2007 and reported to the FCC by April 1, 2008. Also consistent
7 with the terms of the Settlement Agreement and in keeping with the FCC's stated
8 expectation that these matters will be resolved promptly, the parties to the agreement are
9 to request expeditious treatment of these petitions. Qwest does not believe it should be
10 penalized or required to refile the data simply because of the inevitable regulatory lag that
11 may occur as a result of the filing of its Petition. Qwest notes that it filed its Petition in
12 June 2008, although the proceeding has not become active until recently.

13 Second, and perhaps more importantly, requiring more current data would be
14 counter to the FCC's position that once a wire center has been determined to be non-
15 impaired, that wire center *stays non-impaired*, and is not reviewed again, even if the data
16 change in the future.²¹

²¹ Please see my testimony above and footnote 18.

1 **Q. BASED ON THE BUSINESS LINE AND FIBER COLLOCATION**
2 **DATA AS OF DECEMBER 2007, WHICH WAS FILED WITH QWEST’S JUNE**
3 **2008 PETITION IN THIS CASE, ARE ANY IDAHO WIRE CENTERS**
4 **CLASSIFIED AS “TIER 1” OR “TIER 2” FOR INTEROFFICE TRANSPORT?**

5 A. Yes. Based on Qwest’s analysis, one Idaho wire center, Boise Main,
6 meets the FCC’s transport threshold for “Tier 1” non-impairment status. Another Idaho
7 wire center, Boise West, meets the non-impairment threshold for “Tier 2.” Both wire
8 centers qualify on the basis of both business line counts and the number of fiber-based
9 collocators in those wire centers.

10 **Q. HAVE YOU PREPARED AN EXHIBIT THAT IDENTIFIES THE**
11 **BUSINESS LINE COUNTS CALCULATED PER THE SETTLEMENT**
12 **AGREEMENT METHODOLOGY?**

13 A. Yes. Highly-Confidential Qwest Exhibit 5 provides the business access
14 line counts for the Boise Main and Boise West wire centers identified above, calculated
15 in accordance with the *TRRO* definitions and the Settlement Agreement methodology.

16
17 **Q. WHAT TYPES OF BUSINESS LINES HAS QWEST INCLUDED IN**
18 **ITS ANALYSIS OF THESE TWO IDAHO WIRE CENTERS?**

19 A. In conformance with the *TRRO* and the Settlement Agreement, the Qwest
20 analysis includes:

21 (1) Qwest retail business lines,

1 (2) All UNE loops, and

2 (3) Business Qwest Local Services Platform (“QLSP”), and other similar
3 platform product offerings.²²
4

5 A. QWEST RETAIL BUSINESS LINES

6 Q. PER THE SETTLEMENT AGREEMENT, HOW ARE RETAIL
7 BUSINESS LINES DETERMINED?

8 A. Qwest business lines are determined using the most recently-filed
9 unadjusted ARMIS data reported to the FCC.²³ In this case, Qwest used the ARMIS data
10 calculated as of December 2007 and filed with the FCC in April 2008. Qwest recorded
11 and counted actual retail business lines for this filing in the same manner as business line
12 data is tracked and recorded at the wire center-level data that Qwest used to develop its
13 statewide FCC ARMIS 43-08 report.²⁴

²² The Settlement Agreement also includes the count of UNE Platform (“UNE-P”) lines, but there are no UNE-P lines still in service in Idaho.

²³ As I discussed above, ARMIS stands for Automated Reporting Management Information System. ARMIS reports are filed with the FCC as required by and according to FCC Rules. Further information and detailed instructions for filing ARMIS reports can be found at <http://www.fcc.gov/wcb/armis/>.

²⁴ Use of this data is consistent with the *TRRO*, as the FCC intended the business line counts be based “an objective set of data that incumbent LECs already have created for other regulatory purposes.” *TRRO*, ¶ 105.

1 clearly state that the sum of *all* UNE loops-- not a subset of UNE loops-- should be
2 included in an ILEC's count of business lines.

3 **Q. IN ACCORDANCE WITH THE *TRRO* AND THE SETTLEMENT**
4 **AGREEMENT, DID QWEST INCLUDE ALL 64 KILOBIT VOICE-GRADE**
5 **EQUIVALENT ("VGE") CHANNELS ASSOCIATED WITH DIGITAL**
6 **UNBUNDLED LOOPS?**

7 A. Yes. For example, Qwest multiplied all DS1 unbundled loops in Qwest's
8 December 2007 wholesale database—the same vintage of data upon which Qwest's retail
9 business line count for its FCC ARMIS 43-08 report was based—by a VGE factor 24,
10 consistent with the FCC's guideline (47 CFR § 51.5) that all 64 kbps channels of capacity
11 in a digital circuit should be counted as separate business lines.²⁵

12 **Q. IN ADDITION TO STAND-ALONE UNBUNDLED LOOPS, DID**
13 **QWEST INCLUDE ENHANCED EXTENDED LOOPS ("EELS") IN ITS**
14 **UNBUNDLED LOOP COUNT?**

15 A. Yes. An enhanced extended loop, or "EEL," essentially consists of an
16 unbundled loop plus interoffice transport, and is used by a CLEC to provide service to a
17 customer located in a particular wire center when the CLEC is collocated in a different
18 wire center. Thus, EEL loops are appropriately included in the count of unbundled loops

²⁵ This also means that DS3 loops are multiplied by a VGE factor of 672.

1 for the wire center in which the unbundled loop terminates. Again this is consistent with
2 the *TRRO* and the Settlement Agreement.²⁶

3
4 **C. QLSP AND OTHER COMMERCIAL EQUIVALENTS**

5 **Q. ARE ANY OTHER WHOLESALE SERVICES INCORPORATED**
6 **INTO THE COUNT OF BUSINESS LINES?**

7 A. Yes. Per the Settlement Agreement, and consistent with the *TRRO*, Qwest
8 incorporates the counts of Qwest Local Services Platform (“QLSP”), and other similar
9 platform products offered to business customers. These products represent commercial
10 services that Qwest offers to CLECs as replacements for UNE Platform (UNE-P”)
11 services which the FCC no longer requires Qwest to offer. However, for purposes of this
12 docket, Qwest notes that there are no UNE-P lines still in service in Idaho.

13
14 **IX. CONCLUSION**

15 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

16 A. My testimony describes the history of the 1996 Federal Act’s unbundling
17 requirement and the FCC’s Triennial Review process, as well as the results of the FCC’s
18 *TRRO*. I describe the criteria that the FCC defined to identify non-impaired wire centers.

²⁶ Interestingly, both wire centers contain the same number of EELs. These totals are arrived at via different subtotals leased to different CLECs as can be seen in Highly Confidential Exhibit C attached to the Affidavit of Bob Brigham filed with Qwest’s petition in this case.

1 I identify the Boise Main and Boise West wire centers as non-impaired for interoffice
2 transport on the basis of both business line counts and fiber-based collocators. I also
3 identify the Boise Main wire center as non-impaired for DS3 unbundled loops on the
4 basis of business line counts. Further, I introduce the Qwest witnesses who will discuss
5 Qwest's count of fiber-based collocators. I also introduce and describe the terms of a
6 multi-state Settlement Agreement reached between Qwest and the Joint CLECs that can
7 be adopted by the Commission or that can be used as the basis for the implementation
8 process in Idaho, as it has been successfully used in five other states. And finally,
9 I describe the methodology that Qwest uses to count business lines.

10 Accordingly, Qwest asks the Commission to adopt Qwest's list of non-impaired
11 wire centers in the state of Idaho so that Qwest may obtain the unbundling relief that the
12 FCC intended in its *TRRO*. Qwest also asks the Commission to adopt Qwest's proposed
13 procedures as outlined in the multi-state Settlement Agreement for designation of non-
14 impaired wire centers in the future.

15 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

16 **A.** Yes, it does.

17



Federal Communications Commission
Washington, D.C. 20554

February 4, 2005

Via Facsimile and First Class Mail

Gary R. Lytle
Senior Vice President, Federal Relations
Qwest
607 14th Street, NW, Suite 950
Washington, DC 20005

**Re: Unbundled Access to Network Elements, WC Docket No. 04-313; Review of Section 251
Unbundling Obligations for Incumbent Local Exchange Carriers, CC Docket No. 01-338**

Dear Mr. Lytle:

On February 4, 2005, the Commission released its *Triennial Review Remand Order*, adopting rules governing the unbundling obligations of incumbent LECs regarding, among other things, dedicated transport and high-capacity loops.¹ In crafting impairment thresholds for these elements that relied on readily ascertainable, quantitative criteria, the Commission sought to facilitate prompt implementation of its revised rules, and to minimize disputes regarding the scope of an incumbent LEC's unbundling obligations in any particular case. The Bureau is mindful of the need for certainty within the industry regarding the scope of unbundling obligations. Such certainty depends on the timely incorporation of the *Triennial Review Remand Order's* fact-dependent rules into revised interconnection agreements. To this end, we ask that you provide the Bureau a list identifying by Common Language Location Identifier (CLLI) code² which wire centers in your company's operating areas satisfy the Tier 1, Tier 2, and Tier 3 criteria for dedicated transport, and identifying by CLLI code the wire centers that satisfy the nonimpairment thresholds for DS1 and DS3 loops.³ We ask that you submit this information into the above-referenced dockets by February 18, 2005.

The Bureau believes that this information will expedite the implementation of the Commission's rules implementing the Act. I thank you in advance for your prompt reply to this request.

Sincerely,

/s/

Jeffrey J. Carlisle
Chief, Wireline Competition Bureau

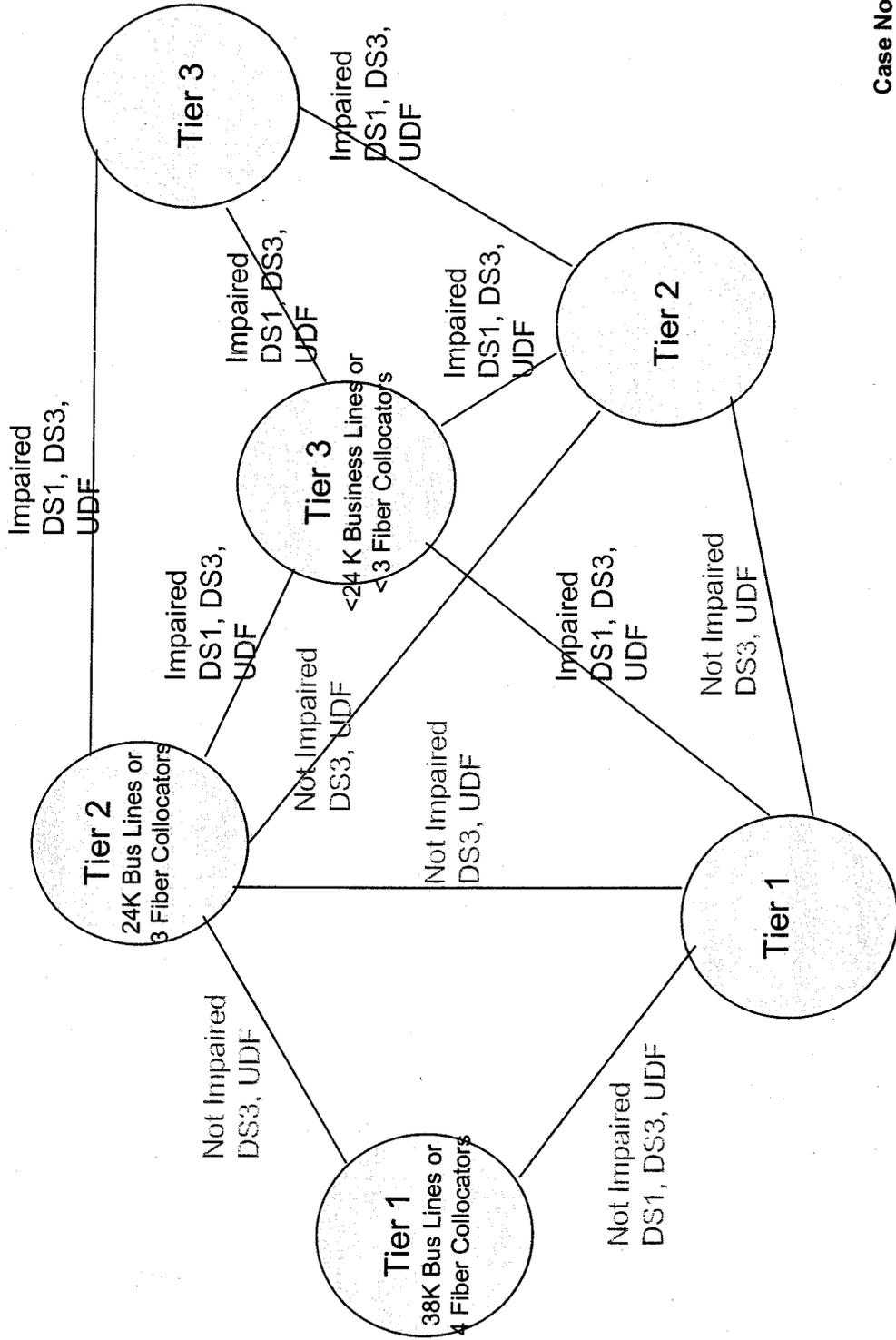
¹ *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand (*Triennial Review Remand Order*).

² The CLLI code is an eight character code that identifies a particular wire center.

³ *Id.* at para. 120 (defining Tier 1 wire centers); *id.* at para. 126 (defining Tier 2 wire centers); *id.* at para. 131 (defining Tier 3 wire centers); *id.* at para. 185 (defining wire center nonimpairment threshold for DS3 loops); *id.* at para. 189 (defining wire center nonimpairment threshold for DS1 loops); *see also id.*, App. B, 47 C.F.R. §§ 51.319(a)(4)(i), (a)(5)(i), (e)(3).

ST	Wire Center Name	Wire Center CLLI8 Code	Wire Center Classification for Transport Non-Impairment	Wire Center Classification for High Capacity Loop Non-Impairment
ID	Boise Main	BOISIDMA	Tier 1	DS3 Unbundled Loops
ID	Boise West	BOISIDWE	Tier 2	

Transport Impairment



**MULTI-STATE
SETTLEMENT AGREEMENT REGARDING
WIRE CENTER DESIGNATIONS AND RELATED ISSUES**

This Multi-State Settlement Agreement ("Settlement Agreement") is entered into between Qwest Corporation ("Qwest") and Covad Communications Company ("Covad"), Eschelon Telecom, Inc. ("Eschelon"), Integra Telecom Holdings, Inc. ("Integra"), McLeodUSA Telecommunications Services, Inc. ("McLeodUSA"), Onvoy, POPP.Com ("POPP"), US Link, Inc. d/b/a TDS Metrocom, Inc. ("TDSM"), and XO Communications Services, Inc. ("XO"). Qwest and each CLEC are referred to separately as a "Party" or collectively as the "Parties."

I. INTRODUCTION

WHEREAS, the Federal Communications Commission ("FCC") issued its Report and Order, *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 Docket Nos. 01-338, 96-98 and 98-147 (effective October 2, 2003) ("TRO"); and, on February 4, 2005, the FCC released the *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand* (effective March 11, 2005)(Triennial Review Remand Order) (FCC 04-290) ("TRRO");

WHEREAS, on February 15, 2006, some or all of the Joint CLECs filed requests with the state Commissions in Arizona, Colorado, Minnesota, Oregon, and Utah asking that the state Commissions, in accordance with the TRRO, develop and approve a list of Non-Impaired Wire Centers and a process for future updates of the wire center list;

WHEREAS, the aforementioned state Commissions opened the following dockets in response to these filings: Arizona (Docket Nos.T-03632A-06-0091; T-03267A-06-0091; T-04302A-06-0091; T-03406A-06-0091; T-03432A-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 No. UM 1251), and Utah (Docket No. 06-049-40);

WHEREAS, 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.

WHEREAS, on March 3, 2006, Qwest also petitioned for a Commission investigation and expedited proceeding to verify Qwest wire center data, address the nonrecurring conversion charge, establish a process for future updates of the wire center list, address related issues, and bind all CLECs.

WHEREAS, the Joint CLECs and Qwest have reached resolution of their disputes. Because of the multi-state nature of these issues, the Parties have determined that it is in their mutual interest to effect a multi-state settlement of issues.

THEREFORE, the Parties agree to the following resolution of issues:

II. DEFINITIONS

"Commission" for Arizona means the Arizona Corporation Commission or any successor state agency.

"Commission" for Colorado means the Colorado Public Utilities Commission or any successor state agency.

"Commission" for Minnesota means the Minnesota Public Utilities Commission or any successor state agency.

"Commission" for Oregon means the Public Utility Commission of Oregon or any successor state agency.

"Commission" for Utah means the Utah Public Service Commission or any successor state agency.

"Commission" for Washington means the Washington Utilities and Transportation Commission or any successor state agency.

"Commission-Approved Wire Center List" is Attachment A to this Settlement Agreement, as

may be updated by the Commission, as described in Section V of this Settlement Agreement.

“Effective Date of this Settlement Agreement” is the effective date of the Commission order approving this Settlement Agreement.

“Effective Date of Non-Impairment Designation” is the date on which the non-impairment designation begins as specified in this Settlement Agreement at Section III(B) for the Initial Commission-Approved Wire Center List and as later determined pursuant to Section VI (F) for future non-impairment designations identified in a Commission-Approved Wire Center List.

“Filing Date” is the date on which Qwest submits its non-impairment or tier designation filing, with supporting data, as described in Section VI of this Settlement Agreement, to the Commission for review and provides the Commission and CLECs that, as of that date, have signed the applicable protective order/agreement (or are subject to a standing protective order). If Qwest provides the data to the Commission and Joint CLECs on different dates, the Filing Date shall be the later of the two dates.

“Initial Commission-Approved Wire Center List” is Attachment A to this Settlement Agreement as of the Effective Date of this Settlement Agreement.

“Joint CLECs” refers collectively to Covad Communications Company (“Covad”), Eschelon Telecom, Inc. (“Eschelon”), Integra Telecom Holdings, Inc. (“Integra”), McLeodUSA Telecommunications Services, Inc. (“McLeodUSA”), Onvoy, POPP.Com (“POPP”), US Link, Inc. d/b/a TDS Metrocom (“TDSM”), and XO Communications Services, Inc. (“XO”).

“Non-Impaired Facilities” are those network elements identified in an applicable FCC order as no longer available as unbundled network elements (“UNEs”) under 47 U.S.C. § 251(c)(3) based on non-impairment or tier designations and that have been reviewed and approved by a Commission using the process and methodology set forth in Section IV of this Settlement Agreement.

“Non-Impaired Wire Center” is a Wire Center that the Commission finds meets the loop thresholds identified in CFR 47 §51.319(a)(4)(i) for DS1 Loops, or the loop thresholds identified in CFR 47 §51.319(a)(5)(i) for DS3 Loops, or the Tier 1 or Tier 2 Wire Centers designations as defined in §51.319(e)(3) and that is identified on a Commission-Approved Wire Center List.

"Parties" refers collectively to Qwest Corporation and the Joint CLECs.

"Qwest" refers to "Qwest Corporation."

"Wire Center" For purposes of this Settlement Agreement, a Wire Center is the location of a Qwest local switching facility containing one or more Central Offices as defined in the Appendix to part 36 of chapter 1 of Title 47 of the Code of Federal Regulations. The Wire Center boundaries define the area in which all customers served by a given Wire Center are located.

III. INITIAL COMMISSION-APPROVED WIRE CENTER LIST

Notwithstanding anything that may be to the contrary in the Definitions set forth in Section I and the Methodology set forth in Section V of this Settlement Agreement, the Parties agree the Qwest Wire Centers listed in Attachment A qualify as Non-Impaired Wire Centers at the tier levels and for the facilities noted on Attachment A.

For Wire Centers identified in Attachment A, the Parties agree as follows:

- A. The Joint CLECs agree that, upon the Effective Date of this Settlement Agreement, they will not order Non-Impaired Facilities identified in the Initial Commission-Approved Wire Center List. An order approving this Settlement Agreement is, and will also be recognized by the Parties as, an order approving the non-impairment or tier designations identified in the Initial Commission-Approved Wire Center List.
- B. The Effective Date of Non-Impairment Designations contained in the Initial Commission-Approved Wire Center List is March 11, 2005, with the following exceptions:
 1. **July 8, 2005:** The Effective Date of Non-Impairment Designations filed in 2005 after Qwest's initial February 18, 2005 filing and identified in the final column of Attachment A shall be July 8, 2005.
 2. **Thirty (30) Days After the Effective Date of this Settlement Agreement:** The Effective Date of Non-Impairment Designations for the

Denver East and Colorado Springs Main Wire Centers shall be 30 days following the Effective Date of this Settlement Agreement.

IV. NON-RECURRING CHARGE FOR CONVERSIONS USING THE INITIAL WIRE CENTER LIST AND FOR FUTURE COMMISSION-APPROVED ADDITIONS TO THAT LIST

- A. Qwest will, for at least three (3) years from the Effective Date of this Settlement Agreement, assess an effective net non-recurring charge of \$25 for each facility converted from a UNE to an alternative service or product under this Settlement Agreement. Qwest may assess a non-recurring conversion charge in excess of \$25 so long as Qwest provides a clearly identified lump sum credit within three (3) billing cycles that results in an effective net non-recurring charge of \$25. No additional non-recurring charges apply, other than OSS non-recurring charges if applicable. Qwest shall not impose any recurring or nonrecurring OSS charges unless and until the Commission authorizes Qwest to impose such charges and/or approves applicable rates at the completion of appropriate cost docket proceedings.
- B. For purposes of settlement, Qwest will provide a clearly identified lump-sum credit of \$25 per converted facility to those CLECs that have (1) converted Non-Impaired Facilities to a Qwest alternative service before the Effective Date of this Settlement Agreement pursuant to the TRRO and (2) paid a \$50 non-recurring conversion charge. In the event a CLEC has, prior to the Effective Date of this Settlement Agreement, disconnected a converted circuit and, as a result that circuit is no longer in service as of the Effective Date of this Settlement Agreement, Qwest will include that disconnected circuit in the lump-sum credit described above if the CLEC provides: (1) the circuit ID of the disconnected circuit; (2) the BAN number on which the disconnected circuit was billed; and (3) the BAN number to which the CLEC would like the credit applied. Once the CLEC has provided this information, Qwest will provide the reimbursement credit as set forth herein. A CLEC will not be required to provide a copy of the disconnection order as a condition of including the disconnected circuit in the lump sum credit provided under this Paragraph.

- C. The Parties may disagree as to the amount of the applicable non-recurring charge after three years from the Effective Date of this Settlement Agreement, and each Party reserves all of its rights with respect to the amount of charges after that date. Nothing in this Settlement Agreement precludes a Party from addressing the non-recurring charge after three years from the Effective Date of this Settlement Agreement. A different non-recurring charge will apply only to the extent authorized by an applicable regulatory authority, or agreed upon by the Parties.

V. METHODOLOGY

Non-Impaired Facilities, non-impairment or tier designations will be determined using the following methodology:

- A. Business Lines – Business lines shall be counted as follows:
1. Qwest retail business lines shall be determined using the most recently filed unadjusted ARMIS data reported to the FCC. For purposes of future non-impairment designations, Qwest shall follow FCC ARMIS instructions and will record and count retail business lines in precisely the same manner as business access line data is tracked and recorded in the Wire Center level data Qwest uses to develop its statewide ARMIS 43-08 reports filed annually with the FCC, without making any inter-wire center adjustments to this data and without including the same lines in more than one of the categories listed in paragraphs (2) – (4) of this Section V(A).
 2. UNE loops connected to a Wire Center where DS1 & DS3 unbundled loops and DS1 & DS3 Enhanced Extended Loops (“EEL”) are provided to CLECs shall be counted at full capacity (i.e., DS1s will be counted as 24 business lines and DS3s will counted as 672 business lines).
 3. Only Business UNE-P lines will be counted for the Commission-Approved Wire Center List. Business UNE-P lines shall be derived by subtracting the count of listings associated with residential UNE-P from the total number of UNE-P lines.

4. Qwest Platform Plus ("QPP"), Qwest Local Services Platform ("QLSP"), and other similar platform product offerings shall be calculated using actual business line counts for these services.

B. Collocation –

1. A fiber-based collocator is defined as any carrier, unaffiliated with the incumbent LEC (Qwest), that maintains a collocation arrangement in an incumbent LEC (Qwest) Wire Center, with active electrical power supply, and operates a fiber-optic cable or comparable transmission facility that:
 - a. terminates at a collocation arrangement within the Wire Center;
 - b. leaves the incumbent LEC's (Qwest's) Wire Center premises; and
 - c. is owned by a party other than the incumbent LEC (Qwest) or any affiliate of the incumbent LEC (Qwest), except as set forth in this definition. Dark fiber obtained from an incumbent LEC (Qwest) on an indefeasible right of use basis shall be treated as non-incumbent LEC (non-Qwest) fiber-optic cable. Two or more affiliated fiber-based collocators in a single Wire Center shall collectively be counted as a single fiber-based collocator. For the purposes of this definition, "affiliate" is defined by 47 U.S.C. §153(1) and any relevant interpretation in that title.
2. Before classifying a carrier as a fiber-based collocator in a Qwest filing request pursuant to Section VI for Commission approval of a non-impaired designation, Qwest will:
 - a. Confirm that the carrier meets the criteria contained in the definition of fiber-based collocator in 47 C.F.R. § 51.5 (as reflected in paragraph B(1) and subparts above);
 - b. Conduct a field visit to verify and document the above (2.a.) criteria; and

- c. Validate the criteria against the most recent order and/or billing data.
3. Express fiber will be counted as a functional fiber facility for purposes of identifying a fiber-based collocator, if it meets the definition of fiber-based collocator in 47 C.F.R. §51.5 (as reflected in paragraph B(1) and subparts above). The Joint CLECs agree not to raise the lack of Qwest-provided power when there is traffic over the express fiber as the sole basis to dispute whether express fiber can be counted as a functional fiber facility for purposes of identifying a fiber-based collocator. For the purpose of this Settlement Agreement, "express fiber" means a CLEC-owned fiber placed to the collocation by Qwest that terminates at CLEC-owned equipment in a collocation and draws power from a remote location.
4. Before filing a request pursuant to Section VI for Commission approval of a non-impairment designation, Qwest will send a letter by certified U.S. mail, return receipt requested, to CLECs identified by Qwest as fiber-based collocators, using the contacts identified by each such CLEC for interconnection agreement notices, and inform them that they will be counted by Qwest as fiber-based collocators in Qwest's filing. The CLEC will have a reasonable opportunity (which Qwest will identify in its letter but which will be no less than ten (10) business days from the CLEC's confirmed receipt of Qwest's letter) to provide feedback to this information before Qwest files its request. In the absence of a response by the Qwest-identified collocators, Qwest may rely on the Qwest-identified collocators in its filing. No party shall use the absence of a response from a CLEC collocator as the sole basis for its position.

VI. FUTURE QWEST FILINGS TO REQUEST COMMISSION APPROVAL OF NON-IMPAIRMENT DESIGNATIONS AND ADDITIONS TO THE COMMISSION-APPROVED WIRE CENTER LIST

- A. Qwest may file a request(s) with the Commission to obtain additional Non-Impaired Wire Centers as data supporting such designations become available,

subject to the following conditions:

1. Qwest may request addition of Non-Impaired Wire Centers to the Commission-Approved Wire Center List at any time based solely the number of fiber-based collocators.
 2. Qwest may request addition of Non-Impaired Wire Centers based in whole or part upon line counts at any time up to July 1 of each year, based on prior year line count data.
 3. Notwithstanding the above, Qwest will not request addition of any Non-Impaired Wire Centers until after the 2007 ARMIS filing (using December 2006 line count data).
- B. When requesting additional non-impairment designations, Qwest will use the methodology set forth in Section V above, and will use the most recent data available at the time Qwest submits its proposed non-impairment designations for Commission review. For business line counts, Qwest will use and submit the most recent filed ARMIS (as reported) data available at the time of submission of its request to the Commission.
- C. At least five (5) days prior to filing new non-impairment or tier designations for Commission review, Qwest will request a protective order from the Commission to govern the handling of confidential information during the proceedings. Attached as Attachment E to this Settlement Agreement, is a model protective order. The Parties agree to seek from the individual Commission's approval for a standing protective order based upon the attached model protective order that will apply in future proceedings. Where a Commission adopts a standing protective order, Qwest is not required to submit a request for a new protective order, and CLECs that have signed the protective order are not required to re-sign it for each new Qwest request. A Commission may modify a standing protective order using its standard processes and procedures after Qwest has made its filing.
- D. In order to provide all interested parties adequate notice of the scope of the requested protective order and the anticipated Wire Center update proceeding, Qwest will provide CLECs (Joint CLECs and other potentially affected

Competitive Local Exchange Carriers), including at least the contacts identified by each such carrier for interconnection agreement notices, via its email notification channels, with at least five (5) business days notice prior to filing proposed non-impairment or tier designations for Commission review.

E. Qwest will file supporting data (as outlined below) with the Commission when filing its request to obtain additional non-impairment designations. Qwest will also provide a copy of the supporting data pursuant to the terms of the applicable protective order to CLECs that have signed the applicable protective agreement (or are subject to a standing protective order).

1. If Qwest relies upon Fiber-Based Collocators for its proposed Non-Impairment Designation, the supporting data will include at least the following information:

- a. The name of each fiber-based collocator.
- b. The applicable Qwest Ready for Service date.
- c. The results of any field verification that Qwest undertook to verify the fiber-based collocation, including the field technicians' notes which includes: (1) the Wire Center and state; (2) collocator name; (3) collocation type; (4) fiber type; (5) validation of fiber termination at the fiber-based collocation; (6) validation that fiber exits a Wire Center premises; (7) visual power verification; (8) power verification at Battery Distribution Fuse Bay/Board ("BDFB,") if possible; (9) additional comments from field personnel.
- d. A copy of the letter sent by Qwest to collocator(s) identified by Qwest as fiber-based collocator(s) requesting validation of status as a fiber-based collocator and ownership/responsibility.
- e. Copies of any responses to the letter noted in 1(d) above, including an indication of whether the collocator has affirmatively identified (or disputed) itself as a fiber-based collocator; and
- f. All written correspondence between Qwest and the collocator(s) identified by Qwest as fiber-based collocator(s) regarding the validation of the fiber-

based collocation.

2. If Qwest relies upon Switched Business Line Count data for its proposed Non-Impairment Designation, the supporting data will include at least the following information:

a. The latest available ARMIS 43-08 line counts, using the methodology described in Section V(A) of this Agreement and used to create official ARMIS data on file with the FCC.

b. Total wholesale UNE loops shown at the aggregated level for the Wire Center(s) at issue, and by capacity (voice grade, DS1, DS3). This information will also be provided on a disaggregated basis for all CLECs with the CLEC names masked. Qwest will provide to CLEC the masking code information necessary for CLEC to identify its own line count data. Qwest calculations to derive 64-kbps equivalents for high capacity (e.g., DS1 and DS3) loops will also be provided.

c. CLEC line counts based upon QPP or Qwest Local Services Platform (or similar platform product) will be provided on a disaggregated basis for all CLECs with CLEC names masked. Qwest will provide to CLEC the masking code information necessary for CLEC to identify its own line count data.

F. Once Qwest submits its new non-impairment or tier designation filing to request Commission approval, including all of the information identified in Section VI(E) above:

1. A CLEC or any other party will have 30 days from the Filing Date to raise objections to Qwest's request with the Commission.

2. If no objections are filed with the Commission, the Effective Date of the Non-Impairment Designation will be thirty (30) days after the Filing Date, unless the Commission orders otherwise ("Effective Date for Undisputed Designations"). The Parties agree that they will request that the Commission not alter the Effective Date for Undisputed Designations without good cause. If no objections are filed with the Commission, the

Joint CLECs agree that they will not order Non-Impaired Facilities in the Wire Center(s) identified on the applicable Commission-Approved Wire Center List as of fifteen (15) days from the Effective Date of the Non-Impairment Designation.

- a. In the event no objections to Qwest filing are filed with the Commission, the Parties agree that they will, within thirty (30) days of the Effective Date of the Non-Impairment Designations, jointly request an expedited order designating as non-impaired the facilities identified in the Qwest filing, if no order has been received.
 - b. To facilitate the expedited order described in the previous paragraph, the Parties further agree that they will, within thirty (30) days of the Effective Date of Non-Impairment Designations, include a mutually agreed to proposed order designating as non-impaired the facilities identified by Qwest in its filing on the Filing Date as an attachment to the joint request for an expedited order, if no order has been received.
3. If a CLEC or any other party disputes Qwest's proposed non-impairment designations, the Parties agree to ask the Commission to use its best efforts to resolve such dispute within 60 days of the date of the objection.
- a. In the event no objections are filed with respect to some but not all of the non-impairment designations identified by Qwest in a request on the Filing Date, the Parties agree that they will jointly request an expedited order approving the undisputed designations identified in the Qwest filing on the Filing Date, using the process noted in paragraphs 2(a) and 2(b) above.
4. If a CLEC or any other party disputes Qwest's proposed non-impairment designation but Qwest prevails and the Wire Center is added to the Commission-Approved Wire Center List, the Joint CLECs agree they will not order Non-Impaired Facilities in (for loops) and between (for transport) Wire Centers identified on the applicable Commission-

Approved Wire Center List as of fifteen (15) days after the effective date of the Commission order adding it to the Commission-Approved Wire Center List.

5. If a CLEC or any other party disputes Qwest's proposed non-impairment designation and prevails, and it is not added to the Commission-Approved Wire Center List, DS1 and DS3 UNE loop or high capacity transport UNE facilities in (for loops) and between (for transport) such Wire Centers will continue to be treated as UNEs until those facilities are added to a Commission-Approved Wire Center List in a future filing.

G. Length of Transition Period for Additional Non-Impairment Designations.

1. When the Commission approves additional DS1 and DS3 UNE loop or high capacity transport UNE non-impairment designations as described in this Section VI, CLEC will have ninety (90) days from the effective date of the order in which the Commission approves the addition to the Commission-approved Wire Center List to transition the applicable Non-Impaired Facilities to an alternative service pursuant to the terms of the applicable interconnection agreement.
2. When the Commission approves additional Dark Fiber transport non-impairment Designations as described in this Section VI, CLEC will have one-hundred and eighty (180) days from the effective date of the order in which the Commission approves the addition to the Commission-approved Wire Center List to transition the applicable Non-Impaired Facilities, pursuant to the terms of the applicable interconnection agreement to an alternative service. Qwest and CLEC will work together to identify those circuits impacted by such a change.

H. Rate During Transition Period for Additional Non-Impairment Designations

1. During the Transition Periods identified in Section VI (G), facilities subject to the transition will be provided at a rate equal to 115% of the UNE rates applicable as of the applicable effective date. The 115% transitional rate for additional Non-Impaired Facilities will be applied to

CLEC bills as a manual adjustment on the following bill cycle. The bill adjustment will be applied to each account based on the Billing Telephone Number (BTN) and/or Circuit (CKT) per Billing Account Number (BAN) with an effective bill date as of the applicable effective date.

2. The non-recurring conversion charge is addressed in Section IV.

VII. OTHER PROVISIONS

A. This Settlement Agreement is the entire agreement between the Parties regarding resolution of the underlying dispute and this Settlement Agreement may be modified only if agreed to in writing, signed by the Parties and approved by the Commission. This Settlement Agreement is not intended to alter or amend the existing interconnection agreements between Qwest and Joint CLECs. To the extent that any term of this Settlement Agreement would affect interconnection agreement terms, interconnection agreement terms will not be dealt with in the Settlement Agreement but will instead be included in filed and approved interconnection agreements or amendments as described in subparagraphs 1-3 of this Section VII(A):

1. Attachments B, C, and D to this Settlement Agreement contain interconnection agreement ("ICA") provisions regarding issues addressed in this Settlement Agreement. The CLECs that are part of the Joint CLECs are at varying stages of ICA negotiations with Qwest. Qwest and the Joint CLECs agree that the ICA language will be addressed as follows:
 - a. Covad, Integra, POPP.Com, and XO have each executed TRRO ICA amendments with Qwest. Qwest, Covad, Integra, POPP.Com and XO agree to amend their interconnection agreements with Qwest using the amendment terms in Attachment B.
 - b. Eschelon and Qwest have executed a Bridge Agreement and are currently parties to ICA arbitrations. Qwest and Eschelon agree that, in each arbitration, the language in Attachment C will be added as closed (*i.e.*, agreed upon) language to the interconnection

agreement that is submitted in the compliance filing for Commission approval in each state. Inserting this language will not re-open or modify any closed language in the proposed interconnection agreement. Eschelon agrees to add the closed language reflected in Attachment C to the negotiations multi-state interconnection agreement negotiations draft within ten (10) business days of the Effective Date of this Settlement Agreement.

- c. McLeodUSA and TDSM have not agreed to or executed TRRO Amendments to their current ICAs and are in negotiations with Qwest pursuant to Section 252 of the federal Act. The timeframes of Section 252 apply to those interconnection agreement negotiations. Qwest, McLeodUSA and TDSM agree to execute an amendment to their existing ICAs to include the amendment terms in Attachment D. Qwest, McLeodUSA and TDSM reserve their rights as to TRRO and ICA terms not set forth in Attachment D including terms with respect to the rates, terms and backbilling for the time period from March 10, 2006 to the time McLeodUSA and TDSM convert their existing base of Non-Impaired Facilities as well as the consequences for any non-conversion (or "Failure to Convert") after the end of a transition period.
2. Qwest, Covad, Integra, POPP.Com, and XO agree to execute the ICA terms in Attachment B within ten (10) business days of the Effective Date of this Settlement Agreement, and Qwest agrees to file the executed amendments for Commission approval within thirty (30) days of the Effective Date of this Settlement Agreement.
3. McLeodUSA and TDSM agree to execute the ICA terms in Attachment D within ten (10) business days of the Effective Date of this Settlement Agreement, and Qwest agrees to file the executed amendments for Commission approval within thirty (30) days of the Effective Date of this Settlement Agreement.
4. Qwest agrees to make the terms in Exhibits B, C, and D available to other

requesting CLECs for inclusion of one or the other in their interconnection agreements, consistent with Section 252(i) of the Act, as well.

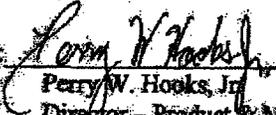
- B. This Settlement Agreement is a settlement of a controversy. No precedent is established by this Settlement Agreement, whether or not approved by Commissions. The Settlement Agreement is made only for settlement purposes and does not represent the position that any Party would take if this matter is not resolved by agreement. This Settlement Agreement may not be used as evidence or for impeachment in any future proceeding before a Commission or any other administrative or judicial body, except for future enforcement of the terms of this Settlement Agreement after approval.
- C. If, prior to approval, any Commission modifies any portion of this Settlement Agreement, the Parties expressly acknowledge that any Party may terminate this Settlement Agreement as to that particular state.
- D. Qwest has entered into ICA Amendments (*See, e.g.*, Section 2.6 of the Qwest-Covad TRRO Amendment; Section 2.8.5 of the Qwest-Integra TRRO Amendment, and Section 2.9.4 of the Qwest-XO TRRO Amendment.) under which Qwest has agreed that facilities previously converted to (or ordered as) non-UNEs based on initial Qwest non-impairment designations will be converted back to UNEs at no charge with corresponding refunds to the CLECs for non-recurring charges and the difference between the applicable non-UNE and UNE recurring rates after a determination that the relevant Wire Center did not meet the FCC's non-impairment criteria. Qwest agrees herein that these provisions and all the conversion and refund terms therein will apply to any of the relevant Joint CLEC's facilities previously designated by Qwest as non-impaired, but not identified as non-impaired in Attachment A to this Settlement Agreement. For any refunds that are due and owing pursuant to such provisions as of the Effective Date of this Settlement Agreement, Qwest will refund the applicable qualifying Joint CLEC no later than sixty (60) days after the Effective Date of this Settlement Agreement.
- E. For those non-impairment designations that have an effective date of July 8, 2005 under this Settlement Agreement, CLECs that have already been back-billed to March 11, 2005 for those facilities shall receive from Qwest a lump sum credit equal to the amount back-billed

specifically for the period from March 11, 2005 to July 8, 2005.

**MULTI-STATE
SETTLEMENT AGREEMENT REGARDING
WIRE CENTER DESIGNATIONS AND RELATED ISSUES**

Dated this 20th day of June, 2007.

Qwest Corporation

By: 
Perry W. Hooks, Jr.
Director - Product & Marketing
1801 California Street, Suite 2150
Denver, CO 80202

**MULTI-STATE
SETTLEMENT AGREEMENT REGARDING
WIRE CENTER DESIGNATIONS AND RELATED ISSUES**

Dated this 14th day of June, 2007.

XO Communications Services, Inc.

A handwritten signature in cursive script, appearing to read "Heather B. Gold", is written over a horizontal line.

Heather B. Gold
SVP – External Affairs

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Dated this 13th day of June, 2007.

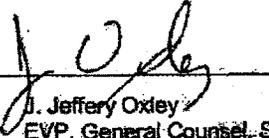
McLeodUSA Telecommunications Services, Inc.



William A. Haas
Vice President & Deputy General Counsel
1 Martha's Way
Hiawatha, Iowa 52233
(319) 790-7295

Eschelon

By:



J. Jeffery Oxley
EVP, General Counsel, Secretary
Eschelon Telecom, Inc.
730 Second Avenue S., Suite 900
Minneapolis, MN 55402