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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 REBUTTAL TESTIMONY OF RENÉE ALBERSHEIM  
QWEST CORPORATION

JUNE 10, 2009

## TABLE OF CONTENTS

	Page
<b>I. IDENTIFICATION OF WITNESS .....</b>	<b>2</b>
<b>II. PURPOSE OF REBUTTAL TESTIMONY .....</b>	<b>2</b>
<b>III. THE MULTI-STATE SETTLEMENT AGREEMENT .....</b>	<b>3</b>
<b>IV. BUSINESS LINE COUNT METHODOLOGY .....</b>	<b>10</b>
<b>V. TRANSITION PERIOD.....</b>	<b>25</b>
<b>VI. UNE CONVERSIONS.....</b>	<b>27</b>
<b>VII. PROCESS GOING FORWARD .....</b>	<b>33</b>
<b>VIII. CONCLUSION .....</b>	<b>36</b>

1

**I. IDENTIFICATION OF WITNESS**

2

**Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND**

3

**POSITION WITH QWEST CORPORATION.**

4

A. My name is Renée Albersheim. I am employed by Qwest Services

5

Corporation, parent company of Qwest Corporation ("Qwest"), as a Staff Witnessing

6

Representative. I am testifying on behalf of Qwest. My business address is 1801

7

California Street, 24th floor, Denver, Colorado, 80202.

8

**Q. DID YOU SUBMIT DIRECT TESTIMONY IN THIS CASE ON**

9

**APRIL 17, 2009?**

10

A. Yes.

11

**II. PURPOSE OF REBUTTAL TESTIMONY**

12

**Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

13

A. The purpose of my testimony is to respond to the Direct Testimony of

14

Douglas Denney, submitted on May 22, 2009. Specifically, I will respond to Mr.

15

Denney's testimony regarding the multi-state settlement agreement and the business line-

16

count methodology for purposes of establishing "non-impairment" pursuant to the

17

*Triennial Review Remand Order* ("TRRO").<sup>1</sup> Rachel Torrence of Qwest will respond to

18

Mr. Denney's testimony regarding the methodology for counting "fiber-based

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<sup>1</sup> See *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*").

1 collocators” at non-impaired wire centers. Finally, Victoria Hunnicutt if Qwest will  
2 respond to Mr. Denney’s testimony regarding the conversion charge to convert  
3 unbundled network elements (“UNEs”) to alternative services such as private line or  
4 special access services after a wire center has been designated as non-impaired.

5 **III. THE MULTI-STATE SETTLEMENT AGREEMENT**

6 **Q. MR. DENNEY CLAIMS THAT IT IS NOT NECESSARY FOR THIS**  
7 **COMMISSION TO DECIDE ALL OF THE ISSUES REGARDING TRRO**  
8 **IMPLEMENTATION IN THIS CASE, AND THAT THE COMMISSION ONLY**  
9 **NEED DETERMINE WHETHER CERTAIN WIRE CENTERS ARE NON-**  
10 **IMPAIRED.<sup>2</sup> DO YOU AGREE?**

11 A. No. Qwest believes that it is most efficient, and the best use of this  
12 Commission’s time and resources, to settle all questions pertaining to the implementation  
13 of the TRRO in this proceeding. That is how Qwest has approached the implementation  
14 of the TRRO in all of Qwest’s states. And that is how the TRRO has been implemented in  
15 the five states in which the state utility commissions adopted the multi-state settlement  
16 agreement that I outlined in my direct testimony.<sup>3</sup> Using the procedures established in

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<sup>2</sup> Direct Testimony of Douglas Denney (“Denney Direct”), at page 19.

<sup>3</sup> See *Arizona Wire Center Docket (Phase I)*, Arizona Corporation Commission, Docket Nos. T-03632A-06-0091, T-04302A-06-0091, T-03406A-06-0091, T-03402A-06-0091, T-01051B-06-0091, Opinion and Order, May 16, 2008, page 22; *In the Matter of CLECs’ Request for Commission of ILEC Wire Center Impairment Analysis; In The Matter of a Commission Investigation Identifying Wire Centers in Which Qwest Corporation Must Offer High-Capacity Loop or Transport UNEs at Cost-Based Rates*, Minnesota Public Utilities Commission, Docket No. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211, Docket No. P-999/CI-060685, Order Adopting Settlement, October 5, 2007, at page 5 (“*Minnesota Settlement Approval*”); *In the Matter of Covad Communications Company, Eschelon Telecom Of Oregon, Inc., Integra Telecom of Oregon, Inc., McLeodUSA Telecommunications Services, Inc., and XO Communications Services, Inc. Request for Commission Approval of Non-Impairment Wire Center List*,

1 the agreement, Qwest has proposed additions to the non-impaired wire center lists in all  
2 five states. In each case, the process established by the agreement was used successfully  
3 to start dockets, disseminate confidential information, allow for objections, and come to  
4 resolution regarding the additions to the non-impaired wire center lists in various states.  
5 The experience for Qwest and the CLECs in these five states in the past two years (non-  
6 impaired wire center updates in 2007 and 2008) has been a productive one with a  
7 minimum of litigation and process.<sup>4</sup>

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Oregon Public Utility Commission, Docket UM 1251, Order on Reconsideration, Order No. 07-328, July 31, 2007, at page 5; *In the Matter of the TRRO/Request for Commission Review and Approval of Wire Center Lists*, Utah Public Service Commission, Docket No. 06-049-40, Report and Order Approving Settlement Agreement, July 31, 2007, at page 5; *In the Matter of the Petition of Qwest Corporation For Investigation Concerning the Status of Competition and Impact of the FCC's Triennial Review Remand Order on the Competitive Telecommunications Environment in Washington State*, Washington Utilities and Transportation Commission, Docket No. 073035, Order 05, Initial Order Accepting, Subject To Conditions, Multi-Party Settlement Regarding Wire Center Designations And Related Issues, March 21, 2008, at ¶ 26.

Qwest has also proposed the use of the settlement agreement as a template to implement the *TRRO* in Iowa. That case is still pending. The only state where Qwest is not using the settlement agreement as a template to implement the *TRRO* is in New Mexico, where there were two undisputed wire centers considered non-impaired on the basis of fiber-based collocators, and Qwest does not anticipate future updates to the list of non-impaired wire centers in that state.

<sup>4</sup> See, for example, **Arizona-** *In the Matter of the Application of Dieca Communications DBA Covad Communications Company, Eschelon Telecom of Arizona Incl., McLeodUSA Telecommunications Services, Inc., Mountain Telecommunications, Inc., XO Communications Services, Inc. and Qwest Corporation's Request for Commission Process to Address Key UNE Issues Arising from Triennial Review Remand Order, Including Approval of Qwest Wire Center Lists (Phase II)*, Arizona Corporation Commission, Docket Nos. T-03632A-06-0091, T-04302A-06-0091, T-03406A-06-0091, T-03402A-06-0091, T-01051B-06-0091, Order, February 4, 2009 ("Arizona Wire Center Docket"); **Minnesota-** *In the Matter of Qwest's Petition for Approval of Additions for 2008 to the Non-Impaired Wire Center List*, Minnesota Public Utilities Commission, Docket No. P-421/AM-08-726, Order Approving Petition to Reclassify the Little Falls Wire Center as Tier 2 Impaired, January 8, 2009; **Oregon-** *Petition for Commission Approval of 2007 Additions to Non-Impaired Wire Center List*, Oregon Public Utility Commission, Docket UM 1326, Final Order, September 18, 2009; **Utah-** (1) *In the Matter of Qwest Corporation's Petition for Commission Approval of 2007 Additions to Non-Impaired Wire Center List and Motion for Expedited Issuance of Protective Order*, Utah Public Service Commission, Docket No. 07-049-30, Report and Order Approving Tier 2 Designation of Qwest's Orem Main Wire Center, November 20, 2007; (2) *In the Matter of Qwest Corporation's Petition for Commission Approval of 2007 Additions to Non-Impaired Wire Center List and Motion for Expedited Issuance of Protective Order*, Docket No. 07-049-30, Report And Order Approving Tier 2 Designation of Qwest's Midvale Main Wire Center, October 1, 2007; **Washington-** *In the Matter of the Petition of Qwest Corporation, For Commission Approval of 2007 Additions to Non-Impaired Wire Center List*, Washington Utilities and Transportation Commission,

1           **Q.     WHAT WOULD BE THE CONSEQUENCES IF THIS**  
2           **COMMISSION WERE TO FOLLOW MR. DENNEY'S SUGGESTION AND**  
3           **ONLY DECIDE THE ISSUE OF NON-IMPAIRMENT FOR THE TWO WIRE**  
4           **CENTERS IN QUESTION IN THIS CASE?**

5           A.     The result would be an excess of future litigation before this Commission.  
6           Every year that Qwest seeks to update its list of non-impaired wire centers in Idaho, the  
7           same issues that were raised here would be raised again, and another lengthy litigation  
8           could ensue. This is in stark contrast to the states in which the commissions have  
9           adopted the settlement agreement as I discussed above, where resolution was reached  
10          quickly in each case where updates were made to the non-impaired wire center lists.  
11          Each lengthy litigation would serve the CLECs' interests as this would allow them more  
12          time to continue to take advantage of UNE pricing in the wire centers at issue, but this  
13          would be the only benefit of putting off resolution of these issues now. Unnecessary  
14          additional litigation would also only serve to take additional time and resources away  
15          from other matters before this Commission. Qwest does not believe this is an efficient  
16          use of this Commission's resources.

17          **Q.     MR. DENNEY CLAIMS THAT THE STATEMENT IN YOUR**  
18          **TESTIMONY THAT THE SETTLEMENT AGREEMENT COMPLIES WITH**

---

Docket No. UT-073033, Initial Order Granting Petition for Approval of Additions to Non-Impaired Wire Center List, July 30, 2008.

1 THE RULES ESTABLISHED BY THE *TRRO* WAS IN ERROR.<sup>5</sup> PLEASE  
2 RESPOND.

3 A. Mr. Denney is incorrect. No party to the settlement agreement would have  
4 signed an agreement that did not comply with the FCC's rules. To suggest otherwise is  
5 to suggest that a party is willing to violate the FCC's rules or applicable law.  
6 I participated in the negotiations that resulted in the multi-state settlement agreement.  
7 Without disclosing any confidential settlement discussions or information, I can say  
8 generally that during those negotiations, all participants made it very clear that the end  
9 result must comply with the FCC's rules. The statement in the settlement agreement that  
10 Mr. Denney uses to support his assertion simply pertains to the fact that the document  
11 was in fact a settlement, a compromise of differing views, and thus that the parties  
12 entered into the negotiations taking different positions.<sup>6</sup> Nevertheless, that does not mean  
13 that simply because a party was willing to compromise on its original (pre-settlement)  
14 position, the end result of the compromise does not comply with the *TRRO*. The  
15 statement that Mr. Denney refers to has no bearing as to whether the settlement  
16 agreement is compliant with the FCC's rules or the FCC's *TRRO*.

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<sup>5</sup> Denney Direct, at page 15.

<sup>6</sup> Denney Direct, at pages 15-16 (the settlement agreement "does not represent the position that any party would take if this matter is not resolved by agreement").

1           **Q.     MR. DENNEY CLAIMS THAT QWEST IS SOMEHOW “IN**  
2 **VIOLATION” OF THE TERMS OF THE SETTLEMENT AGREEMENT BY**  
3 **REFERENCING IT IN THIS PROCEEDING.<sup>7</sup> IS HE CORRECT?**

4           A.     No, not at all. With all due respect, Mr. Denney, who is not a lawyer, is  
5 incorrect regarding his legal conclusion. To be clear, Qwest is simply using the  
6 settlement agreement as an example of a set of procedures that this Commission can use  
7 to implement the *TRRO*. Qwest is not using the settlement agreement as “evidence”  
8 against a party or as “impeachment,”<sup>8</sup> nor is Qwest attempting to use the settlement as  
9 any type of legal precedent. While the agreement prohibits those actions, the agreement  
10 does not prevent a party from referring to it or recommending that a state commission use  
11 it as a template for future non-impairment proceedings, as Qwest is doing here. Qwest is  
12 merely *advising* this Commission (1) of the undisputed *fact* that the agreement has been  
13 entered into (which the agreement does not prohibit and indeed, which is publicly-  
14 available information, as it was publicly-filed, as Mr. Denney admits),<sup>9</sup> and (2) that  
15 Qwest believes these are reasonable methods and procedures that this Commission may  
16 want (but is certainly not obligated) to consider and adopt.

17           To allay Mr. Denney’s concerns, Qwest acknowledges that “no precedent is  
18 established” by the settlement agreement. Indeed, nowhere is Qwest arguing that this  
19 Commission is somehow “obligated” to adopt the methods and procedures in the  
20 agreement, much less the agreement itself. Again, Qwest is simply presenting the

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<sup>7</sup> See, for example, Denney Direct, at page 12.

<sup>8</sup> Denney Direct, at page 12.

<sup>9</sup> Denney Direct, at page 12.

1 methods and procedures from that settlement agreement, with Qwest's two-year  
2 experience having used it with numerous CLECs in those five states, to show the  
3 Commission that, rather than "reinvent the wheel" every year there is a non-impairment  
4 proceeding, the Commission should use these methods and procedures (some or all of  
5 them, at the Commission's discretion) as a way to evaluate such future non-impairment  
6 proceedings.

7 **Q. DOES MR. DENNEY PROVIDE THIS COMMISSION WITH AN**  
8 **ALTERNATIVE SET OF PROCEDURES TO USE TO IMPLEMENT THE *TRRO***  
9 **IN FUTURE NON-IMPAIRMENT PROCEEDINGS?**

10 A. No. As I noted above, it appears that Mr. Denney would rather have the  
11 Commission not establish procedures for future updates to the list of non-impaired wire  
12 centers. Apparently, Mr. Denney and the Joint CLECs would prefer to litigate the same  
13 issues with each non-impairment filing.

14 **Q. MR. DENNEY ALSO CLAIMS THAT QWEST IS IN VIOLATION**  
15 **OF THE NOTICE REQUIREMENTS OF THE SETTLEMENT AGREEMENT.**  
16 **PLEASE RESPOND.**

17 A. Remarkably, Mr. Denney claims that the CLECs had not received notice  
18 that Qwest is seeking non-impairment for DS3 unbundled loops in the Boise Main wire  
19 center until they reviewed my direct testimony. As I noted in my direct testimony, the  
20 business line counts that Qwest provided with its petition in this proceeding clearly  
21 indicated that the threshold for DS3 unbundled loops was reached in the Boise Main wire

1 center. As I will discuss further below, however, there are currently no DS3 unbundled  
2 loops in the Boise Main wire center. Given that fact, and the fact that Mr. Denney does  
3 not want to be governed by the settlement agreement, I believe his indignation is  
4 overblown.

5 **Q. WHAT DOES QWEST RECOMMEND TO THIS COMMISSION**  
6 **REGARDING THE MULTI-STATE SETTLEMENT AGREEMENT?**

7 A. Qwest and (to date) five state commissions consider the multi-state  
8 settlement agreement to be a proven guide for establishing procedures to implement the  
9 FCC's mandates in the *TRRO*. Qwest believes that the multi-state settlement provides a  
10 comprehensive blueprint for *TRRO* implementation. The negotiations that resulted in the  
11 settlement agreement established procedures that ensured fair treatment of all parties, and  
12 all of these state commissions clearly found them to be reasonable and in the public  
13 interest when they approved the agreement. Qwest wanted to ensure that future non-  
14 impairment proceedings could not be used simply to delay non-impairment designations,  
15 and the CLECs who entered into the settlement agreement wanted to ensure that they  
16 would obtain sufficient data and receive sufficient time to ensure that Qwest's non-  
17 impairment designations were valid. These competing needs were recognized by the  
18 Minnesota Commission, for example, in its order adopting the settlement:

19 Applying the FCC's standards in a mutually-agreeable way, CLECs have  
20 acknowledged where Qwest's duties to provide UNEs have now Expired. And  
21 Qwest has acknowledged the legitimate interest of CLECs in procedural  
22 safeguards and transition periods for implementing changes in Qwest's  
23 unbundling obligations.<sup>10</sup>

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<sup>10</sup> See *Minnesota Settlement Approval*, at page 5.

1

2 Indeed, the fact that all the parties agreed to the resulting terms necessarily indicates that  
3 they all believed their concerns were fairly dealt with, as each party entered into the  
4 settlement agreement of its own volition and no party was compelled to enter into it.  
5 Therefore, Qwest recommends that the Commission establish procedures for  
6 implementing the *TRRO* for future non-impairment proceedings consistent with those  
7 established in the multi-state settlement agreement and which are currently in use in five  
8 other states.

9 **IV. BUSINESS LINE COUNT METHODOLOGY**

10 **Q. MR. DENNEY RELIES HEAVILY ON A COLORADO**  
11 **COMMISSION DECISION TO SUPPORT HIS CONTENTION THAT QWEST**  
12 **DOES NOT COUNT BUSINESS LINES PROPERLY.<sup>11</sup> PLEASE RESPOND**  
13 **GENERALLY.**

14 A. First, I should note that the Colorado Commission was the *only state*  
15 *commission* to reject the multi-state settlement agreement. One aspect of this rejection  
16 was the Colorado Commission's erroneous belief that the settlement agreement did not  
17 establish a proper methodology for counting business lines. Although Mr. Denney did  
18 not mention it, Qwest notes that this Colorado decision is presently being reviewed by the  
19 U.S. District Court in Colorado.<sup>12</sup>

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<sup>11</sup> See for example, Denney Direct, at pages 11, 12-13, and 16.

<sup>12</sup> See *Qwest Corporation v. Colorado Public Utilities Commission, et. al., United States District Court, District of Colorado, Civil Action Number: 08-CV-02653-RPM-KLM.*

1           **Q.     WHAT DID THE COLORADO COMMISSION ORDER**  
2 **REGARDING THE BUSINESS LINE COUNT METHODOLOGY?**

3           A.     The Colorado Commission found that residential and non-switched lines  
4 should be excluded from the count of UNE loops in Qwest's business line calculations.  
5 The data in the FCC ARMIS 43-08 report, from which Qwest's *retail* business lines are  
6 counted, is a business line count and already excludes residence lines. The Colorado  
7 Commission order was specific to UNE loops.<sup>13</sup>

8           **Q.     THE COLORADO ALJ RELIED ON A MICHIGAN COMMISSION**  
9 **DECISION.<sup>14</sup> IS THE MICHIGAN DECISION STILL IN EFFECT?**

10          A.     No. The Michigan decision, on which the Colorado Commission heavily  
11 relied, was *overturned* by a federal district court.<sup>15</sup> Regarding the Michigan  
12 Commission's decision on business line counts, the court stated:

13           The Court disagrees with the Defendant Intervenors, and concludes that the  
14 September Order improperly confuses the definition of a business line with the  
15 procedure that is used for counting it as specified in the governing regulation, 47  
16 *C.F.R. 51.5*. Unfortunately, the September Order ignores the plain language of  
17 the regulation, and transforms an otherwise unambiguous phrase, "all UNE  
18 loops," to mean only *some* UNE loops. Moreover, the Court concludes that the

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<sup>13</sup> See *In the Matter of the Joint Competitive Local Exchange Carriers' Request regarding the Status of Impairment in Qwest Corporation's Wire Centers and the Applicability of the Federal Communications Commission's Triennial Review Remand Order*, Colorado Public Utilities Commission, Decision No. C08-0969 Order on Exceptions, September 17, 2008, ¶¶ 15-17.

<sup>14</sup> See *In the Matter of the Joint Competitive Local Exchange Carriers' Request Regarding the Status of Impairment in Qwest Corporation's Wire Centers and the Applicability of the Federal Communications Commission's Triennial Review Remand Order*, Colorado Public Utilities Commission, Recommended Decision, February 19, 2008, ¶ 70.

<sup>15</sup> See *Michigan Bell Telephone Company, d/b/a AT&T Michigan v. Michigan Public Service Commission, et al.*, Case No. 06-11982, 2007 U.S. Dist. LEXIS 71272. (E. D. Mi. 2007), p. 28.

1 MPSC, in misconstruing the regulation, has violated existing federal law.  
2 Accordingly, this part of the September Order must be voided.<sup>16</sup>

3 Indeed, one of the flaws of the Colorado Commission's September 2008 decision is  
4 that it erroneously relied on the Michigan Commission's decision, even though the  
5 Michigan Commission decision had already been overturned (on May 8, 2007) by the  
6 Michigan federal court.

7 **Q. HAS ANY OTHER STATE COMMISSION AGREED WITH THE**  
8 **COLORADO COMMISSION REGARDING BUSINESS LINE COUNTS?**

9 A. Only one other state commission, the North Carolina Public Utilities  
10 Commission, has agreed with the Colorado Commission.<sup>17</sup> The North Carolina decision  
11 was not appealed.

12 **Q. IN CONTRAST, HAVE THERE BEEN ANY OTHER COURTS OR**  
13 **COMMISSIONS THAT HAVE AGREED WITH THE MULTI-STATE**  
14 **SETTLEMENT'S POSITION REGARDING THE COUNTING OF BUSINESS**  
15 **LINES?**

16 Yes. In fact, by my count, in addition to the five Qwest state commissions that  
17 have approved the settlement agreement, there have been 15 separate decisions (two by  
18 courts and 13 by state commissions) that have ruled that business lines should be counted  
19 in a manner consistent with the methodology supported by the multi-state settlement

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<sup>16</sup> *Id.*, at ¶ 17. (Emphasis added.)

<sup>17</sup> See *In the Matter of Proceeding to Consider Amendments to Interconnection Agreements Between BellSouth Telecommunications, Inc. and Competing Local Providers Due to Changes of Law, Order Concerning Changes of Law*, Docket No. P-55, Sub. 1549 (NC P.U.C., March 1, 2006), at p. 5.

1 agreement.<sup>18</sup> For example, in reversing the Michigan Commission's order, the court  
2 stated as follows:

3 The MPSC's position confuses the definition of a business line with the  
4 procedure used for counting a business line as specified in the governing  
5 regulation. "A business line is an incumbent LEC-owned switched access line  
6 used to serve a business customer." See 47 C.F.R. 51.5. Based upon this

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<sup>18</sup> See (1) **Texas**- See *Logix Communications, L.P., V. The Public Utility Commission of Texas, et al.*, Docket No. 06-51697 (5th Cir. 2008), slip op. p 7-8; (2) **Michigan**- *Michigan Bell Telephone Company, d/b/a AT&T Michigan v. Michigan Public Service Commission, et al.*, Case number 06-11982, 2007 U.S. Dist. LEXIS 71272 (E. D. Mi. 2007), p. 28; (3) **Missouri**- Report and Order, *In the Matter of the Application of NuVox Communications of Missouri, Inc. for an Investigation into the Wire Centers that AT&T Missouri Asserts are Non-Impaired under the TRRO*, Case No. TO-2006-0360 (Mo. P.S.C., March 31, 2008), pp. 5-6; (4) **Indiana**- Final Order, *Petition of Indiana Bell Telephone Company, Incorporated for Expedited Resolution of Dispute with Nuvox Communications Inc. Regarding Non-Impaired Wire Centers*, Docket No. 42986 (Ind. U.R.C., August 15, 2007), pp. 48-55; (5) Order, *In the Matter of the Indiana Utility Regulatory Commission's Triennial Review Remand Order and the Remaining Portions of the Triennial Review Order*, Cause No. 42857 (Ind. U.R.C, January 11, 2006); (6) **Ohio**- Finding and Order, *In the Matter of the Petition of XO Communications, Inc. Requesting a Commission Investigation of Those Wire Centers that AT&T Ohio Asserts are Nonimpaired*, Docket No. 05-1393-TP-UNC (P.U.C Oh. June 6, 2006); (7) *Arbitration Award, In re Establishment of Terms and Conditions of an Interconnection Agreement Amendment*, PUCO, Case No. 05-887-TP-UNC (P.U.C. Oh. Nov. 9, 2005), at 16; (8) **Kansas**- Order Determining Proper Method for Fiber-Based Collocator and Business Line Counts, *In the Matter of Post-Interconnection Dispute Resolution of Southwestern Bell Telephone LP Against Nuvox Communications of Kansas, Inc. Regarding Wire Center UNE Declassifications*, Docket No. 06-SWBT-743-COM (Kansas Corp. Com., June 2, 2006); (9) **Texas**- Order Approving Methodology to Determine AT&T Texas Wire Centers which are Non- Impaired, *Post-Interconnection Dispute Resolution Proceeding Regarding Wire Center UNE Declassification*, PUC Docket No. 31303 (Tex. P.U.C., April 7, 2006), pp. 30 and 32-33; (10) **South Carolina**- Order Addressing Changes of Law, *In Re: Petition of BellSouth telecommunications, Inc. to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law*, Docket No. 2004-316C, Order No. 2006-136 (SC P.S.C., March 10, 2006), at p. 44; (11) **Florida**- Order No. PSC-06-0172-FOF-TP, *Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes in Law by BellSouth Telecommunications, Inc.*, Fla. PUC, Docket No. 041269-TP (Fl. P.S.C., March 2, 2006), p. 37; (12) **Georgia**- Order on Remaining Issues, *Generic Proceeding to Examine Issues Related to BellSouth Telecommunications, Inc.'s Obligations to Provide Unbundled Network Elements*, Docket No. 19341-U (Ga. P.S.C., February 7, 2006), pp. 19-20; (13) **California**- Decision Adopting Amendment to Existing Interconnection Agreement, *Application of Pacific Bell Telephone Company, d/b/a SBC California for Generic Proceeding to Implement Changes in Federal Unbundling Rules Under Sections 251 and 252 of the Telecommunications Act of 1996*, Application 05-07-024, Decision 06-01-143 (P.U.C. Cal., January 26, 2006), pp. 10-11; (14) **Illinois**- Arbitration Decision, *Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 with Illinois Bell Telephone Company to Amend Existing Interconnection Agreements to Incorporate the Triennial Review Order and the Triennial Review Remand Order*, Docket No. 05-0442 (Ill. Commerce Com., Nov. 2, 2005), p. 32; (15) **Mississippi**- Final Order, *In Re: Order Establishing Generic Docket To Consider Change-Of-Law To Existing Interconnection Agreements*, Docket No. 2005-AD-139, 2006 Miss. PUC LEXIS 680 (October 20, 2006), pp. 76-69. See also footnote 3 for the five Qwest state commissions approving the settlement agreement.

1 definition, the MPSC concluded that the phrase “all UNE loops connected to that  
2 wire center” included only those UNE loops that can be shown to serve business  
3 clients.”  
4

5 This interpretation *ignores the plain language of the regulation. If the*  
6 *FCC wanted to include only business switched-access lines, it would have said so.*  
7 The Court declines to transform the unambiguous phrase “all UNE loops” to  
8 mean only some UNE loops. Further support for the reading of the regulation  
9 advanced by AT&T can be gleaned from the FCC’s rejection of an approach  
10 requiring “detailed and potentially subjective building-by-building and loop-by-  
11 loop evaluations” as impractical. TRRO at ¶ 159. The FCC instead based its  
12 business line count on data established by objective ILEC filings, concluding that  
13 “by basing our definition [of business line counts] on an ARMIS filing required of  
14 incumbent LECs and adding UNE figures, which must also be reported, we can  
15 be confident in the accuracy of the thresholds, and a simplified ability to obtain  
16 the necessary information. *Id.* at ¶ 105. In contrast, the MPSC’s approach  
17 requires the loop-by-loop analysis that the FCC explicitly rejected because the  
18 information is neither readily available or verifiable. The fact that AT&T, unlike  
19 many other ILECs, has that information, does not alter the approach articulated in  
20 the TRRO and regulation. Finally, the interpretation adopted by the MPSC has  
21 been rejected by the state commissions of Alabama, California, Florida, Georgia,  
22 Illinois, Indiana, Kansas, Ohio, South Carolina, Utah, Texas and Washington,  
23 D.C. [Citation omitted].<sup>19</sup>  
24

25 Likewise, the Missouri Commission noted:  
26

27 Between the two arguments presented on this issue, the Commission is most  
28 persuaded by that of Staff and AT&T. In both the definition of “business line”  
29 and in the FCC’s TRRO, the phrase “UNE-loop” is *not modified by the word*  
30 *“business.”* This is true, despite that “switched access lines”, in the definition, is  
31 modified by the word “business”, as is “UNE-P, in the TRRO paragraph. It is  
32 therefore *the FCC’s intent that UNE-loops serving both business and residential*  
33 *customers be included* when counting “business lines.” Also weighing in  
34 AT&T’s favor is the FCC’s intent that the information on business lines be  
35 objective and readily available. AT&T knows the capacity of the lines sold to  
36 CLECs. If it is something other than voice grade, then AT&T might assume the  
37 line is serving a business. However, as discussed during the hearing, a voice grade  
38 line might also serve a business. It follows that the distinction between a business  
39 loop and one that serves a residential customer will blur at times. As pointed out  
40 by AT&T, it was the FCC’s intention that an approach be adopted that “relies on  
41 objective criteria to which the incumbent LECs have full access, is readily

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<sup>19</sup> *Michigan Bell Telephone Company, d/b/a AT&T Michigan v. Michigan Public Service Commission, et al.*, Case number 06-11982, 2007 U.S. Dist. LEXIS 71272 (E. D. Mi. 2007), p. 28.

1 available by competitors . . . .” Further, the FCC discourages the “loop-by-loop”  
2 evaluations that would be necessary to determine whether a loop serves a business  
3 or residential customer. (Citations omitted and emphasis added.)<sup>20</sup>  
4

5 And finally, the Kansas Commission ruled:  
6

7 55. The Commission concludes that there is no conflict between the first  
8 and second sentences of the “business line” definition. The FCC defined the term  
9 in the first sentence and then, in the second sentence, provided the means by  
10 which business lines would be counted in an incumbent LEC’s wire center. The  
11 FCC determined that the sum of incumbent LEC’s business switched access lines  
12 and UNE loops was appropriate because this set of data was objective and already  
13 in existence for other regulatory requirements. [fn/] The FCC adopted the most  
14 objective criteria possible in order to avoid complex and lengthy proceedings that  
15 are administratively wasteful and add only marginal value to the unbundling  
16 analysis.  
17 . . . . .  
18

19 Thus the Commission concludes that NuVox’s attempt to link the phrase “among  
20 these requirements” to the first sentence of the rule is wrong. NuVox’s  
21 interpretation would limit the business line count to only SWBT-owned switched  
22 access lines used to serve business customers, whether by SWBT itself or by a  
23 CLEC that leases lines from SWBT. *This limitation is clearly not the intention of*  
24 *the FCC* because an inquiry would be required as to which CLEC-leased lines  
25 were used for business customers and which lines were leased for switched access  
26 or data purposes. This information is held only by the CLECs in Kansas [fn/] and  
27 clearly is not the “objective set of data that incumbent LECs already have created  
28 for other regulatory purposes” envisioned by the FCC. As the FCC observed,  
29 relative to fiber-based collocation data: “Moreover, unlike information regarding  
30 fiber-based collocation, the information necessary to implement the previous self-  
31 employment triggers was possessed entirely by a span of competitive LECs and  
32 was not easily verifiable.” That observation is equally germane to the business  
33 line count in a SWBT wire center. Depending upon data that is not objective  
34 criteria to which SWBT does not have full access, that is not readily confirmable  
35 by competitors and that does not make appropriate inferences regarding potential  
36 deployment does not comply with FCC intentions in the analysis of unbundled  
37 transport impairment. (Citations Omitted and Emphasis added.)<sup>21</sup>

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<sup>20</sup> Report and Order, *In the Matter of the Application of NuVox Communications of Missouri, Inc. for an Investigation into the Wire Centers that AT&T Missouri Asserts are Non-Impaired under the TRRO*, Case No. TO-2006-0360 (Mo. P.S.C., March 31, 2008), pp. 5-6.

<sup>21</sup> Order Determining Proper Method for Fiber-Based Collocator and Business Line Counts, *In the Matter of Post-Interconnection Dispute Resolution of Southwestern Bell Telephone LP Against Nuvox Communications of Kansas, Inc. Regarding Wire Center UNE Declassifications*, Docket No. 06-SWBT-743-COM (Kansas Corp. Com., June 2, 2006), 2006 Kan. LEXIS, at p. 16.

1           **Q.     CONSISTENT WITH ALL OF THE ABOVE DECISIONS, HOW**  
2 **SHOULD BUSINESS LINES BE COUNTED FOR THE PURPOSE OF**  
3 **ESTABLISHING NON-IMPAIRMENT?**

4           A.     As I stated in my direct testimony, and as stated by the *TRRO* itself and in  
5 the rules implementing the *TRRO*, “business lines” for *TRRO* non-impairment purposes,  
6 should include all retail business lines as reported in the ILEC’s FCC ARMIS Report 43-  
7 08, all business UNE-P,<sup>22</sup> and *all* UNE loops.<sup>23</sup>

8           **Q.     MR. DENNEY QUOTES THE RELEVANT RULE AND CLAIMS**  
9 **THAT QWEST PLACES TOO MUCH EMPHASIS ON THE SECOND**  
10 **SENTENCE IN ISOLATION FROM THE REST.<sup>24</sup> IS HE CORRECT?**

11          A.     No. In fact, reading Mr. Denney’s testimony, it is the *CLECs* who are the  
12 ones who would have the Commission read the *first* sentence of the rule in isolation from  
13 the rest of the rule.<sup>25</sup> The rule at 47 C.F.R. § 51.5 states in its entirety as follows:

14           A business line is an incumbent LEC-owned switched access line used to serve a  
15 business customer, whether by the incumbent LEC itself or by a competitive LEC  
16 that leases the line from the incumbent LEC. The number of business lines in a  
17 wire center shall equal the sum of all incumbent LEC business switched access  
18 lines, plus the sum of *all UNE loops connected to that wire center*, including UNE  
19 loops provisioned in combination with other unbundled elements. Among these  
20 requirements, business line tallies:  
21

---

<sup>22</sup> As UNE-P is no longer a UNE, Qwest includes a count of business QPP lines. QPP is the commercial product that Qwest offers in place of UNE-P. This is consistent with the terms of the settlement agreement and the *TRRO*.

<sup>23</sup> See *TRRO*, at ¶ 105 and 47 C.F.R. § 51.5.

<sup>24</sup> Denney Direct, at page 28.

<sup>25</sup> Denney Direct, at page 24.

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

3  
4 (2) Shall not include non-switched special access lines.

5  
6 (3) Shall account for ISDN and other digital access lines by counting each  
7 64 kbps-equivalent as one line. For example, a DS1 line corresponds to  
8 24 64 kbps-equivalents, and therefore to 24 "business lines." (Emphasis  
9 added.)  
10

11 Contrary to Mr. Denney's assertion, Qwest reads the rule *in its entirety*, and Qwest's  
12 business line-count methodology as captured in the settlement agreement is entirely  
13 consistent with the rule. This means that, per the rule, and consistent with the findings of  
14 the vast majority of jurisdictions where this issue has been decided, Qwest counts "*all*  
15 *UNE* loops connected to that wire center," and not just switched business *UNE* loops, as  
16 Mr. Denney advocates. Thus, all of Mr. Denney's speculation or wishful thinking about  
17 what he believes the FCC "intended" is irrelevant- the rule says what it says.

18 Furthermore, Mr. Denney ignores the fact that CLECs do not obtain residential or  
19 business lines from Qwest. They purchase *UNE* loops. A loop is simply a network  
20 element. Qwest is selling what amounts to a generic offering that CLECs are free to use  
21 for whatever *business* purpose they choose. As such, Qwest and the FCC appropriately  
22 recognize that all *UNE* loops are correctly counted under the business line category.

23 **Q. MR. DENNEY ALSO CLAIMS THAT QWEST IMPROPERLY**  
24 **INCLUDES "SPARE CAPACITY" AND NON-SWITCHED LINES IN ITS**  
25 **BUSINESS LINE COUNTS.<sup>26</sup> IS QWEST'S COUNT IMPROPER?**

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<sup>26</sup> Denney Direct, at page 26-33.

1 A. No. The FCC's rule is very clear that business line tallies:

2 (3) Shall account for ISDN and other digital access lines by counting *each* 64  
3 kbps-equivalent as one line. For example, a DS1 line corresponds to 24 64 kbps-  
4 equivalents, and therefore to 24 "business lines." (Emphasis added.)  
5

6 Mr. Denney may disagree with this approach, or believe that it is not logical or  
7 competition-friendly,<sup>27</sup> but this is the approach that the FCC established. This is also the  
8 approach implemented to count UNE loops in the multi-state settlement agreement that  
9 five state commissions in Qwest's territory have approved. In the 10 cases where this  
10 issue has been raised, all have agreed with Qwest's interpretation of the FCC's rule on  
11 counting high capacity loops.<sup>28</sup> For example, the Fifth Circuit Court of Appeals said:

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<sup>27</sup> See Denney Direct, at page 33.

<sup>28</sup> See (1) **Texas**- See *Logix Communications, L.P., v. The Public Utility Commission of Texas, et al.*, Docket No. 06-51697, slip op. (5th Cir. 2008); (2) **Missouri**- Report and Order, *In the Matter of the Application of NuVox Communications of Missouri, Inc. for an Investigation into the Wire Centers that AT&T Missouri Asserts are Non-Impaired under the TRRO*, Case No. TO-2006-0360 (Mo. P.S.C., March 31, 2008); (3) **Indiana**- Final Order, *Petition of Indiana Bell Telephone Company, Incorporated for Expedited Resolution of Dispute with Nuvox Communications Inc. Regarding Non-Impaired Wire Centers*, Docket No. 42986 (Ind. U.R.C., August 15, 2007); (4) **Ohio**- Finding and Order, *In the Matter of the Petition of XO Communications, Inc. Requesting a Commission Investigation of Those Wire Centers that AT&T Ohio Asserts are Nonimpaired*, Docket No. 05-1393-TP-UNC (Oh. P.U.C, June 6, 2006); (5) **Kansas**- Order Determining Proper Method for Fiber-Based Collocator and Business Line Counts, *In the Matter of Post-Interconnection Dispute Resolution of Southwestern Bell Telephone LP Against Nuvox Communications of Kansas, Inc. Regarding Wire Center UNE Declassifications*, Docket No. 06-SWBT-743-COM (Kansas Corp. Com., June 2, 2006); (6) **Texas**- Order Approving Methodology to Determine AT&T Texas Wire Centers which are Non- Impaired, *Post-Interconnection Dispute Resolution Proceeding Regarding Wire Center UNE Declassification*, PUC Docket No. 31303 (Tex. P.U.C., April 7, 2006); (7) **South Carolina**- Order Addressing Changes of Law, *In Re: Petition of BellSouth telecommunications, Inc. to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law*, Docket No. 2004-316C, Order No. 2006-136 (SC P.S.C., March 10, 2006); (8) **Florida**- Order No. PSC-06-0172-FOF-TP, *Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes in Law by BellSouth Telecommunications, Inc.*, Fla. PUC, Docket No. 041269-TP (Fl. P.S.C., March 2, 2006); (9) **Georgia**- Order on Remaining Issues, *Generic Proceeding to Examine Issues Related to BellSouth Telecommunications, Inc.'s Obligations to Provide Unbundled Network Elements*, Docket No. 19341-U (Ga. P.S.C., February 7, 2006); (10) **Illinois**- Arbitration Decision, *Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 with Illinois Bell Telephone Company to Amend Existing Interconnection Agreements to Incorporate the Triennial Review Order and the Triennial Review Remand Order*, Docket No. 05-0442 (Ill. Commerce Com., Nov. 2, 2005); (11) **Mississippi**- Final Order, *In Re: Order Establishing Generic Docket To*

1 the requirement at issue provides that "business line tallies . . . [s]hall  
2 account for ISDN and other digital access lines by counting each 64 kbps-  
3 equivalent as one line." 47 C.F.R. § 51.5. The regulation does not indicate that  
4 ILEC's or CLEC's should, for the first time, undertake building-by-building, end-  
5 user analysis. In-stead, the plain language indicates that all lines in a high-  
6 capacity loop should count as business lines.<sup>29</sup>  
7

8 And the Florida Commission stated:

9 We also agree with BellSouth that unused capacity on channelized high  
10 capacity loops should be counted in the business lines. As noted by BellSouth  
11 witness Tipton, the FCC rules specifically state that "the business line tallies . . .  
12 shall account for ISDN and other digital access lines by counting each 64 kbps-  
13 equivalent as one line." ( 47 CFR 51.5) The FCC rule further explains by way of  
14 example that a DS1 line should be counted as 24 business lines because it  
15 corresponds to 24 64 kbps-equivalents.<sup>30</sup>  
16

17 **Q. MR. DENNEY ALSO TRIES TO PARSE THE RULE TO DIVIDE**  
18 **HIGH-CAPACITY CIRCUITS BETWEEN BUSINESS AND RESIDENTIAL**  
19 **LINES.<sup>31</sup> DOES EVEN A BROAD READING OF THE RULE SUGGEST THE**  
20 **DATA SHOULD BE SO DIVIDED?**

21 A. No. Mr. Denney is correct that each 64 kbps-equivalent should be  
22 considered as one line, as the FCC rule already states.<sup>32</sup> But Mr. Denney then tries to

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*Consider Change-Of-Law To Existing Interconnection Agreements*, Docket No. 2005-AD-139, 2006 Miss. PUC LEXIS 680 (October 20, 2006).

<sup>29</sup> See *Logix Communications, L.P., V. The Public Utility Commission of Texas, et. al.*, Docket No. 06-51697, slip op. (5th Cir. 2008).

<sup>30</sup> Order No. PSC-06-0172-FOF-TP, *Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes in Law by BellSouth Telecommunications, Inc.*, Fla. PUC, Docket No. 041269-TP (Fl. P.S.C., March 2, 2006); pp. 78-79.

<sup>31</sup> Denney Direct, at page 27.

<sup>32</sup> Denney Direct, at page 27 (contradicting his position that spare capacity should not be counted).

1 parse the rule to read that only those lines “intended for business use” should be counted.  
2 Nothing in the rule establishes that requirement.

3 **Q. MR. DENNEY CLAIMS THAT HE WAS NOT ABLE TO**  
4 **VALIDATE QWEST’S COUNT OF INTEGRA’S LINES.<sup>33</sup> HAS MR. DENNEY**  
5 **BEEN ABLE TO VALIDATE LINE COUNTS IN OTHER STATES IN OTHER**  
6 **CASES?**

7 A. Yes. In several states where Qwest has filed to update its list of non-  
8 impaired wire centers, Qwest and Integra have shared data and been able to determine  
9 whether or not Qwest’s line counts were accurate. In fact, I have worked directly with  
10 Mr. Denney on an analysis of a wire center in Arizona, and we both agreed in that case  
11 that Qwest did have enough lines to declare that wire center non-impaired.

12 **Q. WHY DO YOU THINK MR. DENNEY NOW CLAIMS HE WAS**  
13 **NOT ABLE TO PERFORM THE SAME VALIDATION IN IDAHO?**

14 A. I cannot know for certain, as Mr. Denney’s testimony does not provide a  
15 great deal of detail. However, I have to question his use of Qwest billing data to perform  
16 his validation.<sup>34</sup> It makes much more sense, and is more likely to produce more accurate  
17 results, if one were to use a database of one’s own circuit inventory. Such a database  
18 would at the very least provide a list of current circuits. I would then look at a database  
19 containing transaction history, and look for new connections (to eliminate circuits that are

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<sup>33</sup> Denney Direct, at pages 33-35.

<sup>34</sup> Denney Direct, at page 24.

1 too new) and disconnections (to find circuits that were connected at the time of Qwest's  
2 filing, but have subsequently been disconnected). I am not familiar with Integra's  
3 computer systems, but databases such as the ones that I have described should be  
4 included in any telecommunications company's systems.

5 **Q. CAN YOU THINK OF ANY OTHER REASONS THAT MR.**  
6 **DENNEY WAS NOT ABLE TO VALIDATE QWEST'S COUNTS OF**  
7 **INTEGRA'S LINES IN IDAHO?**

8 A. I am certain that there was an impact based on the timing of the data. Mr.  
9 Denney strongly advocated changing the timing of the data to be used in *TRRO* cases,  
10 which I will discuss that shortly, but I think that such advocacy is driven in part by the  
11 age of this case. Qwest filed its request for non-impairment in June 2008. That filing  
12 included year-end 2007 data (December 2007), as required by the *TRRO*. It is now June  
13 2009. It would have been prudent for Integra to collect its own data at the time that  
14 Qwest made its filing a year ago. It is evident, however, from the data provided by  
15 Integra in response to Qwest's data request in May 2009 that Integra did not collect data  
16 until very recently. That creates a more than significant time gap between Integra's data  
17 and Qwest's, making a data comparison much more difficult.

18

1 \*\*\*\*BEGIN HIGHLY CONFIDENTIAL\*\*\*\*

18 \*\*\*\*END HIGHLY CONFIDENTIAL\*\*\*\*

19 Q. MR. DENNEY CLAIMS THAT QWEST DID NOT USE THE  
20 CORRECT VINTAGE OF DATA IN ITS FILING, AND THAT QWEST WAS

1 **“SELECTIVE” IN ITS USE OF DATA, AND HE SUGGESTS THAT THE DATA**  
2 **FOR THIS CASE SHOULD BE BASED IN 2008.<sup>35</sup> DO YOU AGREE?**

3 A. No, not at all. Qwest made its filing using the rules established by the  
4 *TRRO* and agreed to by the parties in the settlement agreement. This means that Qwest  
5 made its filing based in part on the ARMIS report that Qwest is required to file with the  
6 FCC in the spring of each year using data collected in December of the previous year.  
7 Following those rules, Qwest filed this case in June 2008. As I stated in my direct  
8 testimony, Qwest should not be penalized for the delays or inevitable regulatory lag  
9 inherent in a Commission proceeding. To suggest that data should be re-collected after a  
10 case schedule is established would only create an incentive for delay by CLECs and  
11 would create a perpetually moving target for Qwest. Qwest made its filing for non-  
12 impairment in good faith, and Integra could have exercised due diligence and collected  
13 data to perform its validation much earlier than it did. To penalize Qwest now because  
14 Integra failed to take action when Qwest first filed its petition is hardly reasonable.

15 **Q. MR. DENNEY REDUCES QWEST’S BUSINESS LINE COUNTS**  
16 **BASED ON THE PERCENTAGE OF BUSINESS LINES HE WAS ABLE TO**  
17 **VALIDATE.<sup>36</sup> PLEASE RESPOND TO HIS RECOMMENDATION.**

18 A. Mr. Denney admitted that he had difficulty validating Qwest’s data.  
19 Based on that and my discussion of his methods above, I do not believe it is appropriate  
20 for Integra to make such a reduction to Qwest’s counts. What I find most telling

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<sup>35</sup> Denney Direct, at page 37.

<sup>36</sup> Denney Direct, at page 35.

1 regarding Mr. Denney's analysis is that he must combine both his argument regarding the  
2 vintage of Qwest's data, along with his artificial percentages, to achieve line counts  
3 below the thresholds for non-impairment that Qwest's line counts achieve.<sup>37</sup> His  
4 adjustments place the Boise Main just 60 lines below the Tier 1 threshold, which suggests  
5 a manufactured result.

6 **Q. GIVEN THAT INTEGRA CLAIMS IT COULD NOT PROPERLY**  
7 **VALIDATE QWEST'S DATA, IS IT APPROPRIATE FOR THIS COMMISSION**  
8 **TO APPLY INTEGRA'S SUGGESTED CHANGES TO QWEST'S BUSINESS**  
9 **LINE COUNTS?**

10 A. No. Integra provides no convincing support to validate its own  
11 methodology, and Integra apparently bases its methodology on the assumption that Qwest  
12 has not used the proper vintage of data. Qwest has used its counting methodology for  
13 several years now, and this methodology has been approved in five Qwest states, and  
14 even Integra agreed to it when it entered into the settlement agreement. This same  
15 methodology has also been used several times in those states to update the lists of non-  
16 impaired wire centers. Therefore, it is appropriate for this Commission to rely on the  
17 business line counts provided by Qwest.

18

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<sup>37</sup> See the right-hand column of Exhibit Joint-CLEC 207.



1 important to recognize, however, the difference between the criteria to establish non-  
2 impairment, such as the number of business lines and the number of fiber-based  
3 collocators at a wire center, and the services that will *no longer* be available as UNEs if  
4 non-impairment is established. If the Boise Main and Boise West wire centers are  
5 determined to be non-impaired as requested by Qwest, then the following UNEs would  
6 have to be converted: DS3 transport between the Boise Main and Boise West wire  
7 centers, dark fiber transport between the Boise Main and Boise West wire centers, and  
8 DS3 unbundled loops in the Boise Main wire center.

9 **Q. IF THERE ARE CURRENTLY NO SERVICES TO BE**  
10 **CONVERTED IF THESE WIRE CENTERS ARE DECLARED NON-IMPAIRED,**  
11 **DOES THIS MEAN THAT CLECs ARE NOT IMPACTED BY THIS**  
12 **PROCEEDING?**

13 A. No. The impact of the fact that there are currently no services to be  
14 converted would be that CLECs would no longer be able to purchase DS3 or dark fiber  
15 transport between the Boise Main and Boise West wire centers, and they would no longer  
16 be able to purchase DS3 unbundled loops in the Boise Main wire center. Instead, CLEC  
17 will be able to obtain equivalent facilities from Qwest by purchasing tariffed services, or  
18 purchasing equivalent services from another provider, or CLECs can self-provision the  
19 services themselves by building their own facilities.

20 **Q. SO, IF THERE ARE NO SERVICES TO BE CONVERTED AT THE**  
21 **PRESENT TIME, IS THE TRANSITION PERIOD NECESSARY?**



1           **Q.     WHAT IS A “CIRCUIT (ID.)”?**

2           A.     The Circuit ID, more formally known as the Common Language Circuit  
3 Identification (CLCI), is used to uniquely identify every circuit in Qwest’s inventory.  
4 Qwest maintains this inventory in the TIRKS (Trunk Information Record Keeping  
5 System) database, a computer system licensed to Qwest by Telcordia.<sup>39</sup> Qwest is  
6 required to follow Telcordia’s standards for the CLCI in order to maintain its inventory  
7 properly. In its most widely-used form, the Circuit ID, which is applicable to unbundled  
8 loops, is a 22-letter identifier that is made up of several Telcordia approved codes.<sup>40</sup> It is  
9 important to note that this format is an industry standard and is not specific to Qwest.  
10 Deviation from these standards jeopardizes industry interoperability.

11           **Q.     DOES THE TIRKS APPLICATION ALLOW QWEST TO LEAVE**  
12 **THE CIRCUIT ID UNCHANGED WHEN THE SERVICE PROVIDED ON THE**  
13 **CIRCUIT CHANGES?**

14           A.     No. This is the critical problem with Mr. Denney’s recommendation that  
15 the Circuit ID remain unchanged. As I described above, the Circuit ID contains a  
16 Telcordia code for the service provided over the circuit. If a circuit is converted from an  
17 unbundled loop to a tariffed service, that code *must* change to comply with Telcordia’s

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<sup>39</sup> Telcordia is the former Bell Labs, which established many processes and systems for use by the telephone companies of the former Bell system. Many companies, including the Bell Operating Companies like Qwest, still use many Telcordia systems and processes.

<sup>40</sup> The information provided here is documented in “Common Language Special Service Circuit Codes, Telcordia Technologies Practice BR-795-402-100, Issue 21, 2008.” This document must be purchased from Telcordia.

1 requirements and to make such a change work properly in the TIRKS system.<sup>41</sup> Mr.  
2 Denney's description of the retention of the Circuit ID as a simple billing change is  
3 grossly overstated.

4 **Q. WHAT IS THE BILLING CHANGE THAT MR. DENNEY**  
5 **DESCRIBES?**<sup>42</sup>

6 A. The billing change that Mr. Denney discusses is a work-around that Qwest  
7 was required to implement in order to comply with an order by the Washington Utilities  
8 and Transportation Commission in the interconnection arbitration between Qwest and  
9 Eschelon (one of Mr. Denney's former employers and a company later acquired by  
10 Integra). I note, however, that this order is currently on appeal in federal court, and thus  
11 the final outcome of the case has not been determined yet.<sup>43</sup> I also note that the  
12 Washington Commission approved the *TRRO* settlement agreement but without reference  
13 to the Eschelon arbitration order.

14 In any event, the billing change *is not simple*. Qwest is, however, implementing  
15 this work-around to leave the Circuit ID unchanged for UNE conversions for Eschelon  
16 and any other CLECs that opts into Eschelon's interconnection agreement, as required by

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<sup>41</sup> TIRKS is not the only application that uses the Circuit ID. It is central to a number of other applications, both written by Qwest and leased from software vendors such as Telcordia. These include the Customer Record Information System (CRIS), the Interexchange Access Billing System (IABS), and the Work Force Administration System (WFA), to name a few.

<sup>42</sup> Denney Direct, at page 67.

<sup>43</sup> See *Qwest Corporation v. Washington State Utilities and Transportation Commission*, Case No. 3:09-cv-05259-RBL, United States District Court, Western District of Washington.

1 the Washington Commission order.<sup>44</sup> This work-around does not apply to any other  
2 CLECs, however. Even though Qwest is required to perform this work for a small subset  
3 of carriers, the work that it must undertake to accomplish the changes is complex, and it  
4 will not be implemented in Qwest's systems until April 2010. Once the system changes  
5 have been implemented, Qwest will need to undertake significant manual administrative  
6 work to deal with the resulting converted circuits.

7 **Q. MR. DENNEY CITES A BILLING CHANGE RELATED TO**  
8 **QWEST'S QPP PRODUCT AS STRONG EVIDENCE THAT A SIMPLE**  
9 **BILLING CHANGE CAN BE ACCOMPLISHED WITH THE CIRCUITS IN**  
10 **QUESTION IN THIS CASE.<sup>45</sup> DO YOU AGREE?**

11 A. Absolutely not. Mr. Denney is comparing apples to oranges. What Mr.  
12 Denney fails to mention with his example is that the conversion of UNE-P to QPP  
13 involved the conversion of one *finished service* to another finished service. A finished  
14 service contains all of the components needed to establish a telecommunications service.  
15 In the case of UNE-P, this includes the loop, transport and switching, making it  
16 equivalent to a basic telephone line. This is as opposed to an unbundled loop, which is  
17 only comparable to the loop portion of UNE-P. In the example that Mr. Denney cites, the  
18 *TRRO* declared that ILECs were no longer required to provide UNE-P. Thus, Qwest

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<sup>44</sup> This Eschelon-specific work-around will cost Qwest approximately \$100,000 to implement. This estimate, however, does not even include the costs of the administrative efforts that Qwest will be required to undertake once this change has been implemented. No provision has been made to compensate Qwest for these costs, however.

<sup>45</sup> Denney Direct, at page 69.

1 created a commercial product that CLECs could use as an alternative to UNE-P. One  
2 more distinction is that a finished service uses a different kind of Circuit ID that is more  
3 equivalent to a telephone number. Finally, in the case that Mr. Denney cites, the entire  
4 product known as UNE-P was eliminated, and replaced with QPP. This was one instance  
5 when a simple billing change was possible. In the case of non-impairment, however, an  
6 entire unbundled element is NOT being eliminated. It is only being made unavailable in  
7 a given wire center. Qwest must still be able to identify these unbundled elements as  
8 products in wire centers that remain "impaired" separately from the alternative services  
9 offered in non-impaired wire centers. That is the function of the Circuit ID. Again, a  
10 product is not being eliminated, as in the example that Mr. Denney cites. The product is  
11 being replaced with an alternative service in a given wire center.

12 **Q. IS QWEST REQUIRED TO PROVIDE DATA TO THE FCC**  
13 **BASED ON THE CIRCUIT ID?**

14 A. Yes. There are a number of reports that Qwest is required to provide to  
15 the FCC along with the ARMIS 43-08 report.<sup>46</sup> All of the ARMIS reports pertaining to  
16 network infrastructure are dependent on the Telcordia codes for the components of the  
17 Circuit ID, which are used to identify the various elements of all carriers' networks.  
18 Another example is the Form 477 report, which collects information about broadband  
19 connections to end-user locations, wired and wireless local telephone services, and

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<sup>46</sup> See for example <http://www.fcc.gov/wcb/armis/instructions/> for current instructions for the preparation of ARMIS reports.

1 interconnected Voice over Internet Protocol (VoIP) services, in individual states.<sup>47</sup> This  
2 report also relies on the proper identification of network components which is dependent  
3 on Circuit ID coding.

4 **Q. SO, IS QWEST IMPACTED IF THE RULES FOR THE CIRCUIT**  
5 **ID ARE NOT FOLLOWED?**

6 A. Absolutely. If the Commission were to require Qwest to maintain the  
7 Circuit ID after the service is changed, in violation of Telcordia's processes, Qwest  
8 would need to seek significant systems changes from Telcordia in order to make these  
9 changes work in Telcordia's TIRKS system. Moreover, Qwest would then be required to  
10 implement these changes for all CLECs in Idaho, as this docket impacts all CLECs in  
11 Idaho, not just one CLEC (Eschelon/Integra), or a few CLECs (those that opt into the  
12 Eschelon agreement), as is the case in Washington. The Joint CLECs, however, have not  
13 offered to compensate Qwest for this systems work, nor did Eschelon make any such  
14 offer in Washington. These costs, of course, were not anticipated when Qwest's rates for  
15 tariffed services were established, nor were they factored into the cost studies for UNEs.  
16 These costs are also not included in the conversion charge discussed in Ms. Hunnicutt's  
17 testimony. These costs would be incurred by Qwest and would not be recovered.

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<sup>47</sup> Interestingly, Mr. Denney identifies the Form 477 report as one the CLECs are also required to prepare, and suggests this would be a good source for the CLECs to use to report their circuits to estimate Qwest business lines. (Denney Direct, at page 33.) Mr. Denney fails to mention, however, that this report is intended to tell the FCC about the deployment of specific types of services, as I have listed here. Gleaning inventory figures from this report makes about as much sense as using another company's billing data to identify circuits. As I stated in my testimony above, it makes more sense to use one's own inventory to count circuits. The specifications for the Form 477 report can be found at <http://www.fcc.gov/Forms/Form477/477inst.pdf>.

1 In short, the *TRRO* did not contemplate leaving the Circuit ID unchanged, it did  
2 not even discuss the Circuit ID, and it certainly did not anticipate the need for  
3 uncompensated system changes in order to implement the *TRRO*. It is therefore  
4 inappropriate for Mr. Denney to raise this issue here.

5 **Q. WHAT DOES QWEST RECOMMEND THIS COMMISSION**  
6 **REQUIRE REGARDING CIRCUIT IDs AND UNE CONVERSIONS?**

7 A. At the present time, there would be no UNE conversions resulting from  
8 the designation of the Boise Main and Boise West wire centers as non-impaired, and the  
9 likelihood of future conversions is minimal. Given these facts, and the significant  
10 impacts to Qwest if the Commission were to order Qwest to alter its use of the Circuit ID  
11 as discussed above, Qwest recommends that this Commission permit Qwest to change the  
12 Circuit ID when a UNE is converted to a tariffed service, per Qwest's current, industry  
13 standard process.

14 **VII. PROCESS GOING FORWARD**

15 **Q. MR. DENNEY WANTS THE COMMISSION TO REQUIRE**  
16 **QWEST TO PROVIDE "ADVANCE NOTICE" WHEN A WIRE CENTER IS**  
17 **WITHIN 5,000 LINES OF REACHING A NON-IMPAIRMENT THRESHOLD.**  
18 **PLEASE RESPOND.**

19 A. Although Mr. Denney does not want this Commission to address anything  
20 other than the designation of the two non-impaired wire centers, and thus does not want  
21 the Commission to address the process for future non-impairment proceedings, he does

1 inconsistently ask the Commission to impose additional requirements on Qwest in the  
2 future. The first of these additional requirements is his request for “advance notice” to  
3 CLECs when a wire center is within 5,000 business lines of becoming non-impaired.  
4 There is absolutely no legitimate reason to add this administrative burden upon Qwest,  
5 and numerous state commissions other than the Colorado Commission have not accepted  
6 the recommendation that Mr. Denney makes here, and that he unsuccessfully made in  
7 those other initial non-impairment proceedings in 2006 and 2007.

8         Additionally, the threshold that the Mr. Denney set forth is not meaningful. This  
9 is especially so because a wire center being within 5,000 lines or one fiber collocator  
10 from non-impairment<sup>48</sup> does not mean that a change in the impairment classification for  
11 that wire center is imminent. The Commission should recall that Qwest only collects the  
12 business line counts once a year. Thus, while a wire center may be within 5,000 lines of  
13 a non-impairment threshold in December of any given year, that certainly does not mean  
14 the wire center will meet or exceed the threshold in the following year, or even that it will  
15 likely do so.

16         Further still, advance notification could allow a CLEC to attempt to “game” the  
17 system by changing its business plans so that the wire center would be unlikely to meet  
18 the threshold. While Mr. Denney notes that the Colorado Commission agreed with his  
19 proposal, he conveniently fails to mention that he has advocated this recommendation  
20 since 2006 (in the initial non-impairment proceedings) and yet no other state commission  
21 has accepted the recommendation or imposed this burden upon Qwest.

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<sup>48</sup> Qwest assumes Mr. Denney meant to refer to one fiber-based collocator, rather than one wire center.

1           The FCC set forth the non-impairment thresholds, and requiring an ILEC to report  
2   in addition to that threshold is an undue burden that the FCC clearly does not require. It  
3   should be sufficient that when Qwest becomes aware that a wire center has actually met  
4   the non-impairment requirements to warrant a change its impairment status, Qwest will  
5   notify this Commission and CLECs that Qwest is seeking a change in the wire center's  
6   impairment designation.

7           **Q.    HOW DO YOU RESPOND TO MR. DENNEY'S CLAIMS THAT**  
8   **QWEST SHOULD BE REQUIRED TO MAKE DATA AVAILABLE EVERY**  
9   **YEAR, AND HIS CLAIMS (AT PAGE 76) THAT QWEST ALREADY DOES SO**  
10 **AND THAT IT POSTS THAT DATA ON ITS WEBSITE. IS HE CORRECT?**

11           A.    No. Mr. Denney is referring to Qwest's ICONN database.<sup>49</sup> However,  
12 there is no relationship between the data provided in the ICONN database and the data  
13 that Qwest collects for *TRRO* non-impairment business line counts. The "Central Office  
14 Find" function in the ICONN database, to which Mr. Denney referred, simply tracks  
15 Qwest residential and business lines connected to a switch in a wire center. The data,  
16 however, contains no data for unbundled loops, or for wholesale services like UNE-P,  
17 QPP or QLSP. The line counts reported in the ICONN database were defined years  
18 before the *TRRO* and do not comply with the FCC's *TRRO* business line definition, and  
19 they cannot be used to determine the business line counts. Mr. Denney's assumption that  
20 Qwest already provides the business line count data publicly is invalid.

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<sup>49</sup> The ICONN database contains a set of reports that provide information regarding Qwest's network.

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**VIII. CONCLUSION**

**Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

A. My testimony responds to the testimony of Mr. Douglas Denney presented on behalf of Integra and 360networks. My testimony rebuts his contention that the Commission should only determine the non-impairment status of the Boise Main and Boise West wire centers, and not establish procedures for implementing the *TRRO* in the future. Instead, based on the reasonableness of the process in the multi-state settlement agreement that I have discussed (a reasonableness that numerous CLECs, including Integra, recognized in various states), I recommend that the Commission use the settlement agreement as a framework for establishing procedures to implement future non-impairment proceedings the *TRRO* in Idaho. Using that framework, the Commission should also approve the non-impairment of the Boise Main wire center as a Tier 1 wire center and the Boise West wire center as a Tier 2 wire center, and further, the Commission should approve the Boise Main wire center as being non-impaired for DS3 unbundled loops based on Qwest's business line counts and the number of fiber-based collocators in that wire center.

My testimony also rebuts Mr. Denney's claims regarding the methodology used to count business lines. Thus, the Commission should adopt the business line process in the settlement agreement, and find both wire centers (Boise Main and Boise West) as non-impaired based on such business line counts and process.

1           Accordingly, I recommend that the Commission adopt the methodology  
2 established in the multi-state settlement agreement, which is consistent with the rules  
3 established by the FCC in the *TRRO*, and that the Commission find and declare the Boise  
4 Main wire center to be non-impaired as a Tier 1 wire center and the Boise West wire  
5 center to be non-impaired as a Tier 2 wire center, and finally, to declare the Boise Main  
6 wire center to be non-impaired for DS3 unbundled loops.

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

8           A.     Yes, it does.

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