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IDAHO PUBLIC
UTILITIES COMMISSION

June 15, 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 eight (8) copies of **QWEST CORPORATION'S PREHEARING BRIEF**.

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

Very truly yours,


Mary S. Hobson

Enclosures

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IDAHO PUBLIC
UTILITIES COMMISSION

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

<p>IN THE MATTER OF QWEST CORPORATION'S PETITION FOR APPROVAL OF NON-IMPAIRED WIRE CENTER LISTS PURSUANT TO THE TRIENNIAL REVIEW REMAND ORDER</p>	<p>Case No. QWE-T-08-07</p> <p>QWEST CORPORATION'S PREHEARING BRIEF</p>
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QWEST CORPORATION'S POST-HEARING BRIEF

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Qwest Corporation (“Qwest”), pursuant to Commission Order No. 30763, respectfully submits its opening post-hearing brief.

INTRODUCTION AND SUMMARY

In February 2005, the Federal Communications Commission (“FCC”) issued its *Triennial Review Remand Order* (“*TRRO*”).¹ In the *TRRO*, the FCC established rules for incumbent local exchange carriers (“ILECs”) like Qwest who are providing unbundled network elements (UNEs) pursuant to the federal Telecommunications Act of 1996 (“the Act”).² Specifically, the *TRRO* addressed the requirements for providing unbundled high-capacity (DS1/DS3/dark fiber) loops and unbundled high-capacity (DS1/DS3/dark fiber) interoffice transport. The FCC intended the *TRRO*’s unbundling rules to be largely self-effectuating and implemented through negotiations between ILECs and competitive local exchange carriers (“CLECs”) such as the Intervenors in this case. The FCC also required Qwest to provide a list of wire centers that met the *TRRO*’s requirements and the FCC’s associated rules for every state in its ILEC region, including Idaho.

Based on the FCC’s *TRRO* mandates and the FCC’s associated implementation rules, including the *TRRO*’s three-tier structure for wire center non-impairment based on the count of “business lines” or “fiber-based collocators” at a given wire center, Qwest will show that one Idaho wire center, Boise Main, meets the FCC’s transport threshold for “Tier 1” non-impairment and another, Boise West, meets the standard for “Tier 2” non-impairment. Qwest will make this showing by correctly following the *TRRO* and FCC requirements for counting “business lines” and “fiber-based collocators” in paragraphs 102 and 105 of the *TRRO* and the FCC’s associated implementation rules, as well as the methodology that Qwest and numerous other CLECs,

¹ *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*”). (Albersheim Dir., p. 11, fn. 11.)

² Telecommunications Act of 1996, Pub. L. Non 104-104, 11 Stat. 56, codified as 47 U.S.C. § 151, et seq. (Albersheim Dir., p. 4, fn. 1.)

including an intervenor here, have agreed to as part of a multi-state settlement agreement in six other states that addressed *TRRO* wire center non-impairment dockets before Qwest filed this Idaho proceeding. One of the purposes of this case is to determine the correct methods for counting business lines and fiber-based collocators for future non-impairment proceedings.

Qwest will also show that it has met the FCC's requirements in 47 CFR § 51.319(a)(5)(i) for non-impairment for DS3 (high-capacity) loops in the Boise Main wire center; a showing that is again based on *both* business line *and* fiber-based collocator counts in that wire center.

On the subject of non-impaired loops, Qwest notes that since the FCC has determined that there is no impairment for "dark fiber" loops on a nationwide basis, Qwest is no longer obligated to provide unbundled dark fiber loops in any wire center. 47 CFR § 51.319(a)(6)(i).

The significance of a non-impairment finding pertains to the pricing of elements that were formerly provided as UNEs. The Act requires Qwest to base its UNE prices on a forward-looking economic cost concept (Total Element Long Run Incremental Cost, or "TELRIC"), which are generally established in state utilities commission cost dockets. (Direct Testimony of Renée Albersheim ("Albersheim Dir."), pp. 7-8.) However, if a UNE is eliminated under the standards of the *TRRO*, Qwest may still offer an equivalent service at a *market-based* rate, and the CLEC has the option of purchasing the commercial equivalent for the UNE from Qwest, purchasing the service or facility from another provider, or self-provisioning the service or facility itself. (*Id.*, pp. 8, 12-13.)

In summary, if the Boise Main and Boise West wire centers are confirmed as non-impaired as Qwest contends in this docket, then certain services will no longer be available as UNEs because the terms of the *TRRO* have established that there is sufficient competition in these wire centers. In the Boise Main wire center, DS3 unbundled loops will no longer be available, and between the Boise Main and Boise West wire centers, DS3 transport and dark

fiber transport will no longer be available as UNEs. (See Qwest Exhibit (“Ex.”) 2.) As stated, CLECs have the option to convert these services to alternative tariffed Qwest services, buy these services from other providers, or self-provision these services. (Albersheim Dir., pp. 8, 12-13.)

The CLECs who have intervened in this docket, 360networks (USA) inc., and a group of companies collectively referred to as “Integra” (“the CLECs”), have raised a number of arguments. However, not surprisingly, most state commissions addressing these issues have agreed with the positions that Qwest has taken on these disputed issues.

In addition to confirming Qwest’s determinations of specific wire center non-impairment, this docket also addresses the procedures that the Commission should adopt for future non-impairment proceedings. Qwest has proposed a simple, straightforward, expeditious and common sense (in short, a self-effectuating) process for the updating of non-impaired wire centers in the future. Indeed, this is a process that Qwest and a number of CLECs, including Integra (an intervenor in this docket), have negotiated and agreed to, and that five other commissions in Qwest’s ILEC region have approved. As Qwest will show, the proposed process follows the FCC’s intent for a self-effectuating process designed to remove unbundling obligations over time. Thus, if and when updates to the non-impaired wire center list are required, Qwest intends to update the wire center list using the same methodology and process it has employed here.³ However, the Commission should not require Qwest to have to provide “advance notice” of possible non-impairment (when a wire center is within 5,000 business lines or one fiber-based collocater of non-impairment), as such advance notice is immaterial, unduly burdensome and simply provides an opportunity for CLEC gamesmanship.

³ Qwest will also show that the CLECs’ argument that Qwest’s presenting the methodology and processes of this settlement agreement as a proposal for the Commission to follow for future non-impairment proceedings is somehow a “breach” of the settlement agreement is incorrect and without any basis.

On another issue, Qwest will show it is entitled to recover its reasonable costs for the work it must perform for the conversion of a UNE circuit to an alternative Qwest service or facility, such as a private line or special access circuit, at those wire centers that are deemed non-impaired. As such, Qwest is entitled, and thus intends, to charge the \$25 nonrecurring charge (“NRC”) it negotiated with the numerous CLECs in other states, and which five commissions have approved. This \$25 NRC is a reasonable compromise, given that Qwest’s Design Change Charge on which it is based best approximates the cost that Qwest will incur when performing these conversion work activities as a direct result of a CLEC choosing to remain on Qwest’s network instead of seeking available non-Qwest alternatives. And when a CLEC does convert UNEs to non-UNE services, the transition period should be 90 days, and not six months, as the CLECs advocate. (Rebuttal Testimony of Renée Albersheim (“Albersheim Reb.”), pp. 25-27.)

Finally, Qwest believes the Commission should make the effective date of the non-impairment designations for both wire centers to be *July 27, 2008*, which is 30 days after Qwest submitted its data on June 27, 2008 in support of its non-impairment petition. This 30-day period is within the spirit of the multi-state settlement agreement, and is also appropriate to ensure that there is no incentive for CLECs to delay or unreasonably object to Qwest’s petitions in the future. The Commission should also make any non-impairment determinations it makes in this docket to be of general applicability, and thus binding on all CLECs in Idaho.

Accordingly, Qwest respectfully submits the Commission should (1) declare that the two Idaho wire centers which Qwest presents here (Boise Main and Boise West) are non-impaired pursuant to the guidelines and standards in the *TRRO* and the FCC’s associated implementation rules, (2) find that Qwest’s methodology to count “business lines,” and its process to identify “fiber-based collocators,” are reasonable and should be adopted, (3) find that Qwest’s procedures to update the non-impaired wire center list in the future as set forth in the multi-state settlement

agreement are reasonable and should be adopted, (4) acknowledge Qwest's right to charge CLECs a nonrecurring charge when CLECs convert from a UNE to an alternative Qwest product or service at non-impaired wire centers, (5) reject the CLECs' arguments seeking a six-month transition period and advance notice of Qwest seeking non-impairment designations, (6) establish that the effective date of the non-impairment is July 27, 2008, or 30 days after Qwest filed its Petition, and (7) rule that its non-impairment determinations are of general applicability and thus binding on all CLECs operating in the state.

PERTINENT PROCEDURAL HISTORY AND BACKGROUND

On June 20, 2007, Qwest filed its petition requesting that the Commission to (1) open an investigation to develop a Commission-approved initial list of "non-impaired" wire centers pursuant to the "TRRO," (2) allow party review and discussion of that data, and (3) implement a process of updating and approving the lists. As part of that Petition, Qwest asked the Commission to adopt the procedures for future non-impairment designations that are set forth in a multi-state settlement agreement that Qwest and a number of CLECs, including intervenor Integra, negotiated and agreed to in various other states, and which five state utility commissions have approved. Thereafter, on June 27, 2008, Qwest filed its confidential data in support of its Petition, together with an Attorney's Certificate of confidentiality.

On July 9, 2008, the Commission issued a Notice of Petition and Notice of Intervention Deadline, and petitions to intervene subsequently were filed and approved for 360networks (USA) inc. ("360") and a group of companies collectively referred to as Integra. A protective agreement to control the distribution of confidential information was executed by the parties in January 2009. On February 6, 2009, Qwest filed a Motion for Informal Prehearing Conference to establish a schedule for completing the case.

Following a discussion among the parties and the Commission Staff, the Commission entered Order No. 30763. Pursuant to that Order, Qwest pre-filed the direct testimony of (1) Renée Albersheim, which discusses the background and structure of the *TRRO* generally, Qwest's interpretation of the FCC's *TRRO* methodology for counting business lines, Qwest's process for updating its wire center list in the future, and the multi-state settlement agreement; (2) Rachel Torrence, whose written testimony covers Qwest's identification of fiber-based collocators in the Boise Main and Boise West wire centers, as well as the process that Qwest uses for identifying and counting fiber-based collocators, as Qwest and the numerous CLECs had agreed to in the multi-state settlement agreement, and (3) Victoria Hunnicutt, whose testimony concerns the nonrecurring charge ("NRC") that will be applied to CLECs for the conversion of UNEs to alternative Qwest services. The direct testimony of Ms. Albersheim and Ms. Torrence includes Qwest Highly-Confidential Exhibits 5 (Albersheim) and 8-10 (Torrence).

On May 22, 2009, the CLECs filed the testimony of their joint witness, Douglas Denney, an employee of intervenor Integra, with seven exhibits (Exs. 201 through 207, including Highly-Confidential Exhibits 206 and 207). Thereafter, on June 10, 2009, Qwest filed its response testimony of Ms. Albersheim, Ms. Torrence and Ms. Hunnicutt, along with one confidential exhibit for Ms. Torrence (Confidential Exhibit 11).

The parties are scheduled to appear for an evidentiary hearing on Monday, June 22, 2009.

BACKGROUND OF THE 1996 TELECOMMUNICATIONS ACT, *TRRO* AND *TRRO* ANALYTICAL FRAMEWORK

I. Telecommunications Act of 1996, and pre-*TRRO* (*TRO* and *USTA II*)

The Telecommunications Act of 1996 ("the Act") was a significant change in the law governing telecommunications in the United States. The Act's primary purpose was to promote competition in local telephone service markets, thereby giving consumers a choice of local

service providers. (Albersheim Dir., p. 4.) Among other things, the Act required Incumbent Local Exchange Carriers (“ILECs”) such as Qwest⁴ to unbundle, or break apart, the physical functional components of their telephone networks, and lease these components, or piece parts, known as Unbundled Network Elements (“UNEs”), to Competitive Local Exchange Carriers (“CLECs”). (*Id.*)

The Act requires the FCC to review the state of competition every three years.⁵ This process is known as a “triennial review.” As part of its triennial review process, in 2001, the FCC initiated a proceeding to review its policies on unbundling under the Telecommunications Act of 1996 (“the Act”).⁶ The FCC sought “comment on how best to update its rules and make them more ‘granular’ to reflect competitive conditions in different markets.”⁷ The FCC’s intent was to ensure that its unbundling rules were faithful to the requirements of the Act, but at the same time that such rules reflected changes in the telecommunications marketplace and advances in technology. (Albersheim Dir., pp. 8-9.)⁸ Upon completion of the Triennial Review, the FCC published its *Triennial Review Order* (“TRO”) in October 2003.⁹ The TRO revised the FCC’s list of UNEs and removed unbundling requirements for broadband services in order to encourage

⁴ Qwest was known as U S WEST at the time the Act was passed. (Albersheim Dir., p. 4, fn. 2.)

⁵ 47 U.S.C. § 257(c). (Albersheim Dir., p. 8, fn. 4.)

⁶ *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*”). (Albersheim Dir., p. 8, fn. 5.)

⁷ http://www.fcc.gov/wcb/cpd/triennial_review/. (Albersheim Dir., p. 9, fn. 6.)

⁸ *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). (Albersheim Dir., p. 9, fn. 7.)

⁹ *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*”). (Albersheim Dir., p. 9, fn. 8.)

investment in broadband facilities. The *TRO* also established a significant role for state commissions to determine impairment in markets for dedicated transport. (*Id.*, p. 9.)

The *TRO* was then appealed to the D.C. Circuit Court of Appeals. The D.C. Circuit upheld a number of the *TRO*'s rules, but vacated and remanded the FCC's findings of nationwide impairment for dedicated transport. The D.C. Circuit also vacated the FCC's delegation of authority to state commissions to conduct granular impairment analysis as the *TRO* had established. *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (2004) ("*USTA I*"). The *USTA II* court determined that the FCC did not properly relate the possibility of competitive deployment of facilities in one market to the actual deployment of facilities in similar geographic markets. *Id.* at 575. (Albersheim Dir., p. 10.) Accordingly, in August 2004, the FCC issued an Interim Order and Notice of Proposed Rulemaking ("*NPRM*") eliminating a number of sections of the *TRO*, and sought comment on a response to *USTA II*. After receiving such comments, the FCC issued the *TRRO* on February 4, 2005. (*Id.*, pp. 10-11.)

II. The *TRRO*

A. *TRRO* background, definitions and FCC implementation rules

As discussed below, the *TRRO* determines whether or not ILECs are still required to provide specific UNEs to CLECs. Relevant to this proceeding, the *TRRO* clarified ILEC obligations to provide unbundled access to dedicated interoffice transport and high-capacity loops. (Albersheim Dir., p. 11.)

An "unbundled loop" is a "UNE" (unbundled network element). In its most basic form, a "loop" is a pair of wires that connect an end-user's (or customer's) telephone to a telephone company switch, which then connects the end-user to the rest of the company's telephone network, in order to route calls to their final destinations. (Albersheim Dir., p. 5.) If a CLEC

(Qwest competitor) leases an unbundled loop from an ILEC (such as Qwest), the CLEC can connect the end-user to its own switch. (*Id.*)

There are different “sizes” or capacities of unbundled loops. The “loop” described above, for a single end-user, is known as a “DS0,” or a “voice-grade” loop. In simplest terms, this is one telephone line. (Albersheim Dir., p. 5.) These lines can be grouped together into larger capacities, and it is these high-capacity loops that are addressed under the *TRRO*. Above the single line (DS0) level, the next larger capacity is known as a “DS1.” A DS1 is equivalent to 24 DS0s, or 24 lines. (*Id.*, pp. 5-6.) The next larger capacity is known as a “DS3.” A DS3 is equivalent to 28 DS1s, or 672 DS0s (i.e., 672 telephone lines, or 28 DS1s (28 X 24 = 672)). DS1 and DS3 unbundled loops are also known as “high-capacity” loops. (*Id.*, p. 6.)¹⁰ As discussed below, the *TRRO* determines whether or not Qwest is still required to provide unbundled high-capacity loops to CLECs in certain wire centers.

The *TRRO* also addressed “unbundled interoffice transport.” “Unbundled interoffice transport” is a physical facility that a CLEC can lease from Qwest to create a transmission path from one Qwest wire center to another Qwest wire center.¹¹ Such a transmission path would be used by a CLEC to carry its telecommunications traffic between two wire centers. (Albersheim Dir., p. 9.) Like unbundled loops, interoffice transport facilities come in different sizes or capacities. The capacities relevant to this case are DS1 and DS3 interoffice transport facilities. These facilities are also known as high-capacity transport facilities. (*Id.*)

¹⁰ 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. (Albersheim Dir., p. 6, fn. 3.)

¹¹ A “wire center” is the physical structure (a building) where a telephone company connects local phone lines to its telephone network. A wire center is sometimes referred to as a “central office.” The wire center usually contains one or more telephone switches, which connect the various parts of the telephone network together and route calls to their final destination. In Idaho, most communities have a single wire center. However, Boise, because of its relative size, has three wire centers serving the community. (Albersheim Dir., pp. 4-5.)

Another network element addressed by the *TRRO* that is relevant to this docket is “dark fiber.” “Dark fiber” is fiber optic cable through which no light is being transmitted, and therefore no signal is being carried. (Albersheim Dir., p. 7.) Once dark fiber is connected to the proper electronics to allow the transmission of light, the fiber is no longer “dark” and is then known as “lit fiber.” Dark fiber can be used to provide both loops and interoffice transport. (*Id.*) ILECs were formerly required by the Act to make unbundled dark fiber available to CLECs. As will be discussed in detail below, the *TRRO* determines whether or not ILECs are still required to provide dark fiber to CLECs.

The *TRRO* also clarified the FCC’s “impairment” standard (whether CLECs’ ability to compete is “impaired” such that a particular UNE is “necessary” for CLECs to compete effectively). Impairment is now evaluated as it relates to the capabilities of a “reasonably efficient competitor.” *TRRO*, at ¶ 24. Using this standard, the *TRRO* established route-by-route unbundling requirements for dedicated interoffice transport, depending on the number of “business lines”¹² and “fiber-based collocators”¹³ in particular wire centers. For DS1 and DS3 loops, the FCC used a methodology similar to its treatment of high-capacity transport. That is, the FCC established a wire center-by-wire center unbundling requirement to determine whether a wire center is subject to actual or potential competition based on the number of business lines and fiber-based collocators in that wire center. (Albersheim Dir., pp. 10-12.)

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.” (Albersheim Dir., p. 11, fn. 12)

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.” (Albersheim, p. 11, fn. 13; Direct Testimony of Rachel Torrence, p. 9.)

The FCC in its *TRRO* also required ILECs like Qwest, as part of a transition plan, to file a list of “non-impaired” wire centers as of the *TRRO*’s effective date. *See TRRO*, ¶¶ 142-145, 195-198. (Albersheim, p. 12; Qwest Ex. 1 (February 4, 2005 letter from the FCC to Qwest).) Qwest thus filed a list of non-impaired wire centers in February 2005. (Albersheim Dir., p. 12; *see also* Qwest Ex. 2 (current list of Idaho non-impaired wire centers).)

The Act requires ILECs to base the prices for UNEs on a forward-looking economic cost concept known as Total Element Long Run Incremental Costs (“*TELRIC*”). Put simply, the price of a UNE is based on a forward-looking incremental cost to provide the UNE, and not the actual cost of having constructed the UNE from scratch. These costs are generally established in cost dockets presided over by state utilities commissions. (Albersheim Dir., pp. 7-8.)

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

B. *TRRO* wire center tier structure

The *TRRO* created a three-tier structure to classify wire centers based on their potential to support competitive transport and high-capacity loop deployment. The FCC generally described the likelihood of actual and potential competitive deployment at these tiers of wire centers as follows: (1) “Tier 1” wire centers are those with the *highest likelihood* for actual and potential competitive deployment, including wholesale opportunities; (2) “Tier 2” wire centers also show a *smaller but still very significant likelihood* of actual and potential competitive deployment, and

(3) “Tier 3” wire centers are those that show a *generally low likelihood* of supporting actual or potential competitive transport deployment. *TRRO*, at ¶ 111. (Albersheim Dir., p. 14.)

C. **TRRO non-impairment thresholds**

1. **High-capacity interoffice transport**

For its specific thresholds in determining what constitutes a “Tier 1” wire centers for purposes of high-capacity *interoffice transport*, the FCC defines such Tier 1 wire centers as those with **four or more fiber-based collocators, or with 38,000 or more business lines**. *TRRO*, ¶ 12; see also 47 CFR § 51.319(e)(3)(i). (Albersheim Dir., p. 14; Direct Testimony of Rachel Torrence (“Torrence Dir.”), pp. 10-11, fns. 2-3.) “Tier 2” wire centers are those with **three or more fiber-based collocators, or with 24,000 or more business lines**. *TRRO*, ¶ 118; see also 47 CFR § 51.319(e)(3)(ii). (Albersheim Dir., p. 15; Torrence Dir., p. 11, fn. 3.) The FCC considers all wire centers that are not Tier 1 or Tier 2 wire centers as “Tier 3” wire centers. *TRRO*, ¶ 123; see also 47 CFR § 51.319(e)(3)(iii). In other words, all wire centers with fewer than three fiber-based collocators or with fewer than 24,000 business lines are Tier 3 wire centers. (Albersheim Dir., p. 15; Torrence Dir., p. 11, fn. 3.) The FCC uses these tiers as indicators of non-impairment and bases its unbundling requirements for DS1, DS3 and dark fiber interoffice transport on these tiers. (Albersheim Dir., p. 15.)

As for non-impairment for specific levels of high-capacity transport, the FCC determined there is no impairment for DS1 interoffice transport between Tier 1 wire centers, and thus ILECs such as Qwest are not obligated to provide unbundled DS1 interoffice transport on routes connecting two Tier 1 wire centers. 47 CFR § 51.319(e)(2)(ii)(A). (Albersheim Dir., p. 16.) Qwest’s evidence will show that one Idaho wire center, Boise Main, meets the requirements for classification as a Tier 1 wire center on the basis of both business line counts and the presence of fiber-based collocators. (Albersheim Dir., p. 33.) However, since DS1 transport will be

considered non-impaired only on routes connecting wire centers that are both classified as Tier 1, DS1 transport will remain available to CLECs as a UNE in Idaho at this time.

With respect to DS3 interoffice transport, the FCC concluded that there is no impairment for DS3 interoffice transport on routes connecting wire centers where *both* of the wire centers are *either* Tier 1 or Tier 2 wire centers, and thus ILECs such as Qwest are not obligated to provide unbundled DS3 interoffice transport on routes connecting either Tier 1 or Tier 2 wire centers. 47 CFR § 51.319(e)(2)(iii)(A). (Albersheim Dir., pp. 11-12.) Because both Boise Main and Boise West meet the standards for Tier 1 and Tier 2 respectively, DS3 interoffice transport between these wire centers is non-impaired.

Finally, the FCC concluded that there is no impairment for dark fiber interoffice transport on routes connecting wire centers where *both* of the wire centers are *either* Tier 1 or Tier 2 wire centers, and thus ILECs such as Qwest are not obligated to provide unbundled dark fiber interoffice transport on routes connecting either Tier 1 or Tier 2 wire centers. 47 CFR § 51.319(e)(2)(iv)(A). (Albersheim Dir., pp. 16-17.) Again Qwest's evidence will show that there is non-impairment for dark fiber transport between the Boise Main and Boise West centers.

2. High-capacity loops

Regarding high-capacity loops, the FCC uses a methodology similar to its treatment of high-capacity transport, in that it establishes a wire center-by-wire center unbundling requirement, and thus determines whether a wire center is subject to actual or potential competition for high-capacity loops, based upon business line counts and fiber-based collocator counts. (Albersheim Dir., p. 17.) Specifically, the FCC found that there is no impairment within a service area of a wire center that contains **60,000** or more business lines *and* **four** or more fiber-based collocators, and thus ILECs such as Qwest are not obligated to provide unbundled DS1 loops in these wire centers. 47 CFR § 51.319(a)(4)(i). (Albersheim Dir., p. 17; Torrence

Dir., p. 11.) The FCC also determined there is no impairment within a service area of a wire center that contains **38,000** or more business lines *and* **four** or more fiber-based collocators, and thus ILECs such as Qwest are not obligated to provide unbundled DS3 loops in these wire centers. 47 CFR § 51.319(a)(5)(i). (Albersheim Dir., p. 18; Torrence Dir., p. 11) Qwest's evidence will show that the Boise Main wire center is non-impaired with regard to DS3 loops. (Albersheim Dir., p. 31, fn. 20; Qwest Highly-Conf. Ex. 5; Albersheim Reb., pp. 8-9, 25-26.)¹⁴

D. Non-impairment effect, and no reclassification of impairment

Finally, the result of any non-impairment determination is that associated circuits that CLECs leased as UNEs will need to be converted from UNEs to alternative Qwest services, to wholesale services obtained from another carrier, or be self-provisioned by the CLEC. (Albersheim Dir., p. 19.) The FCC has also specifically determined that wire centers may not be reclassified back to "impaired" once they have been designated as non-impaired. (*See e.g.*, Albersheim Dir., p. 28, fn. 18.) *See* also 47 CFR §51.319(a)(4)(i) (DS1 loops); 47 CFR §51.319(a)(5)(i) (DS3 loops); *see* 47 CFR §51.319(e)(3)(i) (dedicated DS1 and DS3 transport).

STATEMENT OF PERTINENT FACTS

Qwest follows the *TRRO* and the FCC rule definitions of "business lines" in its methodology for counting business lines in a wire center for non-impairment purposes. In addition, Qwest uses a process for identifying and counting fiber-based collocators at a wire center that follows the *TRRO* and the FCC rule definitions of a "fiber-based collocator." Further still, these are the same processes that Qwest uses in establishing future non-impaired wire centers, based on the settlement agreement that it negotiated and agreed to with numerous CLECs and that five commissions have approved.

¹⁴ The FCC also determined there is no impairment for dark fiber loops on a nationwide basis, and thus, ILECs such as Qwest are no longer obligated to provide unbundled dark fiber loops. 47 CFR § 51.319(a)(6)(i). (Albersheim Dir., p. 18.)

I. QWEST'S METHODOLOGY FOR COUNTING BUSINESS LINES

A. TRRO and FCC rule definitions of "business lines"

The FCC defined "business lines" in its *TRRO* as follows:

The BOC wire center data that we analyze in this Order is based on ARMIS 43-08 business lines, plus business UNE-P, plus UNE loops. (Albersheim Dir., p. 29 (quoting *TRRO*, at ¶ 105).)

Further, the FCC's rules regarding implementation of *TRRO* requirements (47 CFR

§ 51.5) define "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. The number of business lines in a wire center shall equal the sum of all incumbent LEC business switched access lines, plus the sum of all UNE loops connected to that wire center, including UNE loops provisioned in combination with other unbundled elements. Among these requirements, business line tallies:

- (1) shall include only those access lines connecting end-user customers with incumbent LEC end-offices for switched services,
- (2) shall not include non-switched special access lines,
- (3) shall account for ISDN and other digital access lines by *counting each 64 kbps-equivalent as one line*. For example, a DS1 line corresponds to 24 64 kbps-equivalents, and therefore to 24 "*business lines*." (Albersheim Dir., pp. 29-30; Rebuttal Testimony of Renée Albersheim ("Albersheim Reb."), pp. 16-17 (emphasis added).)

Thus, in conformance with the *TRRO*, and as reflected in the Settlement Agreement that complies with the *TRRO*, Qwest's business line counts include the following three types of facilities: (1) Qwest retail business lines, (2) all UNE loops, and (3) and the business lines of Qwest Platform Plus ("QPP"), Qwest Local Services Platform ("QLSP") and other similar platform product offerings. (Albersheim Dir., pp. 33-34; Albersheim Reb., p. 16.)

The CLECs here do not cite to any objections as to how Qwest counts its own retail business lines or to its QLSP or other similar platform business lines. (See *e.g.*, Albersheim Dir., pp. 33-34 and fns. 23-24, p. 37.) The CLECs' business line objections are limited to issues

regarding Qwest's counting of UNE loops and capacity. (*See e.g.*, Intervenor Testimony of Doug Denney ("Denney"), p. 23 (summarizing the bases ("residential" UNE loops and unused and data capacity) for the CLECs' objections regarding business line counts).)

B. Qwest's application of FCC business line definitions and methodology

1. Inclusion of residential and non-switched UNE loop counts

Consistent with the *TRRO*, the FCC's Rule 51.5 and the multi-state settlement agreement, Qwest included *all* UNE loops in a wire center in its business line counts *TRRO*, ¶ 105. Thus, consistent with the FCC's "business line" definition, Qwest did not attempt to "remove" UNE loops that may be used to serve "residential" customers or that may be used to provide "non-switched" services. The language in the *TRRO* and associated rules specifies there is no distinction between "business" UNE loops and "residential" UNE loops, or switched and non-switched UNE loops, and that *all* UNE loops must be included in the business line count for each wire center. (Albersheim Dir., p. 35; Albersheim Reb., pp. 16-17.)

In particular, and as noted in the Rule 51.5 definition quoted above, the FCC specifies that "[I]LEC business switched access lines" must be included in an ILEC's retail line count. The FCC did not include the adjective "business," or any other qualifier, for UNE loops in its definition of "business lines," either in the *TRRO* itself or in Rule 51.5. In other words, the FCC's rules require that *all* UNE loops (not only a subset of UNE loops) be included in an ILEC's business line count in determining whether it has met the FCC's non-impairment criteria. The FCC's discussion of UNE loops is consistent with its view that the data to be assessed should be simple and based on readily available data sources. (Albersheim Dir., p. 35.) It is also consistent with how the vast majority of state commissions and courts have ruled on the issue. (Albersheim Reb., pp. 12-16, and fns. 18-21.)

2. 64 kbps VGE adjustments

In addition, in order to satisfy the FCC's directives, Qwest included all 64 kilobit per second (kbps) voice-grade equivalent ("VGE") channels in a high-capacity digital line in counting all digital unbundled loops. Thus, Qwest multiplied all DS1 unbundled loops in Qwest's December 2007 wholesale database (the same vintage of data upon which Qwest's retail business line count for its ARMIS 43-08 report was based) by a VGE factor of 24, consistent with the FCC's guideline in Rule 51.5 that each 64 kbps channel of capacity in a digital circuit should be counted as a separate business line (since there are 24 VGE channels in each high-capacity DS1 circuit (and 672 VGE channels in a DS3 circuit), and thus "a DS1 line corresponds to 24 64 kbps-equivalents, and therefore to 24 'business lines'"). (Albersheim Dir., p. 36 and fn. 25; Albersheim Reb., pp. 17-20.) *See* also 47 CFR § 51.5.¹⁵

C. Two Idaho wire centers meet non-impairment based on business lines

Based on Qwest's business line data as of December 2007, the Boise Main wire center meets the FCC's transport threshold for "Tier 1" non-impairment having 38,000 or more business lines, and the Boise West wire center meets the FCC's transport threshold for "Tier 2" non-impairment because there are more than 24,000 business lines in that wire center. (Albersheim Dir., pp. 33, 38; Qwest Highly-Confidential Ex. 5; Albersheim Reb., pp. 36-37.) Further, because there are more than 38,000 business lines, and at least four fiber-based collocators, at the Boise Main wire center, that wire center is also non-impaired for DS3 loops. (Albersheim Dir., p. 31, and fn. 20; Albersheim Reb., pp. 8-9, 25-26.)

¹⁵ Qwest also included enhanced extended loops ("EELs") in its unbundled loop counts. An EEL essentially consists of an unbundled loop plus interoffice transport. A CLEC uses an EEL to provide service to a customer located in a particular wire center when the CLEC's switching equipment is located in a different wire center. As such, EEL loops are appropriately included in the count of unbundled loops of the wire center in which the unbundled loop terminates. (Albersheim Dir., pp. 36-37.) As a general proposition, the CLECs do not dispute that EELs should be included in its unbundled loop counts, although they raise concerns about purchasing EEL circuits terminating to wire centers serving customers that reside in other wire centers. (*See e.g.*, Denney, p. 35.)

II. QWEST'S PROCESS FOR IDENTIFYING FIBER-BASED COLLOCATORS

In addition, Qwest follows the *TRRO* and Rule 51.5 in identifying those collocators in Qwest's wire centers that meet the FCC's definition of a "fiber-based collocator" for purposes of non-impairment. As Qwest will show, Qwest's process of identifying and counting such fiber-based collocators is sound and reasonable.

A. TRRO and FCC rule definitions of fiber-based collocators

The *TRRO* defines a "fiber-based collocator" as any carrier, unaffiliated with the ILEC, that maintains a collocation arrangement in an ILEC 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 ILEC wire center premises; and (3) is owned by a party other than the ILEC or an ILEC affiliate. *See TRRO*, ¶ 102.¹⁶ Two or more affiliated fiber-based collocators in a single wire center are collectively counted as a single fiber-based collocator. (Torrence Dir., p. 12; *see also* 47 CFR § 51.5. Fixed-wireless collocation arrangements are included "if the carrier's alternative transmission facilities both terminate in and leave the wire center." *TRRO*, ¶ 102. Finally, a competitor's collocation arrangement counts toward the qualification of a wire center for a particular Tier irrespective of the services that the competing carrier offers. *Id.* (Torrence Dir., p. 13.)

B. Qwest's processes to identify fiber-based collocators

When Qwest undertook its initial efforts to identify its non-impaired wire centers in 2005, it developed a methodology that would accurately identify the number of fiber-based collocators in its wire centers. Qwest started with the criteria set forth in the *TRRO* (¶ 102) for determining a

¹⁶ Dark fiber obtained from an ILEC on an indefeasible right of use ("IRU") basis is treated as non-ILEC fiber-optic cable. *TRRO*, ¶ 102, fn. 292. (Torrence Dir., p. 12.)

fiber-based collocator and adopted the *TRRO*'s definition for fiber-based collocators verbatim.¹⁷ Thus, Qwest undertook efforts to identify the number of fiber-based collocators within its wire centers not only in Idaho, but in all of its other ILEC states. (Torrence Dir., pp. 14-15, 24.)

First, Qwest used an internal database that tracks all CLEC-submitted and approved collocation requests to develop a preliminary list of fiber-based collocations. Qwest then extracted all collocations that did not indicate there were fiber entrance facilities. The resulting list was verified for an active power supply to those collocations. Qwest then checked billing data to confirm that the carrier was being billed for collocation. Qwest then conducted an on-site physical field validation. (Torrence Dir., p. 17)¹⁸ Qwest also checked to make sure that multiple collocations by affiliated carriers were counted as only one fiber-based collocator. (*Id.*)

Finally, Qwest sent a letter on June 4, 2008 to each CLEC advising them of the wire centers in which Qwest will show that CLEC to have a fiber-based collocation. In its letter, Qwest requested that each CLEC verify its records to ensure it agreed with Qwest's records, and if it found any discrepancies, it could provide documentation regarding the collocation in question to Qwest. (Torrence Dir., p. 18; *see* Qwest Ex. 7 (sample June 4, 2008 letter).)

¹⁷ The *TRRO* also set criteria regarding dark fiber users and fixed-wireless providers as fiber-based collocators. However, Qwest did not address them in its criteria because Qwest took a very conservative approach for the sake of increased accuracy, and thus it focused its attention on the majority of qualifying collocators, which were fiber-based collocators. Qualifying fixed wireless and dark fiber users operating with an indefeasible right of use ("IRU") constitute a very small percentage of the total numbers of collocators, and thus identifying and verifying these types of collocators would have required an extensive research effort. This time consuming effort was not practical, and thus Qwest deemed it more prudent to concentrate on compiling an accurate list of the types of fiber-based collocators that constitute the vast majority of fiber-based collocators within Qwest's wire centers. Research conducted since then shows that fixed-wireless and dark fiber obtained under an IRU have not had any impact regarding the non-impairment status of any Idaho wire centers. (Torrence Dir., pp. 15-16.)

¹⁸ In its on-site field verifications, Qwest used a spreadsheet in order to facilitate the documentation of the certain *TRRO* collocation elements, such as verification of operator/carrier name, verification of active power and verification of fiber facilities. Qwest took it upon itself to validate additional elements beyond that required in the *TRRO* to further insure that its list of fiber-based collocators was as accurate as possible. Finally, Idaho central office personnel physically inspected the two wire centers to verify the information that Qwest already had, add any additional fiber-based collocations that met the FCC's criteria, investigate disputes of any data that any CLECs had provided in their responses to Qwest and provide any pertinent anecdotal information or comments regarding any of the collocations. (Torrence Dir., pp. 21-23; Highly-Confidential Ex. 9 (field verification worksheets).)

Unfortunately, however, only one of the six fiber-based collocators that Qwest identified as operating fiber-based collocations in the Boise Main and Boise west wire centers responded to Qwest's June 4, 2008 letter. That lone responding CLEC confirmed it was a fiber-based collocator. (Torrence Dir., p. 21; Highly-Confidential Ex. 8 (table illustrating responses).)

Unfortunately, Qwest can only ask for the CLECs' cooperation in determining the number of fiber-based collocators. Many CLECs appear to be reluctant to respond and thus Qwest is forced to rely on evidence that it can gather independently. (Torrence Dir., p. 18.)

This is the same process that Qwest has used since 2006, and is the same process that is included in the settlement agreement (Section V.B.), which Qwest followed for the Boise Main and Boise West wire centers. (Torrence Dir., p. 21.) The end result was that Qwest identified *three* fiber-based collocators in the Boise West wire center and *five* fiber-based collocators in the Boise Main wire center. (*Id.*, p.24; Qwest Highly-Confidential 10 (list of fiber-based collocators).) The CLECs have admitted that both of these wire centers have the minimum number of fiber-based collocators, and thus are non-impaired at the Tier 1 level (Boise Main) and the Tier 2 level (Boise West) (with the only remaining non-impairment designation in dispute being DS3 loop non-impairment at the Boise Main wire center). (Denney, pp. 7, 42.)

C. Two Idaho wire centers meet non-impairment based on collocators

Accordingly, based on numbers of fiber-based collocators at both the Boise Main and the Boise West wire centers, the Boise Main wire center meets the FCC's transport threshold for "Tier 1" non-impairment, and the Boise West wire center meets the FCC's transport threshold for "Tier 2" non-impairment. (Torrence Dir., pp. 24-25; Qwest Highly-Confidential Exs. 8-10; Albersheim Reb., pp. 36-37; Denney, pp. 7, 42.) Finally, because in addition to the five fiber-based collocators at the Boise Main wire center, there are also more than 38,000 business lines,

that wire center is also non-impaired for DS3 loops. (Albersheim Dir., p. 31, and fn. 20; Albersheim Reb., pp. 8-9, 25-26, 36-37.)

III. QWEST'S PROCEDURES FOR FUTURE NON-IMPAIRED WIRE CENTERS

A. Need for procedures for establishing future non-impaired wire centers

Finally, Qwest expects to update its Idaho list of non-impaired wire centers to the extent that additional wire centers meet the FCC criteria in the future. As noted above, the FCC determined that the rules in the *TRRO* are self-effectuating, and that “our unbundling rules are designed to remove unbundling obligations over time.” *TRRO*, ¶ 3. Thus, going forward, if updates to the list of non-impaired wire centers are required, Qwest intends to update the list of non-impaired wire centers using the same counting methodologies that Qwest has described in detail in this proceeding and that Qwest and numerous CLECs agreed in the multi-state settlement agreement that Qwest has proposed for adoption here in Idaho. (*See e.g.*, Albersheim Dir., pp. 21-23; Albersheim Reb., pp. 9-10.)

B. The Multi-State Settlement Agreement

Under the multi-state settlement agreement (“Settlement Agreement”), Qwest is allowed to update its list of non-impaired wire centers as often as necessary. However, wire center updates based on business lines will only be possible once a year since the data upon which business line counts are based (the FCC’s Automated Reporting Management Information System (“ARMIS”) data) is prepared and submitted to the FCC once a year. Wire center updates based on the number of fiber-based collocators at a wire center are not limited in this manner, and thus at any point in time, a new fiber-based collocation could be installed in a wire center, thus changing the status of that wire center from impaired to non-impaired (or from Tier 2 to Tier 1). (Albersheim Dir., p. 20; *see also TRRO*, fn. 519.)

As Qwest has explained, Qwest and various CLECs who were involved in the *TRRO* proceedings in certain other states reached the Settlement Agreement that established the initial wire center lists in those states, and pertinent to this docket, established an agreed-upon process for updating the lists going forward. This agreement was approved in five of the six states included within the agreement, and has been used to update the non-impaired wire center lists in those states since its approval. (Albersheim Dir., p. 21; Qwest Ex. 4; Albersheim Reb., pp. 3-4, fn. 3, and pp. 9-10.)¹⁹

Section V of the Settlement Agreement outlines the methodology that the parties have agreed to use for the purposes of counting business lines and fiber-based collocators. The parties have agreed that this methodology complies with the rules established by the FCC in the *TRRO*. (Albersheim Dir., p. 24; Qwest Ex. 4, § V; Albersheim Reb., pp. 5-6.) The agreement also allows CLECs the opportunity to dispute changes that Qwest makes to its non-impaired wire center list with an expedited process. (Albersheim Dir., pp. 24-25; Qwest Ex. 4, § V.F.)

Further, Section VI sets forth the process for Qwest's filing of non-impaired wire centers and additions to its non-impaired wire center list in the future. (Albersheim Dir., p. 25; Qwest Ex. 4, § VI.)²⁰ The CLECs in the various earlier states, including Integra, agreed to this process going forward. (Albersheim Dir., p. 25; Albersheim Reb., pp. 9-10.)

¹⁹ The CLECs included Integra (an Intervenor in this case), Covad, Eschelon, McLeodUSA, Onvoy, POPP, TDSM and XO. (Albersheim Dir., p. 21, fn. 15.)

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. (Albersheim Dir., p. 22, fn. 16; Albersheim Reb., pp. 3-4, fn. 3.)

²⁰ The Settlement Agreement includes the following provisions for future filings:

- (1) Qwest may request additions of non-impaired wire centers at any time based solely on the number of fiber-based collocators;
- (2) Qwest may request additions based on line counts until July 1st of each year, based on prior year data;
- (3) at least five days prior to a filing, Qwest will request a protective order for confidential information (the Settlement Agreement includes a model protective order);
- (4) Qwest will provide notice to all impacted CLECs at least five days prior to filing;

Finally, as stated, the FCC has specifically determined that wire centers may not be reclassified back to “impaired” once they have been designated as non-impaired. *See* 47 CFR §51.319(a)(4)(i) (DS1 loops); 47 CFR §51.319(a)(5)(i) (DS3 loops); *see* 47 CFR §51.319(e)(3)(i) (dedicated DS1 and DS3 transport).²¹ Thus, it would be inappropriate to include any provision about reclassification as part of any future non-impairment inquiry. (Albersheim Dir., p. 28.)

IV. QWEST’S NONRECURRING CHARGE FOR CONVERSIONS OF UNEs TO ALTERNATIVE QWEST SERVICES

Qwest also seeks to assess nonrecurring charges (“NRCs”) when converting a UNE to an alternative Qwest circuit, such as a private line or special access circuit. (Direct Testimony of Victoria Hunnicutt (“Hunnicutt Dir.”), pp. 3, 4.) Qwest will use an NRC to recover the costs that it incurs when implementing these conversions. (*Id.*)

A. Work activities involved in converting a UNE to an alternative service

Qwest will demonstrate that the conversion of a UNE circuit to a special private line circuit involves three functional areas within Qwest’s ordering and provisioning organizations. The personnel within these three functional areas involved with a conversion are the (1) Service

(5) 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;

(6) once a filing has been made, parties will have 30 days to raise objections with the state commission to Qwest’s request;

(7) if there are no objections filed, the effective date for non-impairment will be 30 days after the filing date, unless a state commission orders otherwise, and the parties will jointly request an expedited non-impairment designation from the state commission;

(8) 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;

(9) 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; and

(10) 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. (Albersheim Dir., pp. 25-26; Qwest Ex. 4, § VI.)

The Settlement Agreement also has a provision that establishes procedures for transitioning high-capacity UNEs (90 days for high-capacity loops and transport and 180 days for dark fiber) when additional wire centers are found to be non-impaired. (Albersheim Dir., p. 27; Qwest Ex. 4, § VI.)

²¹ See also *TRRO*, p. 94, fn. 466 (regarding DS1 and DS3 loops).

Delivery Coordinator (SDC), (2) Designer, and (3) Service Delivery Implementor. Qwest will show that there are a variety of steps that it must undertake to assure itself that the data for the converted circuit is accurately recorded in the appropriate systems within each of these three job functions. (Hunnicut Dir., pp. 13-15.)²² In addition, Qwest will show why the circuit identifier (“Circuit ID”) must be changed. The Circuit ID must be changed for several reasons, including the fact that FCC rules (47 C.F.R. §32.12(b) and (c)) require that telephone carriers accurately maintain records that track inventories of circuits,²³ and that the unique Circuit ID is maintained as a means of measuring the different service performance requirements applying to UNEs and private line services. (*Id.*, p. 16; Albersheim Reb., pp. 27-33.)

Finally, the process for converting a UNE circuit to a private line circuit is transparent and seamless to a CLEC’s end-user customer, and this process is used to avoid placing the end-user customer’s service at risk. (Hunnicut Dir., p. 17.) Qwest interjects a number of manual activities into the process so that certain automated steps do not occur that could otherwise result in disruption of services. Thus far, Qwest has conducted more than *1,500 conversions* and there have been no complaints from CLECs about customers whose service has been disrupted as a result of this conversion process. (*Id.*, p. 18.)

²² Qwest will not go into all of the detailed work it must perform when a CLEC requests a conversion to an alternative circuit. However, at a minimum, the SDC, who is the primary contact for the CLEC, provides the CLEC end-to-end order coordination from request to order completion must review, and must confirm the data in the Access Service Request (ASR) and assure that the data is accurately transferred into two service orders required to change billing from the CRIS billing system to the IABS billing system. The SDC must also change the circuit identifier (“Circuit ID”) to reflect the fact that the circuit will now be recognized as a private line rather than a UNE circuit once the order is complete, and must check the accuracy of other data. (Hunnicut Dir., pp. 13-15.)

In addition, the Designer reviews and validates the circuit design and assures that the design records for the converted circuit match the current UNE circuit, as well as that no physical changes to the circuit are needed. The Designer also reviews the circuit inventory in the TIRKS database to ensure accuracy and database integrity in order to ensure there is no service interruption for the CLEC’s end-user customer. (Hunnicut Dir., p. 15.)

Finally, the Service Delivery Implementer has overall control for order provisioning, and verifies the orders and completes the update of the circuit orders in the appropriate system. (Hunnicut Dir., p. 15.)

²³ This rule requires Qwest to maintain subsidiary records in sufficient detail to align specific circuits with the billing, accounting, and jurisdictional reporting requirements related to the services that these circuits support. (Hunnicut Dir., pp. 8-9.)

B. Qwest's Design Change Charge

For its conversion charge, Qwest proposes using its tariffed Design Change Charge, which is reflected in the Settlement Agreement and thus was agreed to by numerous CLECs and approved by five state commissions. The Design Change Charge involves functional areas and work tasks that are similar to those associated with the conversion of a UNE to a private line service or facility. In addition, it provides a conservative estimate of the costs Qwest will incur when converting CLEC high-capacity loop and transport UNEs to their private line counterparts. Similar activities take place when Qwest processes the orders for the conversion of a UNE to a private line circuit. Due to the systems involved in the separate tracking of UNE and private line services, as well as the additional manual efforts that Qwest undertakes to ensure there are no service disruptions for CLEC customers, the UNE-to-private line conversion orders are typically more costly to process than a typical Design Change. (Hunnicut Dir., pp. 13-15, 17-18.)

Finally, the use of the Design Change Charge gives CLECs the benefit of a very conservative charge when compared with the actual activities that Qwest undertakes during this conversion process. (Hunnicut Dir., p. 10.) This is the NRC to which Qwest and the Joint CLECs agreed in the multi-state Settlement Agreement, and is a charge that eight CLECs in Idaho have adopted in their interconnection agreements. (*Id.*, pp. 9-10; Hunnicutt Reb., p. 11.)

ARGUMENT

I. QWEST'S BUSINESS LINE COUNTS MEET THE TRRO THRESHOLDS, AND THUS BOTH BOISE MAIN AND BOISE WEST ARE NON-IMPAIRED

The intervening CLECs concede that both the Boise Main and the Boise West wire centers meet the non-impairment standard for transport and dark fiber based on the number of fiber-based collocators in those wire centers. (Denney, pp. 7, 42.) However, these CLECs dispute that the Boise West and Boise Main wire centers are non-impaired based on the

alternative standard of the number of business lines in these wire centers. Although fiber-based collocator counts in these two wire centers alone are sufficient to establish non-impairment for transport and dark fiber regardless of the business line counts, the number of business lines is important here because it affects whether the Boise Main wire center is also non-impaired for *DS3 loops*. DS3 loop non-impairment must be established by showing *both* 38,000 lines *and* at least four fiber-based collocators are present in the subject wire center.

In their opposition to DS3 loop non-impairment of the Boise Main wire center, the CLECs argue that Qwest makes two related errors that lead it to overstate business line counts. They also claim they were unable to “validate” Qwest’s Integra-specific UNE loop counts, and they argue that Qwest should have used December 2008 (instead of December 2007) line counts to support non-impairment status for DS3 loops at the Boise Main wire center. Regarding these alleged errors, they claim that Qwest has inappropriately counted UNE loops that may serve “residential” customers (and not business customers) and that Qwest counts “unutilized capacity” and “capacity to provide data services” in its UNE loop counts, and used the wrong vintage of data for DS3 loops. (*See e.g.*, Denney, pp. 23, 25-33.)

For the reasons set forth below, Qwest business line counts, as described in Section V.A. of the Settlement Agreement, comply with the *TRRO*. As such, the Commission should (1) find that such methodology meets the *TRRO*’s requirements, (2) adopt the methodology in Section V.A. of the Settlement Agreement, (3) find that the Boise Main wire center has more than 38,000 “business lines” as the FCC has defined that term in its *TRRO* and in its associated rule, 47 CFR § 51.5, and thus meets the *TRRO*’s Tier 1 non-impairment threshold for DS3 transport and dark fiber, and the *TRRO* non-impairment threshold for DS3 loops, and (4) find that the Boise West wire center has more than 24,000 business lines as so defined, and thus meets the *TRRO*’s Tier 2 non-impairment threshold. (Albersheim Dir., pp. 31, fn. 20, 33, 38; Qwest Highly-Conf. Ex. 5.)

A. Qwest correctly counts TRRO business lines

In the testimony of their witness, Douglas Denney, the CLECs argue that Qwest should not count all UNE loops because they could include “residential” lines and not business lines (Denney, pp. 23, 25-26), and that Qwest should not include “spare capacity” and non-switched lines in its business line counts (i.e., that Qwest should not count each 64 kilobit (64 kbps) channel for its high-capacity (DS1) loops) (Denney, pp. 23, 26-33).²⁴ However, Qwest will show that it correctly counts “business lines” as the *TRRO* has defined them.

1. Business lines include all UNE loops

The FCC’s directives are very clear: *all* ILEC lines that are used to serve business customers, whether they are provided on a retail *or* a wholesale basis, should be included in the business line count. (Albersheim Dir., pp. 33-36; Albersheim Reb., pp. 16-17.) Wholesale lines, of course, are those that are sold to other telecommunications carriers such as the intervening CLECs in this docket. Indeed, paragraph 105 of the *TRRO* bases its definition of “business lines” “on ARMIS 43-08 business lines, plus business UNE-P, *plus UNE loops.*” (See Albersheim Dir., p. 35.) Further, Rule 51.5 states that “[t]he number of business lines in a wire center *shall equal* the sum of all incumbent LEC business switched access lines, *plus the sum of all UNE loops connected to that wire center*, including UNE loops provisioned in combination with other unbundled network elements.” (*Id.*, p. 35; Albersheim Reb., p. 16 (emphasis added).)

The FCC’s business line definition also recognizes that UNE loops are generic wholesale services and thus that an ILEC has no means of determining whether a CLEC is using a UNE

²⁴ The CLECs do not appear to dispute Qwest’s counting of its own retail business lines. (See e.g., Denney, p. 23 (summarizing the CLECs’ objections to Qwest’s business line counts).) As Qwest mentioned, it counts its own retail business lines using its most recently-filed unadjusted data that it files with the FCC every April regarding the previous year’s data. Thus, in this case, Qwest used the data that it recorded and counted at each wire center as of December 2007 and that it filed with the FCC in its ARMIS 43-08 report in April 2008. (Albersheim Dir., p. 34.) The CLECs also do not appear to object to Qwest’s counting of QSLP or other “platform” service lines. (See e.g., Denney, p. 23; see Albersheim Dir., p. 37.)

loop to serve a residential customer or a business customer. In fact, the FCC's rules (47 CFR § 51.5) clearly state that the sum of *all* UNE loops should be included in an ILEC's count of business lines. (Albersheim Dir., pp. 35-36; Albersheim Reb., pp. 16-17.) Thus, despite the CLECs reading of one sentence in isolation, Qwest reads the rule *in its entirety*. This is also the methodology set forth in the Settlement Agreement, which one of the CLECs (Integra) agreed to, and which is consistent with the FCC's guidelines established in the *TRRO*. (Albersheim Dir., pp. 33-34; Albersheim Reb., pp. 5-6.)

Finally, the CLECs have gone to great lengths to surmise or speculate about what they believe the FCC "intended" by this rule, or is "logical" or "consistent" with the FCC rules, or is a "proper reading" of the FCC's rules. (See *e.g.*, Denney, pp. 26, 30-31.) However, ultimately such speculation is irrelevant - the rule says what it says. Nor surprisingly, the only state commission or court order that the CLECs cite in support of their position is a Colorado Commission decision that found that residential and non-switched lines should be excluded from the count of UNE loops and Qwest's business line calculation. (Denney, pp. 11, 12-13, 16.)

However, as Qwest will show, that Colorado decision is an outlier decision that is presently on appeal and that relied heavily on another order (from Michigan) that had already been overturned by a federal district court. (Albersheim Reb., pp. 10-12.) In contrast, Qwest will show that, in addition to the five Qwest state commissions that have approved the settlement agreement, there have been 15 separate decisions (two by courts and 13 by state commissions) that have ruled that business lines should be counted in a manner consistent with the methodology advocated by Qwest in this docket. (Albersheim Reb., pp. 10-13.)²⁵

²⁵ 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*

Qwest believes the Commission should review those court decisions and state commission orders to see how these courts and commissions have correctly ruled on these issues. These decisions and orders will also demonstrate how flawed the CLECs' arguments, and the order they use to bolster their arguments, really are. Thus, although Qwest will not discuss all 15 court and commission decisions and orders that it cites, it is instructive to review even just a couple of these decisions.

For example, in Qwest's region, the Utah Commission stated as follows:

In deciding this matter, we look first to the *TRRO* and then attempt to read the FCC's rules consistently with the FCC's guidance in the *TRRO*. All parties agree the basic intent of paragraph 105 of the *TRRO* is to provide an easily understood process for calculating business lines based on readily available information. We concur and

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 Investigation of Issues Related to the Implementation of the Federal Communications 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. (Albersheim Reb., p. 13, fn. 18.) See also footnote 40 for the five Qwest state commission orders approving the settlement agreement.

conclude the Division's [Staff's] proposed method of determining the number of business lines at a given wire center best satisfies the FCC's intent by providing an easily calculated, reasonable representation of competition within that wire center. Using ARMIS 43-08 data, including Qwest's known retail DS1 and DS3 line counts, as a starting point for business line calculations provides "an objective set of data that incumbent LECs already have created." Likewise, adjusting wholesale DS1 and DS3 numbers to account for their *total VGE capacity* and *counting all UNE loops* accords with the FCC's view that the number of business lines fairly represents the business opportunities available in a given wire center. (Emphasis added.)²⁶

Other courts and commissions and outside of Qwest's region have concluded similarly.

For example, in *Michigan Bell Tel. Co., Inc. v. Lark, et al.*, 2007 U.S. Dist. LEXIS 33682 (E. D. Mich., May 8, 2007), in reversing the Michigan Commission's order (the order that the Colorado Commission relied on), the Fifth Circuit stated as follows:

The MPSC's position confuses the definition of a business line with the procedure used for counting a business line as specified in the governing regulation. "A business line is an incumbent LEC-owned switched access line used to serve a business customer." *See 47 C.F.R. 51.5*. Based upon this definition, the MPSC concluded that the phrase "all UNE loops connected to that wire center" included only those UNE loops that can be shown to serve business clients." [Citation omitted.]

This interpretation *ignores the plain language of the regulation*. *If the FCC wanted to include only business switched-access lines, it would have said so*. The Court declines to transform the unambiguous phrase "all UNE loops" to mean only some UNE loops. Further support for the reading of the regulation advanced by AT&T can be gleaned from the FCC's rejection of an approach requiring "detailed and potentially subjective building-by-building and loop-by-loop evaluations" as impractical. TRRO at ¶ 159. The FCC instead based its business line count on data established by objective ILEC filings, concluding that "by basing our definition [of business line counts] on an ARMIS filing required of incumbent LECs and adding UNE figures, which must also be reported, we can be confident in the accuracy of the thresholds, and a simplified ability to obtain the necessary information. *Id.* at ¶ 105. In contrast, the MPSC's approach requires the loop-by-loop analysis that the FCC explicitly rejected because the information is neither readily available or verifiable. The fact that AT&T, unlike many other ILECs, has that information, does not alter the approach articulated in the TRRO and regulation. Finally, the interpretation adopted by the MPSC has been rejected by the state commissions of Alabama, California, Florida, Georgia, Illinois, Indiana, Kansas, Ohio, South Carolina, Utah, Texas and Washington D.C. [Citation omitted] 2007 U.S. Dist. LEXIS 33682, at p. 5. (Emphasis added.)

²⁶ See *In the Matter into the Investigation into Qwest Wire Center Data*, Report and Order, Utah PSC, Docket 06-049-40 (September 11, 2006) ("*Utah Initial Order*"), at pp. 20-21.

Likewise, the Missouri Commission noted:

Between the two arguments presented on this issue, the Commission is most persuaded by that of Staff and AT&T. In both the definition of “business line” and in the FCC’s *TRRO*, the phrase “UNE-loop” is *not modified by the word “business.”* This is true, despite that “switched access lines”, in the definition, is modified by the word “business”, as is “UNE-P, in the *TRRO* paragraph. It is therefore *the FCC’s intent that UNE-loops serving both business and residential customers be included* when counting “business lines.” Also weighing in AT&T’s favor is the FCC’s intent that the information on business lines be objective and readily available. AT&T knows the capacity of the lines sold to CLECs. If it is something other than voice grade, then AT&T might assume the line is serving a business.[fn/] However, as discussed during the hearing, a voice grade line might also serve a business. It follows that the distinction between a business loop and one that serves a residential customer will blur at times. As pointed out by AT&T, it was the FCC’s intention that an approach be adopted that “relies on objective criteria to which the incumbent LECs have full access, is readily available by competitors”[fn/] Further, the FCC discourages the “loop-by-loop” evaluations that would be necessary to determine whether a loop serves a business or residential customer. (Emphasis added.)²⁷

Finally, the Kansas Commission ruled:

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

.....

[56.] Thus the Commission concludes that NuVox’s attempt to link the phrase “among these requirements” to the first sentence of the rule [fn/] is wrong. NuVox’s interpretation would limit the business line count to only SWBT-owned switched access lines used to serve business customers, whether by SWBT itself or by a CLEC that leases lines from SWBT. *This limitation is clearly not the intention of the FCC* because an inquiry would be required as to which CLEC-leased lines were used for business customers and which lines were leased for switched access or data purposes. This information is held only by the CLECs in Kansas [fn/] and clearly is not the “objective set of data that incumbent LECs already have created for other regulatory purposes” envisioned by the FCC. [fn/] As the FCC observed, relative to fiber-based collocation data: “Moreover, unlike information regarding fiber-based collocation, the information

²⁷ 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) (“*Missouri Order*”), at p. 5.

necessary to implement the previous self-employment triggers was possessed entirely by a span of competitive LECs and was not easily verifiable.” [fn/] That observation is equally germane to the business line count in a SWBT wire center. Depending upon data that is not objective criteria to which SWBT does not have full access, that is not readily confirmable by competitors and that does not make appropriate inferences regarding potential deployment does not comply with FCC intentions in the analysis of unbundled transport impairment. (Emphasis added.)²⁸

As Qwest will show, the vast majority of jurisdictions that have addressed this issue have agreed with Qwest’s (and the Settlement Agreement’s) position on these issues. (Albersheim Reb., pp. 13-16, and fns. 18-22.) Accordingly, Qwest has correctly counted all UNE loops in its business line counts, and thus will clearly show that both wire centers easily meet the *TRRO*’s non-impairment thresholds based on the number of business lines there. The Commission should reject the CLECs’ arguments on this issue.

2. **Qwest correctly counts all 64 kbps voice-grade equivalents**²⁹

Further, subsection (3) of the “business line” definition of 47 CFR § 51.5 clearly states that each 64 kilobit (64 kbps) channel within a high-capacity digital line, such as a DS1, should be counted as a separate business line. Specifically, subsection 3 of the FCC’s rule is very clear that business line tallies:

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

Since a DS1 line, for example, has a capacity of 1,544 kbps, a DS1 would be counted as 24 separate business lines. (Albersheim Dir., pp. 30, 36, and fn. 25; Albersheim Reb., pp. 17-20.)

²⁸ 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. PUC LEXIS, at p. 16.

²⁹ As stated, *supra*, a 64 kbps channel is also known as a Voice-Grade Equivalent (“VGE”) channel. Qwest reports access lines as VGEs in service in its annual FCC ARMIS data. (Albersheim Dir., p. 36, and fn. 25.)

It is also worth noting again the FCC stated that “business line counts are an objective set of data that incumbent LECs have already created for other regulatory purposes,” and that “by basing our definition in an ARMIS filing required of incumbent LECs, and adding UNE figures, which must also be reported, we can be confident in the accuracy of the thresholds, *and a simplified ability to obtain the necessary information.*” *TRRO*, ¶ 105. (Emphasis added.) Thus, ILECs are directed to use data “already created for other regulatory purposes,” and to follow the FCC’s simple and unambiguous definition to count business lines in determining which wire centers meet the non-impairment thresholds established in the *TRRO*. (Albersheim Dir., p. 35.)

It stands to reason, therefore, that the CLECs’ argument (Denney, pp. 26-32) that “spare capacity” or “non-switched” lines should be excluded from the business line counts is simply wrong.³⁰ Likewise, there is no basis for the recommendation (Denney, pp. 32-33) that the Commission could take the laboring oar of requiring all CLECs operating in Idaho that have lines that Qwest included in its line counts to “provide voice access lines associated with loops that they purchase from Qwest,” or worse yet, that the Commission can rely on the experience of one CLEC (Integra) to “estimate results for all CLECs” in Idaho. (Albersheim Reb., pp. 23-24.)

Finally, all decisions where this issue has been raised have all agreed with Qwest’s interpretation of the FCC rule on counting high-capacity loops. (Albersheim Reb., pp. 17-19.)³¹

³⁰ There is also no merit to the CLECs’ attempt (Denney, p. 27) to parse the FCC’s rule (47 CFR § 51.5) to read that only lines “intended for business use” should be counted, as nothing in the rule establishes that requirement. (Albersheim Reb., pp. 19-20.)

³¹ 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

For example, the Fifth Circuit Court of Appeals said:

... the requirement at issue provides that "business line tallies . . . [s]hall account for ISDN and other digital access lines by counting each 64 kbps-equivalent as one line." 47 C.F.R. § 51.5. The regulation does not indicate that ILEC's or CLEC's should, for the first time, undertake building-by-building, end-user analysis. In-stead, the plain language indicates that all lines in a high-capacity loop should count as business lines.³²

And the Florida Commission stated:

We also agree with BellSouth that unused capacity on channelized high capacity loops should be counted in the business lines. As noted by BellSouth witness Tipton, the FCC rules specifically state that "the business line tallies . . . shall account for ISDN and other digital access lines by counting each 64 kbps-equivalent as one line." (47 CFR 51.5) The FCC rule further explains by way of example that a DS1 line should be counted as 24 business lines because it corresponds to 24 64 kbps-equivalents.³³

Thus, although the CLECs criticize Qwest for counting all 24 channels of capacity in a high-capacity digital loop (Denney, pp. 26-33), the FCC's rule is very clear that business line tallies "(3) [s]hall account for ISDN and other digital access lines by counting *each* 64 kbps-equivalent as one line," and thus that "a DS1 line corresponds to 24 64 kbps-equivalents, and therefore to 24 'business lines.'" (Emphasis added.) Thus, the CLECs may not agree with the approach of counting all capacity in a high-capacity digital loop, or believe it is not logical or

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

³² See *Logix Communications, L.P., v. The Public Utility Commission of Texas, et. al.*, Docket No. 06-51697, slip op. (5th Cir. 2008).

³³ 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. PSC, Docket No. 041269-TP (Fl. P.S.C., March 2, 2006); pp. 78-79.

competition-friendly (Denney, p. 33), but this is the approach that the FCC established (and that five commissions in Qwest's region have adopted, as well as all other cases deciding the issue).³⁴ This is also the approach implemented to count UNE loops in the Settlement Agreement that five state commissions in Qwest's territory have approved. In short, there is simply nothing in the FCC rule that requires that these lines be "intended for business use" or be "actually used" in order for them to be counted. To the contrary, the rule specifically states that one DS1 line is equivalent to 24 "64 kbps-equivalents," and "therefore to 24 'business lines.'" (Albersheim, Dir., p. 30; Albersheim Reb., pp. 17-18.)³⁵

3. December 2007 line counts are appropriate for Boise Main DS3 loops

The CLECs frivolously offer the novel argument that they had not received "notice" that Qwest is seeking non-impairment for DS3 unbundled loops in the Boise Main wire center until they reviewed Qwest's direct testimony in April 2009. (Denney, pp. 17-18.) Thus, they argue that Qwest's December 2007 line counts should not be used, and instead, Qwest should use December 2008 business line counts. (*Id.*, pp. 17-18, 36, 38.) However, this argument does not make sense, and thus Qwest will show that December 2007 business line counts are appropriate for the DS3 loops at the Boise Main wire center for purposes of DS3 loop non-impairment. This

³⁴ Likewise, the CLECs' argument (Denney, pp. 31-32) that CLECs do not use high-capacity UNE loops at their maximum potential capacity is irrelevant and a red herring. Even if true, there is nothing in the FCC's rules that require an ILEC like Qwest to know or determine whether or not particular CLECs use high-capacity UNE loops at their maximum potential capacity, or that require ILECs to count UNE loops based on how a CLEC uses them. The rules simply require that Qwest count *all UNE loops*, and for high-capacity loops, that Qwest count *each 64 kbps-equivalent as one line* (and thus a DS1 as 24 lines), regardless whether a CLEC actually uses every circuit.

³⁵ Qwest will also show that the CLECs' claim that Integra was unable to "validate" or "verify" Qwest's count of Integra lines is through no fault of Qwest. (See Albersheim Reb., pp. 20-24.) This is especially so because Integra has been able to validate Qwest business line counts in the past in other cases and states, and because it appears that Integra's line count is from a different (current) vintage than the December 2007 vintage that is applicable here. (*Id.*, pp. 20-23.) Perhaps even more telling is the fact that the CLECs must combine all of their arguments regarding UNE loops and the vintage of Qwest's data and their artificial percentages to achieve line counts below the thresholds for non-impairment that Qwest's line counts achieve. (See right-hand column of Exhibit Joint CLEC 207.) These adjustments place the Boise Main wire center just 60 lines below the Tier 1 threshold, which suggests a result-oriented approach. (Albersheim Reb., pp. 23-24.) Thus, the Commission should not apply Integra's suggested percentage and changes to Qwest's business line counts and should rely on the business line counts that Qwest has provided.

is especially so because that is the applicable vintage of data for this case (which the CLECs otherwise do not dispute, other than for the Boise Main DS3 loop issue) and because the CLECs indeed *had* “notice” in Qwest’s petition and the data in support of the petition that Qwest filed in June 2008 that the Boise Main wire center met the DS3 loop non-impairment threshold.

The CLECs’ claim regarding “notice” for the Boise Main DS3 loop issue is plainly frivolous. As Qwest noted in its direct testimony (of Renée Albersheim), the business line counts that Qwest provided in support of its petition in this proceeding clearly indicated that the threshold for DS3 unbundled loops was reached in the Boise Main wire center. (Albersheim Dir., p. 31 and fn. 20.) Moreover, as Qwest will show, there are currently no DS3 unbundled loops in the Boise Main wire center. (Albersheim Reb., pp. 8-9, 25-27.) Nevertheless, since Qwest’s petition and supporting data clearly showed that it would demonstrate that the Boise Main wire center exceeded 38,000 business lines *and* had four or more fiber-based collocators, thus meeting both standards for Tier 1 status, the petition clearly indicated the wire center is non-impaired for DS3 loops even though it inadvertently did not mention DS3 loop non-impairment in the petition. (Albersheim Dir., p. 31 and fn. 20.) Thus, there is no question that the Boise Main wire center is non-impaired for DS3 loops, and that the CLECs had sufficient notice of it.³⁶

B. The CLECs’ adjustments are improper

Finally, the CLECs propose certain specific adjustments to Qwest’s business line data. (See *e.g.*, Denney, pp. 33, 35, 38-39 and Highly-Confidential Exs. 206, 207.) Specifically, they argue that the Commission could require all CLECs that have lines that Qwest included in its line

³⁶ Moreover, even if the Commission were to use December 2008 business line data (which would not be appropriate because Qwest’s filed its petition in June 2008), there would still be significantly more than 38,000 business lines at the Boise Main wire center (in addition to the five fiber-based collocators), and thus DS3 loop non-impairment. The only way the CLECs can show fewer than 38,000 business lines at Boise Main is through their inappropriate “slicing and dicing” of Qwest business line counts that they advocate (based on various arguments, adjustments and calculations). For the reasons set forth in the next subsection regarding the CLECs’ improper adjustments, the Commission should reject such tortured attempts to reach a desired result.

count totals to provide access lines associated with the loops that they purchase from Qwest, and their witness performed a “calculation estimate” for his employer, Integra. (Denney, pp. 32-33; Confidential Ex. 206.) Alternatively, the CLECs argue that “the Commission could rely on the experience of a large CLEC in the state, such as Integra, to *estimate* results for *all* CLECs in the state.” (Denney, p. 33 (emphasis added).) Then, after alleging problems with “verifying” Qwest loop counts in the two wire centers (Denney, pp. 33-35), they set forth an alleged percentage of Qwest’s Integra loop counts that Integra could “validate.” (*Id.*, p. 35, and Table 2.) Finally, the CLECs argue the Commission should use December 2008 line count data (instead of December 2007) for the Boise Main wire center. (*Id.*, p. 36.) After all these “calculations,” “estimates” and “adjustments,” the CLECs “estimate” that the remaining loops and capacity are used for “non-voice services,” and thus, by using such “estimates,” they claim Qwest has failed to meet the business line thresholds for both wire centers at issue. (*Id.*, pp. 38-39; Ex. 207.)

However, as Qwest will show, the CLECs’ “adjustments” to Qwest’s data are in conflict with the *TRRO*, which requires that *all loops*, and *all digital capacity*, be counted, and thus such adjustments and calculations are nothing more than a results-oriented approach that conveniently (for CLECs) results in the Boise Main wire center not becoming non-impairment for DS3 loops by a mere 60 lines. (Albersheim Reb., pp. 22-24.)³⁷ Indeed, what is really telling about these CLEC “adjustments” is that they are all needed in order for Qwest not to meet the appropriate non-impairment threshold (and even then, to barely not meet the threshold). Anything less than accepting all of the CLECs’ “adjustments” and data vintage argument would mean Qwest easily

³⁷ As Qwest will show, ultimately, the CLEC adjustments do not impact the Tier 1 non-impairment status for DS1 and DS3 transport and dark fiber for the Boise Main wire center, and the Tier 2 non-impairment status for DS3 transport and dark fiber for the Boise West wire center, because the CLECs admit that these wire centers each have the required number of fiber-based collocators for such non-impairment status. (*See e.g.*, Denney, pp. 7, 42.) Thus, as to such non-impairment, this is primarily an academic argument. However, because these issues are important for the DS3 loop non-impairment of the Boise Main wire center, as well as for future non-impairment designations, Qwest addresses the CLECs’ inappropriate attempts to “slice and dice” these line counts in their result-oriented attempts to decrease Qwest’s business line counts.

meets the 38,000 line non-impairment threshold, and thus would not help their argument. Thus, the CLECs had to find a way to reach a business line count under 38,000, and it could only do so with all of these creative adjustments and “estimates.” (*Id.*; see e.g., Highly-Confidential Ex. 207.) The CLECs’ attempted game of tortured math visibly exposes their ploy.

C. Non-impaired wire centers in Idaho based on business lines

Accordingly, based on Qwest’s analysis of the data the *TRRO* requires, and on Qwest’s business line data as of December 2007, the Boise Main wire center meets the FCC’s transport threshold for “Tier 1” non-impairment, and the Boise West wire center meets the FCC’s transport threshold for “Tier 2” non-impairment. Further, the Boise Main wire center meets the non-impairment threshold for DS3 loops because it has more than 38,000 business lines and four or more fiber-based collocators. (Albersheim Dir., p. 31, and fn. 20; pp. 33, 38; Qwest Highly-Confidential Ex. 5; Albersheim Reb., pp. 36-37.)

II. QWEST’S COLLOCATOR EVIDENCE AND PROCESSES MEET THE TRRO

A. The CLECs agree that both Boise Main and Boise West are non-impaired

As Qwest noted, despite Qwest’s thorough investigation of the fiber-based collocators at the Boise Main and Boise West wire centers, only one of the six collocators Qwest had identified responded to Qwest’s June 4, 2008 letter requesting validation of their fiber-based collocation data, and that CLEC did confirm such status. (Torrence Dir., p. 21; Highly-Confidential Exs. 8, 9.) Nevertheless, the CLECs have now admitted that these wire centers have the required number of fiber-based collocators for their respective non-impairment. (Denney, pp. 7, 42.)

Accordingly, the Commission may issue an order declaring (1) the Boise Main wire center as Tier 1 non-impaired for DS1 and DS3 interoffice transport and dark fiber, and (2) the Boise West wire center as Tier 2 non-impaired for DS3 interoffice transport and dark fiber, based on the number of “fiber-based collocators” at those wire centers.

B. Qwest's process to identify collocators is reasonable and should be adopted

As stated, the CLECs do not dispute the non-impairment of the Boise Main and Boise West wire centers based on the number of fiber-based collocators at those wire centers.

Nevertheless, they raise several "concerns" about Qwest's process to verify and count fiber-based collocators. (Denney, pp. 42-47.)³⁸ However, as Qwest will show, Qwest's current collocation identification and counting process yields accurate results and thus the CLECs' "concerns" lack merit. (Rebuttal Testimony of Rachel Torrence ("Torrence Reb."), pp. 9-38.)

For example, Qwest's letters to CLECs requesting validation of its findings of their collocation status are a reasonable attempt to solicit CLEC participation. (Torrence Reb., pp. 10-17.) These letters are routed to the appropriate personnel for each CLEC. However, even if a CLEC does not respond (and many do not), Qwest does not equate such failure to respond with CLEC "agreement" that it is a fiber-based collocator, as Qwest bases its decision on the many factors set forth in the *TRRO* (and not merely on a CLEC's failure to respond). (*Id.*, pp. 10-12.) Further, although the CLECs complain about whether the letters are routed to the appropriate personnel, Qwest will show it sends them to the appropriate CLEC contact, and the CLECs do not dispute they received their letters. (*Id.*, pp. 12-14.) And finally, the CLECs' claim that Qwest should conduct more of a "follow up" with CLECs (and thus essentially "baby sit" CLECs), is much ado about nothing. Qwest's notification process is reasonable, but Qwest cannot force CLECs to respond, and many CLECs fail to cooperate, presumably because they do

³⁸ The CLECs allege that that (1) Qwest does not adequately notify or follow up regarding its letters to CLECs about their collocations, (2) Qwest's memo to its central office personnel is written in such a way as to encourage Qwest employees to err on the side of finding fiber-based collocations, (3) Qwest has in some states counted carriers as fiber-based collocators even if its verification worksheets indicated otherwise, (4) Qwest inappropriately counted a "CLEC-to-CLEC connection" in Colorado as a fiber-based collocation, and (5) if the Commission adopts the procedures in the Settlement Agreement, it should remove a provision regarding "express fiber." (Denney, pp. 42-47.)

not believe it is in their best interests to cooperate. (*Id.*, pp. 14-17.) Ultimately, it is a CLEC's responsibility to respond; Qwest cannot be a "baby-sitter" if a CLEC fails to respond. (*Id.*)

Qwest will also show that its collocation field verifications are comprehensive and performed in an objective manner. (Torrence Reb., pp. 17-24.) As the Commission can see (Qwest Confidential Ex. 11), Qwest's letter is objective, and thus the CLECs' complaint that these letters encourage Qwest employees to "err" on the side of finding a fiber-based collocation is without any basis. (*Id.*, pp. 17-18.) Likewise, the isolated examples the CLECs raise about collocation in other states four years ago (Denney, pp. 43-46) when the FCC had just issued the *TRRO* are irrelevant to the issues here, and are easily rebutted. (*Id.*, pp. 18-20, 20-22, 22-25.)

Finally, Qwest will show that despite the CLECs' general concerns about "CLEC-to-CLEC connections" (Denney, pp. 45-46), there were no such CLEC-to-CLEC connections here. (Torrence Reb., p. 25.) Moreover, even if there had been, Qwest's methodology correctly identifies fiber-based collocators, and excludes non-fiber-based collocators, even if a CLEC-to-CLEC connection is present. (*Id.*, pp. 28-30.) Thus, there is no concern about "double counting" of fiber-based collocators, either here in Idaho or with Qwest's process in general, and Qwest's position is supported by the FCC. (*Id.*, pp. 30-32.)³⁹

Accordingly, there is no need for the Commission to make any changes or add any requirements to Qwest's process for identifying and counting fiber-based collocators for non-impairment purposes. Moreover, this is a process that numerous CLECs (including Integra) have agreed to, and that five commissions have approved, and that has proven to work in those other

³⁹ The CLECs also argue that Qwest should provide advance notification to CLECs when a wire center is within one fiber-based collocator of non-impairment (essentially, when there are two fiber-based collocators in a wire center). Qwest addresses this argument in section VI, *infra*.

Finally, with respect to the provisions of the Settlement Agreement regarding express fiber that the CLECs complain about (Denney, p. 47), Qwest has no objections to that provision being removed from the Settlement Agreement. (Torrence Reb., pp. 37-38.)

states that have had non-impaired wire center list update proceedings. The Commission should thus reject the CLECs' arguments about any additional process.

III. THE COMMISSION SHOULD ADOPT THE PROCEDURES IN THE SETTLEMENT AGREEMENT

As Qwest will show, Qwest will be updating the non-impaired wire center list in the future when additional wire centers meet the *TRRO*'s non-impairment criteria. Qwest proposes to use for non-impairment designations in the future the same methodology and processes that it employed for the two Idaho wire centers here, and that methodology and processes are set forth in the Settlement Agreement that Qwest negotiated with numerous CLECs in other states and that five state commissions have previously approved and adopted for general applicability in those states.⁴⁰ Qwest is proposing that the Commission adopt the methodology and processes of the Settlement Agreement. (Albersheim Dir., pp. 20-28; Albersheim Reb., pp. 3-5.) These procedures are reasonable and in the public interest, have been agreed to by numerous CLECs and state commissions, and have worked well in the past.

⁴⁰ As stated (see e.g., fn. 19), the Settlement Agreement was approved in Arizona, Minnesota, Oregon, Utah and Washington. See e.g., **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; **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, Docket No. UT-073033, Initial Order Granting Petition for Approval of Additions to Non-Impaired Wire Center List, July 30, 2008. (Albersheim Dir., p. 22, fn. 16; Albersheim Reb., p. 3, fn. 3.)

A. Qwest has not violated the Settlement Agreement by proposing its methods and procedures for use for future non-impairment proceedings here in Idaho

Qwest notes that the CLECs make much ado about a certain provision in the Settlement Agreement which they contend means Qwest cannot propose the *methodology and processes* in that agreement as a basis for this Commission to use for future non-impairment proceedings. Thus, their witness makes an incorrect legal argument that Qwest has somehow violated the Settlement Agreement by proposing it here. With all due respect to the CLECs' witness, a non-lawyer, he is simply incorrect about his legal conclusion. There is simply nothing in the Settlement Agreement that prohibits Qwest from proposing that this Commission (or any other commission) adopt the *methodology and processes* set forth in the Settlement Agreement as *reasonable processes* for future non-impairment proceedings. This is, of course, also an agreement that numerous major CLECs (who are knowledgeable and sophisticated carriers acting in their best interests and who had counsel representing them, including the CLECs' witness' own employer) agreed were reasonable (reasonable enough anyway to bind themselves to it in those larger states that had earlier non-impairment proceedings). (Albersheim Reb., p. 7.)

In his testimony, the CLECs' witness also makes much ado about the Settlement Agreement provision that provides it cannot be used as "evidence or impeachment." (Denney, pp. 12-13.) Qwest does not quarrel with that provision, and it is not using the Settlement Agreement as "evidence" or "impeachment" against any settling CLEC. Nor is Qwest attempting to enforce it against any settling CLEC who is not abiding by the agreement, or to use it to impeach a CLEC in those five states who might now have "buyer's remorse." Rather, Qwest is merely *advising* this Commission (1) of the undisputed *fact* that the agreement has been entered into (which the agreement does not prohibit) – a fact that is underscored by its public filing and availability, as the CLECs admit (*id.*, p. 12)), and (2) that Qwest believes the

Settlement Agreement's methodology and processes are reasonable ones that this Commission may want (but is certainly not obligated) to consider and adopt. (Albersheim Reb., p. 7.)

Moreover, to allay the CLECs' witness' concerns (Denney, pp. 12-14), Qwest admits that "no precedent is established." Indeed, nowhere is Qwest arguing that the Commission is somehow "obligated" to adopt the methodology and processes in the agreement, much less the agreement itself. Nor is Qwest arguing the any participant in this case is legally barred from advocating a position inconsistent with the Settlement Agreement in this docket. Again, Qwest is simply presenting the methodology and processes from that Settlement Agreement, with Qwest's two-year experience having used it with numerous CLECs in those five states, to show the Commission that, rather than "reinvent the wheel" every year there is a non-impairment proceeding, the Commission should use the methodology and processes (some or all of them, at the Commission's discretion) as a way to evaluate such future non-impairment proceedings. (Albersheim Dir., pp. 7-8.) Thus, the CLECs' conclusion that Qwest's seeking this Commission to approve the methodology and processes of the Settlement Agreement "can only be done by using the agreement as a precedent in violation of its own terms" (Denney, p. 14:11-12) is simply the result of their witness' apparent misunderstanding of the legal term "precedent" and of the legal significance of both that provision and what Qwest has asked this Commission to do.⁴¹

⁴¹ Nor, contrary to the CLECs' witness' apparent concerns (Denney, pp. 13-14), does Qwest take the position that the Settlement Agreement is "binding" on or applies to any carriers other than the carriers in the states that were at issue in the agreement. Qwest fully recognizes that the Settlement Agreement applies only to those carriers in those states, as its attorney articulated so eloquently in the Colorado docket. (*Id.*) Rather, Qwest is merely advising the Commission of the *fact* that (1) various major CLECs in various states that had earlier non-impairment proceedings have in fact agreed to this methodology and procedures (since they entered into the agreement, have not withdrawn from it, and thus are still operating under it), (2) such procedures have *worked well the past two years* for Qwest and numerous CLECs, and (3) Qwest believes such methods and procedures are *reasonable* and in the public interest, and accordingly, that the Commission should adopt these procedures for future non-impairment proceedings in Idaho. (Albersheim Dir., pp. 7-8, 9-10.)

B. The methodology and procedures in the Settlement Agreement are reasonable, in the public interest and comply with the TRRO, and the affected CLECs have agreed

As Qwest will demonstrate, Section V of the Settlement Agreement, which outlines the methodology and processes for counting business lines and identifying and counting fiber-based collocators, complies with the FCC's rules in the *TRRO*. (Albersheim Dir., p. 24.) In addition, Section VI, which details the process that parties agreed for adding wire centers to the non-impaired wire center list in the future, sets forth reasonable procedures, including the opportunity for CLECs to dispute Qwest's additions to the non-impaired wire center list and reasonable transition periods to allow CLECs to transition from UNE services to alternative services, and thus this process is in the public interest. This process provides a comprehensive and productive blueprint for *TRRO* implementation in the future. This process has been used successfully to start dockets, disseminate confidential information, allow for objections and come to resolution regarding Qwest's additions to the non-impaired wire center lists in those five states since its approval by the state commissions, with a minimum of litigation and process. (Albersheim Dir., pp. 24-27; Albersheim Reb., pp. 9-10.)

C. The CLECs' other arguments about the methods and procedures lack merit

Finally, Qwest disagrees that with the CLECs' argument that it is not necessary for the Commission to decide all of the issues regarding *TRRO* implementation in this case, but only whether certain wire centers are non-impaired. (Denney, p. 19.) Rather, Qwest believes that it is most efficient, and the best use of this Commission's time and resources, to settle all questions pertaining to the implementation of the *TRRO* in this proceeding. (Albersheim Reb., p. 3.)⁴² As stated, using the procedures established in the Settlement Agreement, Qwest has proposed

⁴² That is how Qwest has approached the implementation of the *TRRO* in all of Qwest's states. And that is how the *TRRO* has been implemented in the five states in which the state utility commissions adopted the Settlement Agreement. (Albersheim Reb., p. 3.)

additions to its non-impaired wire center lists in all five of those states, and in each case, the process established by the agreement was used successfully to start dockets, disseminate confidential information, allow for objections, and come to resolution regarding the additions to the non-impaired wire center lists in various states. The experience for Qwest *and the CLECs* in these five states in the past two years (non-impaired wire center updates in 2007 and 2008) has been a productive one with a minimum of litigation and process. (*Id.*, pp. 3-4, and *see* fn. 4 (identifying the *TRRO* non-impairment update cases and decisions in 2007 and 2008 in the other five states that adopted the settlement agreement).) Otherwise, the result would be an excess of future litigation before this Commission.⁴³ Each lengthy litigation would also serve the CLECs' interests as this would allow them more time to continue to take advantage of UNE pricing in the wire centers at issue, but this would be the only benefit of putting off resolution of these issues now. Unnecessary additional litigation would also only serve to take additional time and resources away from other matters before this Commission. Qwest does not believe this is an efficient use of this Commission's resources. (Albersheim Reb., p. 5.)

Likewise, the CLECs' argument that Qwest has somehow "misstated" that the parties to the Settlement Agreement agreed the agreement complies with the *TRRO* (Denney, pp. 15-16) cannot be taken seriously. Qwest can state without qualification that it was clear that no party to the Settlement Agreement would have signed an agreement that did not comply with the FCC's rules.⁴⁴ The CLECs' citation to a certain provision in the Settlement Agreement (Denney, p. 16, fn. 28) simply pertains to the fact the agreement was in fact a settlement, or compromise of

⁴³ That is, every year that Qwest would seek to update its list of non-impaired wire centers in Idaho, the same issues raised here would be raised again, and another lengthy litigation could ensue. This is in stark contrast to the states in which the commissions have adopted the settlement agreement, where resolution has been reached quickly in each case where updates were made to the non-impaired wire center lists. (Albersheim Reb., p. 5.)

⁴⁴ To suggest otherwise would be to suggest that a party was willing to violate the FCC's rules or applicable law. Indeed, without disclosing any confidential settlement discussions or information, Qwest can say generally that during those negotiations, all participants made it very clear that the end result must comply with the FCC's rules. (Albersheim Reb., p. 6.)

differing views, and that the parties entered into the negotiations taking different positions. It certainly does not mean, however, that simply because a party was willing to compromise off of its original (pre-settlement) position, the end result of the compromise does not comply with the *TRRO*. This provision simply has no bearing on whether the settlement agreement is compliant with the FCC's rules or the FCC's *TRRO*.

Finally, for the reasons set forth throughout this brief, Qwest respectfully submits that the Commission should reject each of the CLECs' recommendations (Denney, pp. 19-22) that they make if the Commission addresses the issues in the Settlement Agreement.

Accordingly, Qwest respectfully submits that the Commission should find that the methodology and procedures set forth in the Settlement Agreement for updating the non-impaired wire center list in the future are reasonable, in the public interest and comply with the *TRRO*. Thus, it should adopt such procedures for future non-impairment proceedings in Idaho.

IV. A 90-DAY TRANSITION PERIOD IS REASONABLE AND ADEQUATE

The CLECs also claim that CLECs should be given six months to transition from UNEs to non-UNE services once a wire center is declared non-impaired, apparently based on the initial *TRRO* transition period when it was first implemented in 2005. (Denney, pp. 47-50.) However, the FCC established the one-year initial period based on its assumption there would be large numbers of circuits to be converted during the initial transition. That is not the case in Idaho, however, where only two wire centers are at issue. Also, most large wire centers in Qwest states have already been transitioned due to non-impairment of those wire centers. (Albersheim Reb., p. 25.) Indeed, there are currently no UNE services to be transitioned in Idaho. (*Id.*, pp. 25-26.)

Nevertheless, a transition period may be necessary in the future if additional wire centers with existing services are declared non-impaired. In the agreement, the parties established a 90-day transition period for such circumstances. Qwest believes that a 90 days period should be

more than adequate, especially since it is not likely there will be a significant number of services impacted by future non-impairment declarations in Idaho. (Albersheim Reb., pp. 26-27.)

V. QWEST IS ENTITLED TO ASSESS AN NRC TO CONVERT UNEs TO SUBSTITUTE SERVICES IN NON-IMPAIRED WIRE CENTERS

Qwest is also entitled to assess a nonrecurring charge (“NRC”) when converting a former UNE circuit to an alternative Qwest circuit, such as a private line or special access circuit, in wire centers meeting the FCC’s non-impairment thresholds. Since CLECs that *choose* to convert UNE circuits to alternative Qwest circuits have *other business alternatives*, and thus *voluntarily request* conversions, and because Qwest incurs expenses associated with converting UNE circuits to private line circuits, Qwest is entitled to recover its tariffed Design Change Charge as an NRC for conducting this conversion work at CLEC requests. (Hunnicut Dir., pp. 4, 12-13.)

A. The CLECs’ arguments against the conversion NRC are without merit

The CLECs raise a plethora of claims, including several irrelevant or red herring arguments, against Qwest’s conversion NRC.⁴⁵ However, these arguments are not persuasive.

First, Qwest notes that it will use an NRC to recover a portion of the costs it actually *incurs* when implementing these conversions. (Hunnicut Dir., pp. 3-4.) This is especially so because in the case of the conversions of UNE facilities to alternative facilities, it is the CLEC’s *choice* to remain on Qwest’s facilities; conversely, if a CLEC chooses another alternative, then there would be no charge since Qwest would not have to incur the costs of performing the associated tasks. (*Id.*, p. 4; Hunnicutt Reb., pp. 3-4.) Obviously, if Qwest were to perform these

⁴⁵ The CLECs argue that (1) UNE conversions are within this Commission’s jurisdiction, (2) conversions should not “impact” CLEC end-user customers, (3) it is not necessary for Qwest to change the Circuit ID to convert a UNE to an alternative service, (4) Qwest should not charge CLECs to convert UNEs to higher-priced alternative facilities, (5) Qwest’s Design Change Charge is inappropriate for UNE conversions, (6) seamless conversions can be accomplished through a simple billing change, and (7) other states in Qwest’s ILEC region have found a charge for conversion is inappropriate. (Denney, pp. 50-71.) As Qwest will show, these arguments, which all appear to be scattershot arguments in the apparent hopes that one or more will stick, are not persuasive or well taken.

conversion activities, but not allowed to charge CLEC for such activities, the cost burden would be unfairly shifted to Qwest and its end-user customers, thereby disadvantaging Qwest in a market the FCC has deemed competitive. Thus, to the extent Qwest incurs costs to facilitate a CLEC's request to remain on Qwest's facilities and convert from a UNE service to a private line service, Qwest should be entitled to assess an appropriate charge. (Hunnicut Dir., pp. 12-13.)

In addition, contrary to the CLECs' suggestions (Denney, pp. 53-55), such conversions are *not* subject to sections 251 and 252 of the Telecommunications Act. This is so because while sections 251 and 252 apply *prior* to non-impairment for a particular UNE service at a given wire center, once a wire center is non-impaired, then sections 201 and 202 (requiring "just and reasonable rates") apply to the conversion of the *former* UNE service to the alternative (*non-*UNE) service. See *TRO*, ¶ 656. (Hunnicut Dir., pp. 6-7.) The case law around the country is overwhelming that such former UNE services are not subject to TELRIC or to state commission pricing, because they are no longer subject to sections 251 and 252.⁴⁶

The same holds true for an element under section 271 of the Act. *TRO*, ¶ 664. (Hunnicut Dir., p. 8.) In fact, just last week the Ninth Circuit joined the First, Seventh, Eighth and Eleventh Circuits in holding that the Act does not authorize state commissions to determine,

⁴⁶ See e.g., *Ill. Bell Tel. Co. v. Box, et al.*, 526 F.3d 1069, 2008 U.S. App. LEXIS 11077 (7th Cir. 2008); *Ill. Bell Tel. Co. v. Box, et al.*, 548 F.3d 607, 2008 U.S. App. LEXIS 24201 (7th Cir. 2008); *Verizon New England, Inc. v. Maine Public Utilities Commission*; *Verizon New England, Inc. v. New Hampshire Public Utilities Commission*, 509 F.3d 1, 2007 U.S. App. LEXIS 21349 (1st Cir. 2007); *BellSouth Telecomms, Inc., v. Ga. Pub. Serv. Comm'n., et al.*, 555 F.3d 1287, 2009 U.S. App. LEXIS 1310 (11th Cir. 2009), *affirming* ___ F.Supp.2d ___, 2008 U.S. Dist. LEXIS 51786, 2008 WL 4999187 (N.D. Ga. Jan. 3, 2008); see also *Ill. Bell Tel. Co. v. Hurley*, 2008 U.S. Dist. LEXIS 6326 (N.D. Ill., January 28, 2008) (*affirmed*, 548 F.3d 607, 2008 U.S. Dist. LEXIS 24201 (7th Cir. 2008)), citing to *Mich. Bell Tel. Co. v. Lark*, No. 06-11982, 2007 WL 2868633, at *1 (E.D. Mich., Sept. 26, 2007); *BellSouth Telecomms., Inc. v. Kentucky Pub. Serv. Comm'n.*, No. 06-65-KKC, 2007 U.S. Dist. LEXIS 69152, at *49 (E.D. Ky., Sept. 18, 2007); *Qwest Corp. v. Arizona Corp. Comm'n.*, 496 F. Supp. 2d 1069, 1077-79 (D. Ariz. 2007); *Illinois Bell Tel. Co. v. O'Connell-Diaz*, No. 05-C-1149, 2006 WL 2796488 at *13-14 (N.D. Ill, September 28, 2006); *Dieca Communications, Inc. v. Florida Pub. Serv. Comm'n.*, 447 F. Supp. 2d 1281, 1285-86 (N.D. Fla. 2006); *Southwestern Bell Tel., L.P. v. Missouri Pub. Serv. Comm'n.*, 461 F. Supp. 2d 1055, 1066-69 (E.D. Mo. 2006); *BellSouth Telecomms., Inc. v. Mississippi Pub. Serv. Comm'n.*, 386 F. Supp. 2d 557, 565-66 (S.D. Miss. 2005); *Verizon New England, v. New Hampshire Pub. Utils. Comm'n.*, No. 05-CV-94, 2006, WL 2433249, at *8 (D.N.H. Aug. 22, 2006), *aff'd* *Verizon New England*, 2007 WL 2509863, at *5; *BellSouth Telecomms., Inc. v. Ga. Pub. Serv. Comm'n.*, 1:06-CV-00162-CC, slip op. at 15 (N.D. Ga. Jan. 3, 2008).

enforce or implement Section 271 requirements. See *Qwest Corporation v. Arizona Corporation Commission, et al.*, No. 07-17079, D.C. No. CV-06-01030-ROS (9th Cir., June 8, 2009), Opinion for Publication, 6777, at 6790-6791 (citing to these appellate decisions).⁴⁷ Therefore, such conversion need not be priced under TELRIC concepts, but may be priced at market-based rates. (Hunnicut Dir., pp. 19, 20.) Likewise, and for these reasons, neither this docket, nor any Commission proceeding, is the appropriate forum to address pricing for elements that are “delisted” (no longer on the list of required UNEs), and thus Qwest is not required to file a cost study for this charge. (Hunnicut Dir., pp. 4-5; Hunnicutt Reb., pp. 6, 8-9.)

In addition, Qwest will show why the circuit identifier (“Circuit ID”) must be changed for several reasons (including for record-keeping purposes and technical reasons, such as per Telcordia code requirements). Qwest will also show that other ILECs also charge to change the Circuit ID, as it is an accepted industry practice when converting a UNE service to an alternative service. (Hunnicut Dir., p. 16; Albersheim Reb., pp. 28-29.)⁴⁸

Finally, Qwest will show that not only is the process for converting a UNE circuit to a private line circuit transparent to a CLEC’s end-user customer, but it is also used to avoid placing the end-user customer’s service at risk. (Hunnicut Dir., pp. 17-18.) In fact, Qwest interjects manual activities into the process so that certain automated steps do not occur that could otherwise result in disruption of services. Indeed, Qwest has conducted more than 1,500

⁴⁷ See also *Verizon New England v. Maine Public Utilities Comm’n*, 509 F.3d 1, 7; *Illinois Bell Tel. Co. v. Box*, 548 F.3d 607, 613 (7th Cir. 2008); *Southwestern Bell Tel., L.P. v. Mich. Public Serv. Comm’n*, 530 F.3d 676, 682-683 (8th Cir. 2008); *BellSouth Telecomms. Inc. v. Ga. Public Serv. Comm’n*, ___ F.3d ___, 2009 WL 368527 (11th Cir., Jan. 26, 2009). The Ninth Circuit in *Qwest* also found that numerous federal district courts in other circuits have similarly decided that state commissions do not possess power to determine or enforce section 271 requirements, and that the only federal court to reach a contrary conclusion was reversed. *Qwest*, at 6790, fn. 9.

⁴⁸ The “billing change” that the CLECs describe (Denney, p. 67) is actually a complex and expensive “work-around” that Qwest was required to implement due to a Washington arbitration order that is currently on appeal. (Albersheim Reb., pp. 29-30.) It is of no significance here.

conversions and there have been no complaints from CLECs about customers whose service has been disrupted as a result of this conversion process. (Hunnicut Dir., pp. 17-18.)

B. Qwest's Design Change Charge is a reasonable proxy

Finally, Qwest will show that its \$25 interstate tariffed Design Change Charge rate is a reasonable proxy for this conversion and thus should be used, instead of a unique charge for the UNE-to-private line conversion process.⁴⁹ This is so because the modified Design Change Charge involves functional areas and work tasks that are similar to those associated with the conversion of a UNE service to a private line service or facility. In addition, it provides a conservative estimate of the costs that Qwest will incur when converting CLEC high-capacity loop and transport UNEs to their private line counterparts. Due to the systems involved in the separate tracking of UNE services and private line services, as well as the additional manual efforts that Qwest undertakes to ensure there are no service disruptions for CLEC customers, the UNE-to-private line conversion orders are typically more costly to process than a typical design change job. The use of the existing Design Change Charge, however, avoids the complexity of adding a new charge to Qwest's billing systems, and gives CLECs the benefit of a very conservative charge when compared with the costs associated with the actual activities that Qwest undertakes during this conversion process. (Hunnicut Dir., p. 10.)

There is simply, therefore, no basis for the CLEC proposal (Denney, p. 52) to set the conversion rate to "zero." This is especially so because a zero rate would be unreasonably discriminatory to other similarly-situated carriers and would distort economic assessments of alternatives (such as CLEC self-provisioning of its own facilities). (Hunnicut Reb., pp. 9-10.)

⁴⁹ It is not likely that the CLECs that were parties to the Settlement Agreement would have agreed to the \$25 charge if they believed it was an unreasonable charge.

Accordingly, Qwest is not asking the Commission to determine the reasonableness of Qwest's tariffed Design Change Charge. Rather, Qwest will merely demonstrate the nature of the work activities that it will perform in processing the conversions from UNE circuits to private line circuits at those wire centers that have been deemed non-impaired. Qwest believes that its existing tariffed Design Change Charge represents an appropriate charge to CLECs for Qwest's processing of these conversions. In short, the Commission should acknowledge that Qwest has a right to assess such a charge for the work that it performs in performing such conversions. (Hunnicut Dir., pp. 10-11.)

VI. THE REQUESTED NOTICE REQUIREMENTS SHOULD BE REJECTED

The CLECs also argue that the Commission should require Qwest to provide advance notice when a wire center is "nearing non-impairment," which to the CLECs means when a wire center is within 5,000 business lines or one fiber-based collocator of non-impairment. (*See* Denney, pp.72-79.) However, as Qwest will show, there is absolutely no legitimate reason to add this administrative burden upon Qwest. Other than one commission, all other state commissions have not accepted this recommendation, despite the CLECs' witness' and his employer's repeated (but unsuccessful) attempts to convince such commissions to require such notification in other initial non-impairment proceedings in 2006 and 2007. (Albersheim Reb., pp. 33-34; Torrence Reb., p. 36.)

More importantly, however, the thresholds that the CLECs advocate are not meaningful. For example, simply because a wire center is within 5,000 lines or one fiber collocator from non-impairment does not mean that a change in the impairment classification for that wire center is imminent. (Albersheim Reb., p. 34; Torrence Reb., p. 33.) Moreover, with respect to business lines, the Commission should recall that Qwest only collects the business line counts once a year. Thus, while a wire center may be within 5,000 lines of a non-impairment threshold in

December of any given year, that certainly does not mean the wire center will meet or exceed the threshold in the following year, or even that it will likely do so. (Albersheim Reb., p. 34.)⁵⁰

Likewise, most Tier 3 wire centers with fiber-based collocators have already been identified as being within one fiber-based collocator of becoming a Tier 2 wire center (in other words, these wire centers have two fiber-based collocators, and three are needed to become a Tier 2 wire center), and have been within one collocator since 2005 when the *TRRO* was issued, thus rendering the proposed notification requirement immaterial. (Torrence Reb., pp. 33-34.)

Finally, advance notification could allow a CLEC to attempt to “game” the system or take creative advantage by changing its business plans so that a wire center would be unlikely to meet the threshold. (Albersheim Reb., p. 34; Torrence Reb., pp. 34-35.) And while the CLECs note that the Colorado Commission agreed with such proposal, they conveniently fail to mention they have advocated this recommendation since 2006 (in the initial non-impairment proceedings) and yet no other state commission has accepted the recommendation or imposed this burden upon Qwest. (Albersheim Reb., p. 34; Torrence Reb., pp. 35-36.) They also fail to note that the CLECs who entered into the Settlement Agreement, which includes Integra, agreed not to include any such advance notification requirements in the agreement. (Torrence Reb., p. 36.)

In short, the FCC set forth the non-impairment thresholds, and therefore, requiring an ILEC to report in addition to that threshold is an undue burden, from both an operational and resource perspective, that the FCC clearly does not require. (Albersheim Reb., p. 35; Torrence Reb., pp. 36-37.) The CLECs, of course, cannot point to any such requirement in the *TRRO* itself. (Torrence Reb., p. 35.) It should be sufficient that when Qwest becomes aware that a wire

⁵⁰ Likewise, there is no merit to the CLECs’ claims that Qwest should be required to make data available every year, or that Qwest already does so in its ICONN database. This is especially so because there is no relationship between the data that Qwest provides in the ICONN database and the data that Qwest collects for *TRRO* non-impairment purposes. (Albersheim Reb., p. 35.)

center has actually met the non-impairment requirements to warrant a change its impairment status, Qwest will notify this Commission and CLECs that Qwest is seeking a change in the wire center's impairment designation. (Albersheim Reb., p. 35.)

VII. THE NON-IMPAIRMENT EFFECTIVE DATE SHOULD BE 30 DAYS AFTER QWEST FILED ITS DATA

The Commission should find that the effective date for non-impairment of these two Idaho wire centers is **July 27, 2008**, which is 30 days after Qwest filed its data showing that both of these wire centers are non-impaired. Any other result would reward CLECs with an unfair advantage due to the regulatory lag that occurs in Commission dockets. Any other result would also have the effect of giving CLECs an incentive to needlessly object to Qwest's non-impaired wire center designations in the future in the hopes that by the time the non-impairment issues have been decided, the effective date would have been delayed.

Thus, Qwest believes that the more appropriate effective date for the non-impairment of these four wire centers is *30 days after Qwest filed its data in support of its non-impaired wire centers*. Since Qwest filed its data in support of its non-impaired wire centers on June 27, 2008, the effective date should be *July 27, 2008* for both wire centers.

First, Qwest notes that in the Settlement Agreement, which the settling parties entered into in 2007, the parties agreed that the effective date for the vast majority of wire centers at issue should be March 11, 2005. (*See* Ex. 4, § III.B., pp. 4-5.) March 11, 2005 was the effective date of the *TRRO*. (Albersheim Dir., p. 12.) This agreed date is clearly recognition by all parties, including the CLECs in those initial non-impairment dockets (which included Integra), that state commissions should find the effective date to be when those wire centers were *in fact non-impaired*, regardless that there might be some delay inherent in state commission proceedings. Indeed, the Settlement Agreement was not approved by the state commissions until

various times throughout 2007, more than two years after the parties' agreed-upon effective date for most wire centers on the initial list of non-impaired wire centers. (*See* fn. 40 for the various dates of state commission approvals of the Settlement Agreement.)

Further, the Settlement Agreement does not specify the date on which a "disputed" wire center designation becomes effective once the dispute has been resolved. It only discusses a specific effective date for *undisputed* wire centers, which is 30 days after the "Filing Date" (which is the date that Qwest has submitted its non-impairment or tier designations, with supporting data, for the state commission to review), unless the state commission orders otherwise. (*See* Ex. 4, §§ I., p. 3 and VI.F.2., pp. 4-5.) Nevertheless, Qwest believes that the spirit and intent of the Settlement Agreement, and *good public policy*, is that if CLECs object to a wire center's non-impairment designation, but the Commission ultimately finds that the wire center is *indeed non-impaired* (as Qwest had designated), the effective date should be 30 days after the "Filing Date," or July 27, 2008 here. That would be the only just result, especially since the end result would still have been the same as if the CLECs had *not* disputed the designation. Otherwise, there would *never be any incentive* for CLECs to agree to a wire center's non-impairment designation, because any dispute or objection would delay the effective date until the dispute was resolved.

In this proceeding, Qwest filed its initial petition on June 20, 2008, with its supporting data showing both of its Idaho wire centers to be non-impaired on June 27, 2008.⁵¹ Accordingly,

⁵¹ Qwest also notes that the CLECs did *not object* to the wire centers being non-impaired for transport and dark fiber based on the number of fiber-based collocators (Denney, pp. 7, 42), and thus accepted Qwest's position that these two wire centers are non-impaired based on the data that Qwest filed on June 27, 2008. Thus, although they may still object based on the business line counts at those wire centers, they agree that these two wire centers are non-impaired for transport and dark fiber at the Tier 1 level (Boise Main) and the Tier 2 level (Boise West).

Moreover, even as to the CLECs' objections based on business line counts, the evidence will show that there is no rational basis for such "objections." First, their main complaints about business lines are premised on their attempts to slice and dice the total number of business lines based on their arguments about "residential UNE loops," "spare capacity" and data vintage in order to reach a favorable result. (Denney, pp. 23, 25-26 and 26-33.)

the effective date for the non-impairment of these two wire centers should be *July 27, 2008*.

Alternatively, if the Commission were to find that another effective date for either of these wire center's non-impairment were more appropriate, it should find such effective date. Nevertheless, Qwest does not believe the Commission should find an effective date to be 30 days after the Commission issues its order here. Such a late effective date would have the result of rewarding CLECs for the delays and regulatory lag that are the inevitable or inherent result of a Commission proceeding.

Finally, yet another reason for the Commission to adopt Qwest's recommendation of a July 27, 2008 effective date is that a later effective date would have the effect of incenting CLECs to object unnecessarily to Qwest's future non-impairment designations. This is especially so because the CLECs could do so in the hopes that they could unnecessarily delay the effective dates of non-impairment, even if ultimately the CLECs' objections to Qwest's designations were not successful. Establishing a later effective date would set a precedent that could give CLECs an improper incentive to raise a wire center dispute, even if completely unfounded, simply to delay the process.⁵²

However, assuming that the Commission *rejects* the CLECs' attempts to use their creative math against Qwest's business line counts (see e.g., Albersheim Reb., pp. 23-24, and 10-24 generally), the Commission should likewise find that the appropriate effective date for the DS3 loop non-impairment in the Boise Main wire center is 30 days (July 27, 2008) after Qwest supported its petition with its data (June 27, 2008).

⁵² The CLECs may argue that despite their agreement that the two wire centers here are non-impaired based on the number of fiber-based collocators there, it was necessary to investigate Qwest's non-impairment designations, or that any objections they may have raised here were "legitimate," or were not an attempt to unnecessarily delay the process. However, whether or not any objections the CLECs raised here were legitimate or an attempt to unnecessarily delay the process would be completely irrelevant and beside the point. The Commission should not be put in the position of determining whether an objection is "legitimate" or in "good faith" or "frivolous" or "fairly debatable." The Commission should only have to determine whether the data that Qwest has presented meets the *TRRO*'s non-impairment threshold, and thus whether a particular wire center is non-impaired. All of the evidence here will point to the fact that Qwest submitted the data that shows it meets the non-impairment threshold, and thus that both wire centers are non-impaired, as of June 27, 2008.

VIII. THE COMMISSION'S NON-IMPAIRMENT DESIGNATIONS SHOULD BE OF GENERAL APPLICABILITY AND THUS BINDING ON ALL CLECs

Finally, the Commission's non-impairment determinations on these wire centers must necessarily apply to all CLECs in Idaho. This is simply logical- indeed, it would be illogical to have the Commission's determinations apply to one set of CLECs (such as the interveners), but not to the many other CLECs who had an opportunity to participate in this docket but apparently chose not to do so. Moreover, the FCC based the non-impairment triggers based on existing and potential competition in a geographic market, applying to all CLECs in a given market.

In addition, once a wire center is deemed non-impaired, it cannot be non-impaired only for "some CLECs," but not others, and thus no CLEC can then have the right to seek a different determination in another docket, including an interconnection arbitration. That would simply make no sense, and would be extremely wasteful of the Commission's (and Qwest's) time and resources. It would also have the perverse result of punishing those CLECs (Integra and 360) who took the time to participate here, and rewarding those CLECs who did not participate.

Finally, all CLECs operating in Idaho have been on notice that such non-impaired wire center determinations would be binding on them because Qwest's petition indicated that it sought to bind all CLECs in Idaho, and thus that whether the Commission's decisions would be binding on all CLECs would be an issue to be decided in this case. (*See* Qwest Petition, pp. 3, 10-11.) As such, all CLECs operating in Idaho were *on notice* that whether the Commission's decisions here would be binding on all CLECs in the state would be an issue to be decided here. Those CLECs that chose not to participate in this docket cannot later have a "second bite of the apple" to try to argue that either of these wire centers are still "impaired." In short, the Commission's non-impaired wire center and process determinations here should be binding on all CLECs, and should be of general applicability to all CLECs, in the state.

CONCLUSION

For all of the reasons set forth above, Qwest respectfully submits the Commission should adopt Qwest's positions in this docket. Therefore, Qwest respectfully submits the Commission should (1) declare that the two Idaho wire centers which Qwest presents here are non-impaired pursuant to the guidelines and standards in the *TRRO* and the FCC's associated implementation rules, (2) find that Qwest's methodology to count "business lines," and its process to identify "fiber-based collocators," are reasonable and should be adopted, (3) find that Qwest's procedures to update the non-impaired wire center list in the future as set forth in the multi-state Settlement Agreement are reasonable and thus should be adopted, (4) acknowledge Qwest's right to charge CLECs a nonrecurring charge when CLECs convert from a UNE to an alternative Qwest product or service at non-impaired wire centers, (5) reject the CLECs' arguments seeking a six-month transition period and advance notice of Qwest seeking non-impairment designations,

(6) establish that the effective date of the non-impairment is July 27, 2008, or 30 days after Qwest filed its Petition, and (7) rule that its non-impairment determinations are of general applicability and thus binding on all CLECs operating in the state.

Dated: June 15, 2009

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of **QWEST CORPORATION'S PREHEARING BRIEF** was served on the 15th day of June, 2009 on the following individuals:

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