

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF)
QWEST CORPORATION FOR APPROVAL) CASE NO. QWE-T-08-07
OF NON-IMPAIRED WIRE CENTER)
LISTS PURSUANT TO THE TRIENNIAL) ORDER NO. 30866
REVIEW REMAND ORDER)

On June 20, 2008, Qwest Corporation filed a Petition requesting Commission approval of Qwest's identification of non-impaired wire centers compiled pursuant to the Federal Communications Commission's Triennial Review Remand Order (TRRO). According to terms of the federal Telecommunications Act of 1996, Qwest must provide access to specific network elements at its wire centers if "the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." 47 U.S.C. § 251(d)(2)(B). The TRRO, among many other things, established standards to determine that a wire center no longer is impaired; that is, the presence of competitors' facilities in the wire center should make the network elements available from multiple sources.

BACKGROUND AND QWEST'S PETITION

In this case, Qwest alleges the presence of competitor facilities in two Boise wire centers makes some unbundled network elements (UNEs) available from other sources and thus meets the "non-impairment" standard established by the FCC. A determination of non-impairment affects the price at which Qwest must make specific network elements available to competitors, and whether Qwest is obligated to provide access to a network element at all. If a wire center is impaired, Qwest must provide UNEs to competitive local exchange carriers (CLECs) at rates based on the FCC's total element long-run incremental cost (TELRIC) pricing methodology. If a wire center no longer is impaired, the affected network elements are no longer subject to Section 251(c)(3) of the Act and instead are governed by the non-TELRIC pricing standard in Sections 201 and 202, which means Qwest is free to set market rates for those elements.

Under the TRRO framework, a wire center is deemed no longer impaired regarding access to DS1 transport on routes connecting a pair of wire centers where both wire centers contain at least four fiber-based collocators or at least 38,000 business access lines (Tier 1). For

DS3 transport and dark fiber transport, there is no impairment on routes connecting a pair of wire centers where both wire centers contain at least three fiber-based collocators or at least 24,000 business lines (Tier 2). Qwest's Petition claims its Boise Main wire center meets the Tier 1 standards for non-impairment for DS1 and DS3 Transport and Dark Fiber, and its Boise West wire center meets the Tier 2 standards for DS3 Transport and Dark Fiber. Qwest Petition, p. 10.

Qwest's Petition alleges that it previously implemented a detailed, multi-step process to generate accurate wire center data, permit CLECs to verify the data, and identify the wire centers in Qwest's operating areas that meet the non-impairment thresholds. Based on the data, Qwest filed a list of wire centers with the FCC. According to Qwest's Petition, several CLECs thereafter requested that state utility commissions open proceedings to determine and establish line counts and numbers of collocators in Qwest's wire centers. In 2007, Qwest and several CLECs negotiated a multi-state settlement agreement in TRRO wire center dockets pending in Arizona, Colorado, Minnesota, Oregon, Utah, and Washington.

Qwest did not file for approval of its non-impaired wire center list in Idaho as part of the earlier multi-state process, and now seeks approval of the Boise wire centers it identified as meeting the non-impaired standards. Qwest also asserts that a finding of non-impairment triggers "at least two other issues relating to the conversion of the element from a Section 251 UNE to a non-[Section] 251 element." Qwest Petition, p. 13. First, Qwest asks the Commission to "confirm Qwest's right to assess a nonrecurring charge (NRC) at applicable price-listed rates for converting impacted high-capacity loop and transport facilities in non-impaired wire centers to alternative products." *Id.* Second, Qwest requests that the Commission approve the process set forth in the settlement agreement to direct future identification of non-impaired wire centers in Idaho. If that process to identify non-impaired wire centers is not adopted by the Commission, Qwest asserts the Commission "should require Qwest to provide notice to CLECs of additions to the list of non-impaired wire centers and, if the CLECs seek additional information, should direct Qwest to provide the CLECs with the methodology by which Qwest determined that a wire center meets the TRRO's non-impairment criteria relating to numbers of business lines and fiber collocators." Qwest Petition, p. 14.

On July 9, 2008, the Commission issued a Notice of Petition and Notice of Intervention Deadline. Petitions to Intervene were subsequently filed by Integra Telecom of Idaho, Inc.; Electric Lightwave, LLC dba Integra Telecom; Eschelon Telecom dba Integra

(collectively referred to as Integra); and 360networks (USA) Inc. Petitions to Intervene were granted by the Commission in Order Nos. 30618 and 30619. The CLEC intervenors thereafter collaborated in their participation in the case and filed testimony of only one witness on behalf of all intervenors. Accordingly, we refer to all the Intervenor as Joint Intervenor or as simply the Intervenor.

In its Petition, Qwest recommended the Commission “conduct an expedited proceeding to review and establish wire center line counts and numbers of fiber collocators per wire center.” Qwest Petition, p. 10. Qwest notified Staff, however, that it preferred to discuss the issues informally with the Intervenor and attempt to resolve the issues consistent with the settlement agreement reached in other state proceedings. After these discussions were unsuccessful, Qwest on February 6, 2009, filed a Motion for Informal Prehearing Conference. The parties thereafter presented a procedural schedule to the Commission, and on April 1, 2009, the Commission issued Procedural Order No. 30763 and Notice of Hearing to establish the procedure to complete the case, including a hearing to convene on June 22, 2009. A few days prior to June 22, the parties requested that the hearing be vacated and that the record be established by stipulation of the parties. On July 2, 2009, Qwest and the Intervenor filed a Joint Stipulation agreeing to waive the evidentiary hearing and submit the case on filed documents, including prefiled testimony and exhibits. The Joint Stipulation states the parties’ agreement “to submit this docket for the Commission’s final order and decision based upon the written record” identified in the Stipulation. Joint Stipulation, p. 2. The Stipulation also requests approval of two Motions for Admission Pro Hac Vice filed by the parties’ out-of-state attorneys. Joint Stipulation, p. 3.

DISCUSSION OF ISSUES

Non-Impairment Standard for Boise Main and Boise West Wire Centers

The primary substantive issue presented by Qwest’s Petition involves a determination that Qwest’s Boise Main and Boise West wire centers meet the FCC’s standard to be classified as non-impaired. The TRRO establishes specific standards for determining that sufficient competitor facilities are present in a wire center to no longer be impaired. The thresholds vary according to the type of network element considered to be available from different sources. For dedicated interoffice transport, a determination of non-impairment depends on the number of business lines and fiber-based collocators in a particular wire center. Tr. p. 12. A wire center

meets a Tier 1 standard if there are four or more fiber-based collocators, or 38,000 or more business lines, in the wire center. Tr. p. 14, *citing* 47 C.F.R. § 51.319(e)(3)(i). A Tier 2 standard is met if there are at least three fiber-based collocators, or at least 24,000 business lines, in the wire center. Tr. p. 15, *citing* 47 C.F.R. § 51.319(e)(3)(ii).

Interoffice transport facilities vary by their capacity to carry traffic. The facilities relevant to this case are DS1 and DS3 interoffice transport facilities, also known as high-capacity transport facilities. Tr. p. 7. Interoffice transport for DS1 capacity is considered not impaired between two Tier 1 wire centers. Tr. p. 17. Thus, a finding of non-impairment relieves Qwest of its obligation to provide unbundled DS1 interoffice transport on routes connecting two Tier 1 wire centers. Tr. p. 17, *citing* 47 C.F.R. § 51.319(e)(2)(ii)(A). For DS3 capacity level, there is no impairment for interoffice transport on routes connecting wire centers that meet either the Tier 1 or Tier 2 standards. Qwest is no longer obligated to provide unbundled DS3 interoffice transport on routes connecting either Tier 1 or Tier 2 wire centers. Tr. p. 17, *citing* 47 C.F.R. § 51.319(e)(2)(iii)(A).

The Intervenors concede that Qwest meets at least one of the non-impaired standards for interoffice transport. The Intervenors testified that “[b]ased on review of the supporting information provided by Qwest, the Joint CLECs currently do not dispute that Boise Main and Boise West have the minimum number of fiber-based collocators to be classified as Tier 1 and Tier 2 respectively.” Tr. p. 93. On this undisputed record the Commission finds that Qwest’s Boise Main wire center meets the Tier 1 non-impaired standard for interoffice transport, and that its Boise West wire center meets the Tier 2 non-impaired standard for interoffice transport.

In its Petition, Qwest requested Commission determination of non-impairment only in regard to interoffice transport, but in its prefiled testimony asserted that the Boise Main wire center also meets “the non-impairment threshold for DS3 unbundled loops.” Tr. p. 32. Qwest acknowledged that its Petition “inadvertently failed to mention non-impairment for DS3 loops in the Boise Main wire center,” but asserted in testimony that “a finding that access to DS3 loops is non-impaired in Boise Main necessarily follows” from the evidence presented. Tr. p. 32, footnote 20.

The Intervenors challenge Qwest’s belated claim to a non-impairment designation for DS3 loops on several counts. First, because Qwest did not include DS3 loop impairment in its original request, the Intervenors argue the Commission should use the most recent data to

determine whether the standard for non-impairment is met. For DS3 loop, the non-impaired threshold is the presence of at least 38,000 business lines in addition to four or more fiber-based collocations in the wire center. Tr. p. 110. Qwest filed year-end 2007 data with its Petition filed in June 2008. The Intervenor asserts that “because Qwest did not make its request for DS3 non-impairment until its April 17, 2009 testimony, Qwest should have relied upon end of year 2008 switched business line counts rather than end of year 2007.” Tr. p. 93.

Second, the Intervenor contends Qwest improperly counted switched business lines in its Boise Main wire center by including residential loops and non-switched capacity in its count. Tr. pp. 110-111. Finally, the Intervenor testified they were not able to verify Qwest’s count for Intervenor Integra’s switched business lines, raising reliability concerns about Qwest’s count of switched business lines in the Boise Main wire center. Tr. pp. 120-121.

The Commission declines to make a determination of non-impairment for DS3 loop for several reasons. First, Qwest made no request in its Petition that the Commission determine whether the non-impaired standard for DS3 loops was met in the Boise Main wire center, nor did Qwest seek to amend its Petition to include a request. Second, Qwest was clear in rebuttal testimony that “there are currently no DS3 unbundled loops in the Boise Main wire center,” raising concerns for the Commission about reaching a meaningless decision. Tr. pp. 177, 193. Finally, a finding of non-impairment should be based on the most recent data to support a determination of the current status of a wire center. The record does not reveal whether the 2008 year-end data supports a finding of non-impairment for DS3 loops in the Boise Main wire center.

Process for Future Non-Impairment Proceedings

Qwest included in its Petition a request that the Commission “address the process for future updates of Qwest’s list of non-impaired wire centers.” Petition, p. 13. Qwest recommended the process be the same as set forth in the multi-state settlement agreement, and that it include confirmation of Qwest’s right to charge for converting UNE facilities to alternative arrangements. Petition, p. 13. The transition period recommended by Qwest once non-impairment is established is 90 days. Petition, p. 14. The Intervenor challenges particular parts of Qwest’s proposal, including the conversion charge and transition period, and recommends that Qwest notify them when a wire center is within a certain number of business lines or fiber collocators to be approaching non-impaired status.

The Commission will provide guidance for Qwest's future non-impairment proceedings. Because the Intervenor's dispute with Qwest's count of business lines will affect the process of future proceedings if not resolved, the Commission will discuss that issue to facilitate new non-impairment proceedings.

Qwest requests that the Commission approve the specific items in the Settlement Agreement for processing its future applications for identification for non-impaired wire centers. Intervenor's oppose adoption of the terms of the Settlement Agreement for Idaho proceedings. Some of the specific procedural terms in the Settlement Agreement differ from this Commission's procedures and we decline to approve it in the absence of agreement by the Intervenor's. It is possible and reasonable, however, to direct some aspects for the processing of future applications filed by Qwest. Accordingly, the Commission directs the following for future applications filed by Qwest for identification of non-impaired wire centers:

1. Qwest may request additions of non-impaired wire centers based on the number of fiber-based collocators or on the number of line counts, and must provide the most recent data available to support its application;
2. At least ten days prior to filing its application, Qwest should provide notice to all impacted CLECs and request that all interested parties sign a protective order for confidential information;
3. Qwest must file with its application supporting data sufficient to support the counts of fiber-based collocators and/or line counts;
4. If Qwest requests processing by Modified Procedure, the Commission will promptly file a Notice of Application and Notice of Modified Procedure providing for a 21-day comment period;
5. If there are no objections to Qwest's application, the effective date for non-impairment will be the date the Commission issues an order once the application has been fully submitted and processed by Modified Procedure;
6. If any party disputes Qwest's proposed non-impairment designations, the parties may request that the Commission use its best efforts to resolve the dispute within 60 days of the date of the objection.

When determining the number of switched business lines in a wire center, Qwest is bound to use the definition provided by the FCC in its rule at 47 C.F.R. § 51.5. As written, the rule states that 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.” Tr. p. 108, *citing* 47 C.F.R. § 51.5. Clearly, the rule allows inclusion of all UNE loops, including loops provisioned in combination with other unbundled elements, in determining a number of business lines in a wire center. The Intervenor contends that Qwest improperly counted the business lines by including UNE-L lines that are used to serve residential and non-business customers, and by including capacity used to provide data services in its UNE-L line counts. Tr. p. 109. The Commission finds that Qwest is obligated and entitled to apply the definition of business line as written by the FCC. In future filings, if a CLEC believes Qwest has not properly applied the rule to count business lines as the FCC directs, it can state that objection in its response to Qwest’s application.

The Intervenor contends that the 90-day transition period in the Settlement Agreement is not long enough to transition impacted circuits from UNEs to alternative arrangements once a finding of non-impairment has been made. The Intervenor recommends that the transition process allow up to one year, or at least six months, to make the transition from UNEs to alternative services. Qwest points out that this determination is not critical in this case because “there are no services that will need to be transitioned at the present time” as a result of a non-impairment finding. Tr. p. 193. Qwest nonetheless requests that the Commission make a determination about a transition period for future cases, and argues that the 90-day transition period agreed to in the Settlement Agreement is adequate. Tr. p. 195. It is not necessary for the Commission to make a final determination on a transition period at this point, but will state its concern that a 90-day transition period may be inadequate for a CLEC to transition from UNEs to alternative services. The Commission is not bound by the terms of the Settlement Agreement, and will determine an appropriate transition period in future filings if the parties do not agree on the transition time.

Finally, the Commission briefly addresses the parties’ argument regarding the need to change circuit identification, and Qwest’s \$25 charge for converting UNEs to other services. Regarding the change in circuit identification, Qwest testified that its computer system that maintains the data base is leased from Telcordia (formerly Bell Labs), and that Telcordia’s standards require changing circuit identifications when changing UNEs to a tariffed service. Tr.

pp. 196-97, 200-201. On this record, the Commission finds that it is appropriate for Qwest to change the circuit identification when changing UNEs to tariffed service.

The Commission also finds it has no basis for disallowing Qwest's \$25 charge to convert UNEs to a private line once a finding of non-impairment has been made. Qwest testified that the \$25 charge is contained in its FCC Tariff No. 1, Section 5.2.2(C), Design Change Charge. Tr. p. 249. On the record presented, the Commission finds that Qwest may charge the conversion rate as set forth in its FCC tariff.

Based on the record in this case, the Commission finds that Qwest's Boise Main wire center meets the Tier 1 non-impaired standard for interoffice transport, and that its Boise West wire center meets the Tier 2 non-impaired standard for interoffice transport. This determination is binding on all CLECs that request high-capacity interoffice transport from Qwest through these wire centers. Qwest is directed to file future Petitions for determination of non-impaired wire centers consistent with this Order.


ORDER

IT IS HEREBY ORDERED that Qwest's Petition for determination of non-impairment in its Boise Main and Boise West wire centers is approved. Qwest's Boise Main wire center meets the Tier 1 non-impaired standard for interoffice transport, and its Boise West wire center meets the Tier 2 non-impaired standard for interoffice transport.

IT IS FURTHER ORDERED that the Motions for the limited admission of out-of-state counsel (Pro Hac Vice) filed by Qwest and 360networks (USA) Inc. are granted.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

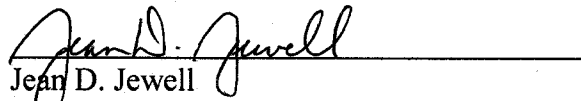
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 27th
day of July 2009.


JIM D. KEMPTON, PRESIDENT


MARSHA H. SMITH, COMMISSIONER


MACK A. REDFORD, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

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