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IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION

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

DIRECT REBUTTAL TESTIMONY OF RENÉE ALBERSHEIM
QWEST CORPORATION

JUNE 10, 2009

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1

I. IDENTIFICATION OF WITNESS

2

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND

3

POSITION WITH QWEST CORPORATION.

4

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

5

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

6

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

7

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

8

Q. DID YOU SUBMIT DIRECT TESTIMONY IN THIS CASE ON

9

APRIL 17, 2009?

10

A. Yes.

11

II. PURPOSE OF REBUTTAL TESTIMONY

12

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

13

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

14

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

15

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

16

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

17

Triennial Review Remand Order ("TRRO").¹ Rachel Torrence of Qwest will respond to

18

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

¹ See *In the Matter of Review of Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, CC Docket No. 01-338, WC Docket No. 04-313, 20 FCC Rcd 2533, (2004) ("*Triennial Review Remand Order*" or "*TRRO*").

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

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

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

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

² Direct Testimony of Douglas Denney (“Denney Direct”), at page 19.

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

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

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

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

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

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

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

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

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

1 **THE RULES ESTABLISHED BY THE *TRRO* WAS IN ERROR.⁵ PLEASE**
2 **RESPOND.**

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

⁵ Denney Direct, at page 15.

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

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

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

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

⁷ See, for example, Denney Direct, at page 12.

⁸ Denney Direct, at page 12.

⁹ Denney Direct, at page 12.

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

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

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

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

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

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

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

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

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

¹⁰ See *Minnesota Settlement Approval*, at page 5.

