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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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**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><b>QWEST CORPORATION'S PREHEARING BRIEF</b></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*”).<sup>1</sup> 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”).<sup>2</sup> 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,

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<sup>1</sup> *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.)

<sup>2</sup> 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.<sup>3</sup> 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.

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<sup>3</sup> 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

