

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03I-478T

REGARDING THE UNBUNDLING OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS PURSUANT TO THE TRIENNIAL REVIEW ORDER--INITIAL COMMISSION REVIEW.

**ORDER OPENING DOCKET AND
ESTABLISHING PROCEDURAL REQUIREMENTS**

Mailed Date: October 31, 2003

Adopted Date: October 16, 2003

I. BY THE COMMISSION

A. Statement

1. On August 21, 2003, the Federal Communications Commission (FCC) issued its *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, FCC 03-36, Triennial Review Order (Triennial Review Order).¹ That order modified the unbundling obligations of incumbent local exchange carriers (ILEC) such as Qwest Corporation pursuant to 47 U.S.C. § 251. Specifically, Rule 51.319(a)(4),(a)(5), and (a)(6)² require an ILEC to provide competing carriers with nondiscriminatory access to DS1, DS3, and dark fiber loops on an unbundled basis except where the state commission has found, through application of certain "triggers" or certain criteria regarding potential deployment of competitive facilities,³ that competing carriers are not impaired without access to the ILEC's unbundled loops "at a specific

¹ *Review of the Section 251 Unbundling obligation of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provision of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunication Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (rel. Aug. 21, 2003).

² All FCC rules referenced in this order are contained in 47 C.F.R., Part 51.

³ See Rule 51.319(a)(5)(ii) (potential deployment of competitive DS3 loops) and Rule 51.319(a)(6)(ii) (potential deployment of competitive dark fiber loops).

customer location." According to Rule 51.319(a)(7), a state commission is required to complete any initial review applying these triggers and criteria within nine months from the effective date of the Triennial Review Order. The Triennial Review Order became effective on October 2, 2003; therefore, any state commission review under Rule 51.319(a)(7) must be completed by July 2, 2004.

2. Rule 51.319(d)(2) requires an ILEC to provide unbundled access to local circuit switching to competing carriers serving end-users using DS0 capacity loops, except where the state commission finds that competing carriers are not impaired without such access *in a particular market* (i.e., a particular geographic area defined by the state commission), or where the state commission finds that any impairment would be cured by implementation of transitional unbundled local circuit switching in a given market. In determining whether competing carriers are impaired without access to unbundled circuit switching, a state commission is required to apply the triggers listed in Rule 51.319(d)(2)(iii)(A) and the alternative criteria listed in Rule 51.319(d)(2)(iii)(B). Under Rule 51.319(d)(5), a state commission must complete the initial proceedings applying these triggers and criteria within nine months from the effective date of the Triennial Review Order (or by July 2, 2004).

3. Rules 51.319(e)(1-3) require an ILEC to provide competing carriers with nondiscriminatory access to DS1, DS3, and dark fiber dedicated transport on an unbundled basis except where the state commission has found that competing carriers are not impaired without access to the ILEC's dedicated transport "along a particular route." In determining whether competing carriers are impaired without access to the ILEC's unbundled dedicated transport, a state commission is required to apply the triggers and alternate criteria regarding potential deployment of competitive facilities listed in Rules 51.319(e)(1)(ii) (competitive wholesale

facilities trigger for dedicated DS1 transport); 51.319(e)(2)(i) (self-provisioning and competitive wholesale facilities triggers for dedicated DS3 transport); 51.319(e)(2)(ii) (potential deployment of competitive dedicated DS3 transport); 51.319(e)(3)(i) (self-provisioning and competitive wholesale facilities triggers for dark fiber transport); and 51.319(e)(3)(ii) (potential deployment of competitive dark fiber transport). According to Rule 51.319(e)(4), a state commission must complete the initial proceedings applying these triggers and criteria within nine months of the effective date of the Triennial Review Order (or by July 2, 2004).

4. We now open this docket to conduct the investigations required by FCC Rules 51.319(a)(7), 51.319(d)(5), and 51.319(e)(4). In order to complete the required investigations by July 2, 2004, we adopt the procedural directives discussed below.

5. Our decision as to whether competing carriers are impaired without access to the unbundled network elements discussed above will be based upon the evidence provided by the parties to this docket. This docket will be conducted as an on-the-record adjudicative proceeding. Qwest Corporation is, at present, the only ILEC in the state required to provide unbundled network elements to competing carriers under the FCC's rules. As such, Qwest will have the primary responsibility to assist the Commission in conducting the investigations required by the above-cited rules. Qwest is now made a party to this proceeding and will have the primary responsibility for producing information relevant to the investigations discussed above, in addition to those duties described here.

6. On November 6, 2003, Qwest will file a Notice of Scope of Docket. That Notice will inform the Commission of Qwest's intent to challenge the FCC's requirement that it continue to provide unbundled loops (Rule 51.319(a)(4-6), unbundled local circuit switching

(Rule 51.319(d)(2)), and unbundled dedicated transport (Rule 51.319(e)(1-3)). Qwest's Notice of Scope of Docket will identify: (1) the specific customer locations, if any, for which it challenges the FCC's requirement to continue providing unbundled loops; (2) the particular markets for which it challenges the FCC's requirement to continue providing unbundled local circuit switching; and (3) the particular routes for which it challenges the FCC's requirement to continue providing unbundled dedicated transport. Interested parties may file responses to Qwest's Notice on or before November 20, 2003.

7. Trial Staff of the Commission is directed to participate as a party to assist the Commission in developing the record in this investigation in light of the directives in the Triennial Review Order. Staff will conduct audit or discovery as it deems appropriate. We attach to this decision (Appendix 1) a list of questions which Staff *should consider*--we do not mandate that Staff propound these questions--serving upon parties to this proceeding.⁴

8. Interested persons may file requests for intervention within 30 days of the effective date of this order. Each telecommunications carrier who is a party to a currently effective interconnection agreement with Qwest approved by the Commission under 47 U.S.C. § 252 is now made a party to this proceeding. As a party to this case, each carrier is required to respond to discovery requests made by another party to this case, such as Qwest or Trial Staff, under the Commission's discovery rules.⁵

⁴ Our suggestion that Staff consider using these discovery (or audit) questions does not limit the discovery rights of other parties to this case, including the right to object to discovery.

⁵ This order does not constitute a ruling regarding the propriety of any specific discovery request made by any party.

9. The parties may commence discovery immediately upon the effective date of this order. The Commission's Rules of Practice and Procedure, 4 CCR 723-1, regarding discovery shall apply except as specifically modified here: Objections to written discovery requests shall be made within three business days of service. Answers to discovery shall be provided within five business days of service.⁶ Discovery disputes will be resolved by an Administrative Law Judge.

10. Unless otherwise requested by a party, service of all documents to other parties, including pleadings, discovery, and prefiled testimony (discussed below), shall be accomplished through electronic means (*i.e.*, e-mail). Filings with the Commission shall be made in accordance with the Commission's Rule of Practice and Procedure (electronic filings are not permitted).

11. The Rules Relating to the Claim of Confidentiality of Information Submitted to the Colorado Public Utilities Commission, 4 CCR 723-16, shall apply to this proceeding as modified by Attachment C. Parties seeking to modify or supplement these confidentiality provisions shall timely file a motion requesting such action by the Commission. The same Administrative Law Judge handling discovery disputes will rule on any such motions.

12. Rule 51.319(d)(2)(ii) requires that a state commission establish a "batch cut process," or issue detailed findings explaining why such a process is unnecessary. The rule defines a batch cut process as a process by which the ILEC simultaneously migrates two or more loops from one carrier's local circuit switch to another carrier's local circuit switch. In its Notice

⁶ We expect that trial staff will soon serve an initial, large set of discovery requests on other parties. For this initial set only, parties will have 14 calendar days to respond to the requests (but 3 business days to object). After the initial set, the response times set forth in the text above will govern.

of Scope of Docket, Qwest shall address the procedure (in this proceeding or in another docket before the Commission) by which Qwest proposes that the batch cut process be developed. Interested parties may reply to Qwest's suggestions in their responses to the Notice (due November 20, 2003).

13. The parties shall comply with the following procedural schedule:

<u>Required Action</u>	<u>Due Date</u>
Qwest's Notice of Scope of Docket	November 6, 2003
Response to Notice	November 20, 2003
Qwest's Direct Testimony	January 26, 2004
Answer Testimony	March 1, 2004
Qwest Rebuttal.....	March 22, 2004
Hearings	April 12-16, and April 19-23, 2004
Statements of Position.....	May 20, 2004

II. ORDER

A. The Commission Orders That:

1. This docket is opened for the purposes discussed above.
2. Qwest Corporation and each telecommunications carrier who is a party to an interconnection agreement with Qwest approved by the Commission pursuant to 47 U.S.C. § 252 is now designated a party to this docket.
3. Other interested persons may file requests for intervention within 30 days of the effective date of this order.
4. Trial Staff of the Commission is now designated a party to this docket.

5. The procedures discussed above are adopted for this proceeding, and each of the parties shall comply with those procedures.

6. The Commission shall conduct a hearing in this matter as follows:

DATE: April 12, 2004
 TIME: 9:00 a.m.
 PLACE: Colorado Public Utilities Commission
 1580 Logan St., OL2
 Hearing Room A
 Denver, Colorado

Hearings shall continue as necessary on April 13-16, and 19-23, 2004.

7. This Order is effective immediately upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING
 October 16, 2003.**

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith

Bruce N. Smith
 Director

THE PUBLIC UTILITIES COMMISSION
 OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

JIM DYER

Commissioners

PRELIMINARY DISCOVERY REQUESTS

In the Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundle Network Elements

A. Requests for Information submitted to CLECs in Response to Petitioning ILEC

Switching

1. Provide a list of all switches that you currently use to provide a qualifying service (as defined in 47 C.F.R. § 51.5, as that section will be amended by the Final Rules issued by the FCC pursuant to the *Triennial Review Order*) anywhere in Colorado, regardless of whether the switch itself is located in Colorado. Do not include ILEC switches utilized by you on an unbundled basis in the ILEC's service territory or through the resale of the incumbent's services at wholesale rates.
2. Identify each ILEC wire center district (*i.e.*, the territory served by a wire center of the ILEC) in which you provide qualifying service to any end user customers utilizing any of the switches identified in your response to Question 1. Wire centers should be identified by providing their name, address, and CLLI code.
3. For each ILEC wire center identified in response to Question 2, identify the total number of voice-grade equivalent lines you are providing to customers in that wire center from your switch(es) identified in response to Question 1. For purposes of this question, "voice-grade equivalent lines" should be defined consistent with the FCC's use of the term. *See, e.g. FCC Form 477, Instructions for the Local Competition and Broadband Reporting Form.*
4. For each switch identified in response Question 1, identify the approximate capacity of the switch – that is, the maximum number of voice-grade equivalent lines it is capable of serving – based on that switch's existing configuration and component parts.
5. With respect to the voice-grade equivalent lines identified in response to Question 3, separately indicate the number being provided to (a) residential customers; (b) business customers to whom you provide only voice-grade or DS0 lines; and (c) business customers to whom you provide DS1, ISDN-PRI, or other high capacity lines. For purposes of this question, "high capacity" means DS1 or equivalent or higher capacity lines, including, but not limited to DS1, ISDN-PRI, DS3, OCn.

6. For each of the switches identified in your response to Question 1, state whether the switch is owned by you, or whether you have leased the switching capacity or otherwise obtained the right to use the switch on some non-ownership basis. If the facility is not owned by you, identify the entity owning the switch and (if different) the entity with which you entered into the lease or other arrangement, identify the nature of the arrangement, and state whether such entity or entities are affiliates of yours, in the sense defined in ¶ 408, footnote 1263 of the *Triennial Review Order*.
7. Provide a list of all switches from which you offer or provide switching capacity to another local service provider for use in providing qualifying service anywhere in Colorado.

Transport

1. For each ILEC, Identify, by name, address, and CLLI code, each ILEC wire center (by the name, address, and CLLI code of that wire center) in which you have established a collocation arrangement or in which such arrangements have been ordered.
2. For each wire center identified in your response to Question 1, provide the number of arrangements by wire center, identify the transport facilities that currently serve such collocation arrangement (or that will serve such arrangement and that you are currently in the process of constructing, ordering, purchasing, or arranging for the use of). For purposes of this Question, “transport facilities” (a) does not include unbundled facilities obtained from the petitioning ILEC, and (b) does include dark fiber.
3. For each transport facility identified in the response to Question 2, identify the transport technology utilized (*e.g.*, fiber optic (specify whether dark or lit), microwave, radio, or coaxial cable), and the quantity/capacity of the facility deployed.
4. For each wire center and transport technology identified in the responses to Questions 1-3, identify the type of termination equipment utilized in the collocation arrangement.
5. For each transport facility identified in your response to Question 2, state whether the facility is owned by you or whether you acquired rights to utilize it under a lease or other some other form of non-ownership arrangement. (If the facility was provisioned through the use of dark fiber that you acquired and subsequently “lit,” answer separately for the fiber and the optronics utilized.) If the facility is not owned by you, identify the entity that owns the facility and (if different) the entity with which you entered into the lease or other arrangement, identify the nature of the arrangement, and state whether such entity or entities are affiliates of yours, in the sense defined in ¶ 408, footnote 1263 of the *Triennial Review Order*.
6. Identify and describe any arrangements into which you have entered with another entity for such other entity’s use of transport facilities in Colorado that you own or control, on a lease or other basis.

7. Provide a list of all recurring and non-recurring rate elements and rates when a CLEC purchases UNE-Loop and special access, EEL, DS1, or DS3 transport from the ILEC rate center to the CLEC rate center.

B. Questions for Petitioning ILECs

1. For each wire center in your territory in Colorado, please provide the number of business voice-grade equivalent lines that you directly serve.
2. For each wire center in your territory in Colorado, please provide the number of business voice-grade equivalent lines that CLECs are serving through resale.
3. For each wire center in your territory in Colorado, please provide the number of business voice-grade equivalent lines that CLECs are serving through UNE-P.
4. For each wire center in your territory in Colorado, please provide the number of business voice grade equivalent lines that CLECs are serving through own facilities.
5. For each wire center in your territory in Colorado, please provide the number of residential voice-grade equivalent lines that you directly serve.
6. For each wire center in your territory in Colorado, please provide the number of residential voice-grade equivalent lines that CLECs are serving through resale.
7. For each wire center in your territory in Colorado, please provide the number of residential voice-grade equivalent lines that CLECs are serving through UNE-P.
8. For each wire center in your territory in Colorado, please provide the estimated number of residential lines that CLECs are serving through their own facilities (complete bypass).
9. For each wire center in your territory in Colorado, please provide the number of in-service collocation arrangements that you have, and for each collocation arrangement, please indicate the type of collocation that you are providing.
10. For each wire center in your territory in Colorado, please provide the number of provisioned collocation arrangements that you have in place that have yet to be activated, and for each collocation arrangement, please indicate the type of collocation.
11. For each wire center in your territory in Colorado, please provide the number of pending collocation arrangements that you have, and for each collocation arrangement, please indicate the type of collocation.

Requests for Information Regarding the Development of an Batch Hot Cut Process

A. Questions for Qwest Corp.

1. For the period of time from January 1, 2000 through June 30, 2003, on a monthly basis for every wire center, provide, in an electronic format, the number of UNE-P lines at the beginning of the month, added during the month, disconnected during the month and at the end of the month.
2. For the period of time from December 31, 2000 through June 30, 2003, on a monthly basis for every wire center, provide, in an electronic format, the number of UNE-L lines at the beginning of the month, added during the month, disconnected during the month and at the end of the month.
3. Describe the hot cut process currently used to transfer lines from the ILEC switch to the CLEC facilities.
4. List each task that is part of the current process. Provide the average time it takes to complete the task, the typical occurrence of the task during the process, the labor rate for the task, and the common overhead loading associated with the labor rate. Indicate the source of the data; i.e., time/motion studies, SME analysis, etc.
5. Describe a batch hot cut process that Qwest Corp. would implement to meet the FCC's requirement to establish a batch hot cut process. Include an estimate of number of lines per batch.
6. List each task that is part of the batch hot cut process described in the answer to the above question regarding a batch process. Provide the average time it takes to complete the task, the typical occurrence of the task during the process, the labor rate for the task, and the common overhead loading associated with the labor rate. Indicate the source of the data; i.e., time/motion studies, SME analysis, etc.
7. List each task that is part of the batch hot cut process that is not included in the current hot cut process.
8. List each task that is part of the current hot cut process that is not included in the batch hot cut process.
9. For each wire center as of December 31, 2002 and June 30, 2003, provide the total number of residential lines served and the number of residential lines served using integrated digital line carriers. Provide separately for every wire center the number of Qwest Corp. retail residential lines, UNE served residential lines, and Wholesale served residential lines.

10. For each wire center as of December 31, 2002 and June 30, 2003, provide the total number of business mass-market lines served and the number of business massmarket lines served using integrated digital line carriers. Provide separately for every wire center the number of Qwest Corp. retail business mass-market lines, UNE served business mass-market lines, and Wholesale served business mass-market lines. Explain how Qwest Corp. determined which business lines were mass-market lines and which are enterprise lines.
11. If the tasks related to the hot cut process for lines served using integrated digital line carriers differs from the process used for other lines, discuss how the process is different and list the tasks that must be added specifically for the lines served using integrated digital line carriers. Include the time required to accomplish those tasks, the labor cost and loaded labor cost associated with those tasks.
12. On a monthly basis for the time period from January 2000 through June 2003, provide the average time a customer's service was disconnected due to the hot cut process.
13. On a monthly basis for the time period from January 2000 through June 2003, provide the number of technicians during each month who have transferred a line from an ILEC switch to the CLEC facility as part of the hot cut process. Count only those employees who perform the manual process.
14. On a monthly basis for the time period from January 2000 through June 2003, provide the number of technicians trained and capable of transferring a line from an ILEC switch to the CLEC facility as part of the hot cut process. Count only those employees who can perform the manual process. Do not include management or supervisory personnel who can perform these tasks but do not do so as part of their regular work effort.
15. For the period of time from January 1, 2000 through June 30, 2003, on a monthly basis for every wire center, provide, in an electronic format, the number of hot cuts performed.
16. Provide a list of all carriers with which Qwest Corp. has an interconnection agreement for the provision of local service in Colorado.
17. Provide a list of all carriers to which Qwest Corp. has sold collocation services in Colorado. For each carrier, list the wire centers where the carrier is collocated.
18. Provide a list of Qwest Corp. wire centers with indicators that identify whether the office is unstaffed, has a technician on duty but the technician can not perform hot cuts, or has a technician on duty and the technician can perform hot cuts. For unstaffed offices and offices where the technician can not perform hot cuts, specify the number of miles that the technician must drive and driving time to reach that office from the closest office where a technician who can perform hot cuts is normally on duty.
19. Compare and contrast electronic loop provisions (as contemplated by the *PA PUC's Functional Structural Separation Order*) and the batch cut process (contemplated by the *Triennial Review Order*).

20. If a batch cut process is developed, does that make it more or less likely that an electronic loop provisioning process will be implemented.

B. Questions for Other Participants

1. Describe the hot cut process currently used to transfer lines from the ILEC switch to the CLEC facilities.
2. List each task that is part of the current process. Provide the average time it takes to complete the task, the typical occurrence of the task during the process, the labor rate for the task, and the common overhead loading associated with the labor rate. Indicate the source of the data; i.e. time/motion studies, SME analysis, etc.
3. Describe a batch hot cut process that you would implement to meet the FCC's requirement to establish a batch hot cut process. Include an estimate of the maximum number of lines per batch.
4. List each task that is part of the batch hot cut process described in the answer to the preceding question. Provide the average time it takes to complete the task, the typical occurrence of the task during the process, the labor rate for the task, and the common overhead loading associated with the labor rate.
5. If UNE-P is no longer available, what monthly volumes of hot cuts would be required: (a) to migrate existing UNE-P customers to another form of service and (b) to connect new customers in the ordinary course of business. Provide supporting documentation for these volume estimates.

SUPPLEMENTAL PROTECTIVE ORDER

Highly Confidential Information:

Any person, whether a party or non-party, may designate certain competitively sensitive Confidential Information as “Highly Confidential Information” if it determines in good faith that it would be competitively disadvantaged by the disclosure of such information to its competitors. Parties must scrutinize carefully responsive documents and information and limit their designations as Highly Confidential Information to information that truly might impose a serious business risk if disseminated without the heightened protections provided in this section. The first page and individual pages of a document determined in good faith to include Highly Confidential Information must be marked by a stamp that reads:

“HIGHLY CONFIDENTIAL—USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO. 03I-478T.”

Placing a “Highly Confidential” stamp on the first page of a document indicates only that one or more pages contain Highly Confidential Information and will not serve to protect the entire contents of a multi-page document. Each page that contains Highly Confidential Information must be marked separately to indicate Highly Confidential Information, even where that information has been redacted. The unredacted versions of each page containing Highly Confidential Information, and provided under seal, should be submitted on paper distinct in color from non-confidential information and “confidential information.”

Parties seeking disclosure of Highly Confidential Information must designate the person(s) to whom they would like the Highly Confidential Information disclosed in advance of disclosure by the providing party. Such designation may occur through the submission of Exhibit “A” of the non-disclosure agreement which is attached hereto and incorporated herein. Parties seeking disclosure of Highly Confidential Information shall not designate more than (1) a reasonable number of in-house attorneys who have direct responsibility for matters relating to

Highly Confidential Information; (2) two in-house experts; and (3) a reasonable number of outside counsel and outside experts to review materials marked as “Highly Confidential.” The Exhibit “A” also shall describe in detail the job duties or responsibilities of the person being designated to see Highly Confidential Information and the person’s role in the proceeding. Highly Confidential Information may not be disclosed to persons engaged in developing, planning, marketing, or selling retail or wholesale services, strategic or business planning, competitive assessment, or network or system planning or procurement on behalf of the receiving party.

Any party, providing Highly Confidential Information may object to the designation of any individual as a person who may review Highly Confidential Information. Such objection shall be made in writing to counsel submitting the challenged individual’s Exhibit “A” within three (3) business days after receiving the challenged individual’s signed Exhibit “A.” Any such objection must demonstrate good cause to exclude the challenged individual from the review of the Highly Confidential Information. Written response to any objection shall be made within three (3) business days after receipt of an objection. If after receiving a written response to a party’s objection, the objecting party still objects to disclosure of Highly Confidential Information to the challenged individual, the Commission shall determine whether the Highly Confidential Information must be disclosed to the challenged individual.

Copies of Highly Confidential Information may be provided to the in-house attorneys, outside counsel and outside experts. The in-house experts who have signed and Exhibit “A” may inspect review, and make notes from the in-house attorney’s copies of Highly Confidential Information.

Persons authorized to review the Highly Confidential Information will maintain the documents and any notes reflecting their contents in a secure location to which only designated counsel and experts have access. No additional copies will be made, except for use during hearings. Any testimony or exhibits prepared that reflect Highly Confidential Information

must be maintained in the secure location until removed to the hearing room for production under seal and under circumstances that will ensure continued protection from disclosure to persons not entitled to review Highly Confidential Information.

Unless specifically addressed in this section, all other sections of the Commission's Confidentiality Rule 4 CCR 723-16 shall apply.

EXHIBIT "A"

HIGHLY CONFIDENTIAL INFORMATION

I have read the Supplemental Protective Order dated October, 31, 2003,
in Docket No. 03I-478T and agree to be bound by the terms and conditions of this Order.

Name

Employer

Job Title and Job Description

Business Address

Party

Signature

Date