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Cronan O'Connell
Vice President-Federal Regulatory

EX PARTE

August 20, 2004

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, DC 20554

Re: *In the Matter of 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 and 98-147

Dear Ms. Dortch:

The attached letter from R. Steven Davis, Qwest, was initially served on Chairman Michael K. Powell on August 19, 2004. Today's corrected version of the letter to Chairman Powell contains minor revisions which were made subsequent to the submission of the original letter. There have been no revisions to the maps or attachment. Chairman Powell is also being served concurrently with the correct version of the letter. Qwest respectfully requests that this *ex parte* and its associated attachment be included in the public record of the above-captioned docketed proceedings.

In accordance with Commission Rule 47 C.F.R. § 1.49(f), this *ex parte* is being filed electronically in the above-referenced proceedings pursuant to Commission Rule 47 C.F.R. § 1.1206(b)(1).

Sincerely,
/s/ Cronan O'Connell

Attachment



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PCS 720-203-4200

R. Steven Davis
Senior Vice President
Public Policy

August 19, 2004

VIA COURIER AND ELECTRONIC MAIL

Michael K. Powell, Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Michael.powell@fcc.gov

Dear Chairman Powell:

This letter is in response to recent published reports that the Commission is considering issuing a notice of proposed rulemaking that would include a tentative nationwide impairment finding for unbundled high-capacity facilities.

Such a finding would fly in the face of the four court decisions reversing the Commission's earlier findings on the same issue. In *USTA I*, the D.C. Circuit reversed the Commission's across-the-board, nationwide impairment findings for all UNEs. In that decision, the Court pointed to the fact that competitors were providing interoffice transport in 47 of the 50 top MSAs, and expressed skepticism that there could be impairment in markets "where the element in question – though not literally ubiquitous – is significantly deployed on a competitive basis." *United States Telecom Association, et al. v. Federal Communications Commission, et al.*, 290 F.3d 415, 422 (D.C. Cir. 2002). In response, the Commission imposed a route-by-route market definition for high-capacity loops and transport, which the Court also reversed, suggesting that the appropriate market definition should be based on geography (e.g., MSA) or customer class. *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*"), *pets. for cert.* filed, Nos. 04-12, 04-15, 04-18 (S. Ct. June 30, 2004). The Court also held that "the Commission's impairment analysis must consider the availability of tariffed ILEC special access services when determining whether would-be entrants are impaired." *Id.* at 577.

As you know, Verizon has submitted data for its most populous MSAs demonstrating that an impairment finding is not justified in those areas under the principles outlined by the Court. Qwest is compiling the same data for many of its MSAs, including its largest MSAs, and will submit each analysis as it is completed. Qwest has completed the analysis for the Denver MSA, and the results are attached. The data clearly demonstrate that a finding of impairment for high-capacity loops and transport cannot be justified, because of numerous alternative facilities.

The attached analysis contains data from Qwest internal sources and from outside vendors retained by Qwest. Qwest internal sources include facilities tracking databases, interconnection tracking databases, and billing databases. The existence of alternative sources was confirmed through examination of collocation and entrance facilities in Qwest central offices. Qwest

contracted with a consulting firm, Geo-Results, for information on lit buildings served by competitive carriers. Qwest contracted with two other consulting firms, GeoTel and Power Engineering, for information on the presence of competitive fiber within Qwest serving areas. Those firms collected data from CLECs and from public records, including permit applications.

The data for the Denver MSA clearly demonstrate that, throughout the Denver area, CLECs: 1) have deployed their own fiber networks; 2) are serving buildings with fiber facilities not obtained from Qwest; and 3) are serving buildings with special access circuits¹ obtained from Qwest. As demonstrated by the attached maps, a finding of impairment regarding high-capacity facilities for the Denver MSA cannot possibly be justified.

Map A provides a graphic representation of the location of “Lit” buildings currently being served by competitive carriers. These buildings have been verified as having fiber-based equipment serving the premises. This allows for fiber-based services ranging from voice to OC-n voice and data services.

Map B is an overlay of the known competitive fiber that exists within the Qwest serving area. This is fiber that has been deployed by competitive carriers for their own use or for use by other telecommunications carriers. It is currently being used to provide both high-capacity loops and/or inter-office transport. And as with all fiber-based facilities, this fiber can be used to provide a broad range of services (again, voice through OC-n services).

Map C combines both the known competitive fiber and lit buildings throughout the Denver MSA.

Map D shows the number of Qwest central offices within the Denver MSA that contain fiber-based collocation by one or more competitive carriers that enable existing fiber interoffice transport capability or that provide the potential of linking to interoffice transport capability on non-Qwest transport facilities. While the competitive fiber as illustrated in Maps B and C does not necessarily follow the Qwest fiber architecture, it commonly comes in close proximity to the Qwest central offices and in many cases enters the Qwest central offices where these collocations exist, allowing for access to the coveted end-user customer.

Map E shows cable facilities within the Qwest serving area of the Denver MSA. Cable modem facilities allow for the provision of a wide range of services from voice to data to video.

Map F shows the multiple wireless carriers offering service within the Denver MSA.

Finally, data on the competitive landscape of the Denver MSA are summarized as the final sheet of the attachment. Within the 37 wire centers that comprise the MSA, 24 CLECs have established over 117 fiber based collocations. 41 competing carriers have constructed their own fiber networks having deployed over 3,100 miles of fiber facilities. Carriers are currently

¹ A special access circuit can be a stand-alone loop or a combination of a loop and transport.

servicing 979 lit buildings. In addition, there are 24 carriers that purchase special access circuits from Qwest in 34 of the 37 wire centers in the Denver MSA (92% of the total wire centers in the MSA). These carriers purchase 18,563 special access circuits to 6,350 different locations (terminating addresses). Of the total 18,563 special access circuits purchased from Qwest by carriers, there are 18,267 DS1 circuits and 296 DS3 circuits in the Denver MSA.

Adding to the view of competition being presented for the Denver MSA, research being conducted by Qwest is proving that a substantial competitive presence is not limited to the Denver MSA, but is common to MSAs throughout the Qwest region. While data gathered for other MSAs within the Qwest region have not yet been fully analyzed, preliminary results have already yielded a high-level perspective on the inroads competitors have made into portions of Qwest's service territory. For example:

MSA - Phoenix, AZ

Within the 28 wire centers that comprise the MSA, 24 CLECs have established over 250 fiber-based collocations. 29 carriers have constructed their own fiber networks having deployed over 2800 miles of fiber facilities. Although not yet quantified, carriers purchase special access services throughout the MSA.

MSA - Minneapolis, MN

Within the 38 wire centers that comprise the MSA, 23 CLECs have established over 172 fiber-based collocations. 57 carriers have constructed their own fiber networks having deployed over 3,400 miles of fiber facilities. Although not yet quantified, carriers purchase special access services throughout the MSA.

MSA - Seattle, WA

Within the 39 wire centers that comprise the MSA, 31 CLECs have established over 66 fiber-based collocations. 28 carriers have constructed their own fiber networks having deployed over 12,210 miles of fiber facilities. Although not yet quantified, carriers purchase special access services throughout the MSA.

MSA - Salt Lake City, UT

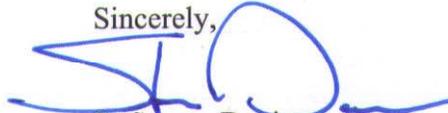
Within the 23 wire centers that comprise the MSA, 13 CLECs have established over 57 fiber-based collocations. 20 carriers have constructed their own fiber networks having deployed over 2,000 miles of fiber facilities. Although not yet quantified, carriers purchase special access services throughout the MSA.

The above information is consistent with the data that are being presented for the Denver MSA. As previously stated, it is Qwest's intention to submit similar information for these and other MSAs as sufficient data are compiled and analyzed.

Michael K. Powell, Chairman
Federal Communications Commission
August 19, 2004
Page 4

In conclusion, high-capacity facilities have been significantly deployed on a competitive basis throughout many if not all MSAs in the Qwest service territory. Any finding of impairment in these areas would be contrary to overwhelming data, and contrary to clear and unequivocal judicial decisions. Qwest urges the Commission to fully consider all these matters before reaching any conclusions, tentative or otherwise, in this proceeding.

Sincerely,

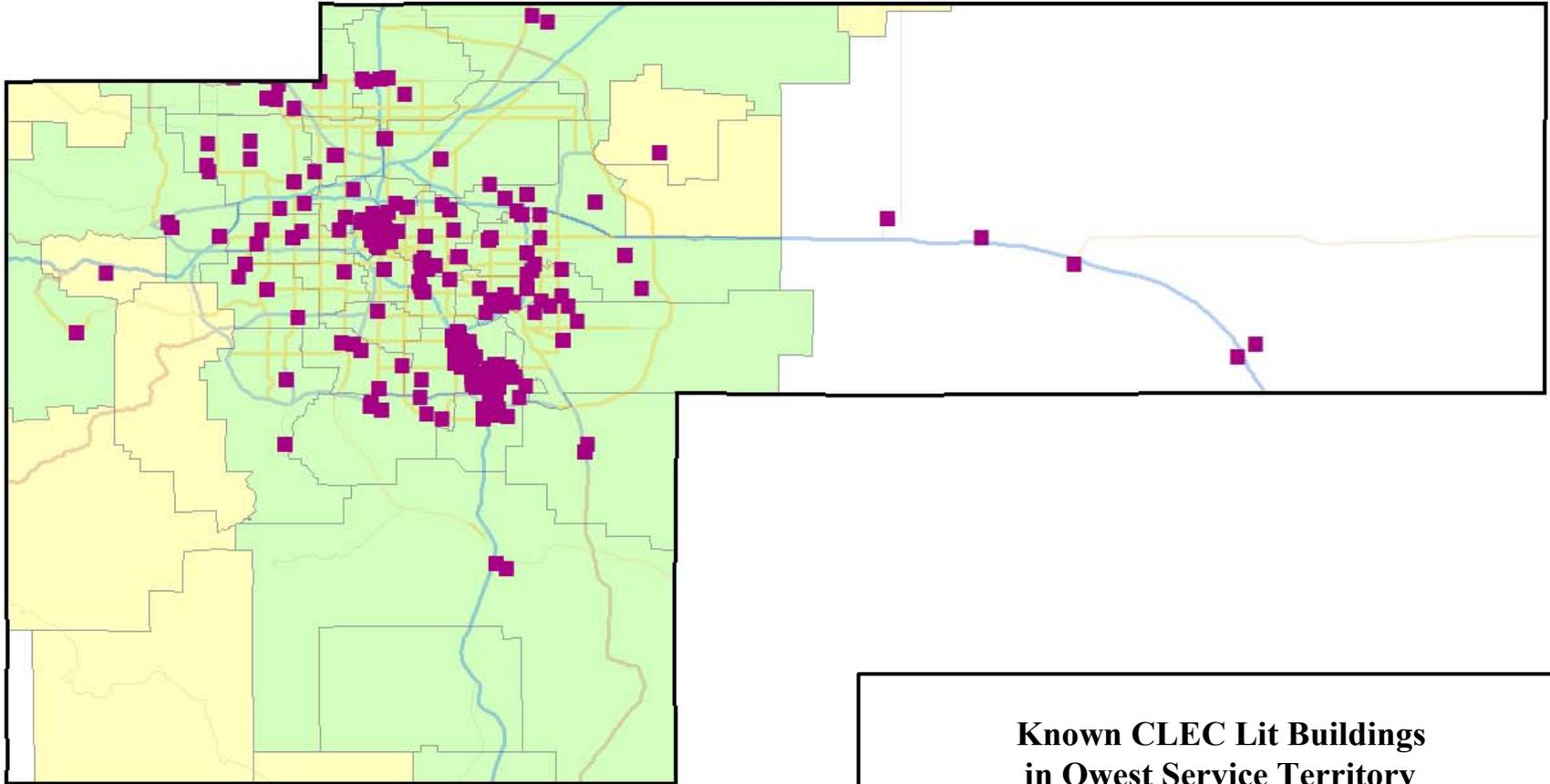


R. Steven Davis

cc: Commissioner Kathleen Q. Abernathy (via e-mail kathleen.abernathy@fcc.gov)
Commissioner Kevin J. Martin (via e-mail kevin.martin@fcc.gov)
Commissioner Michael J. Copps (via e-mail michael.copps@fcc.gov)
Commissioner Jonathan S. Adelstein (via e-mail jonathan.adelstein@fcc.gov)
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Jeffrey Carlisle (via e-mail jeffrey.carlisle@fcc.gov)
Michelle Carey (via e-mail michelle.carey@fcc.gov)

Attachments

Denver, CO - MSA

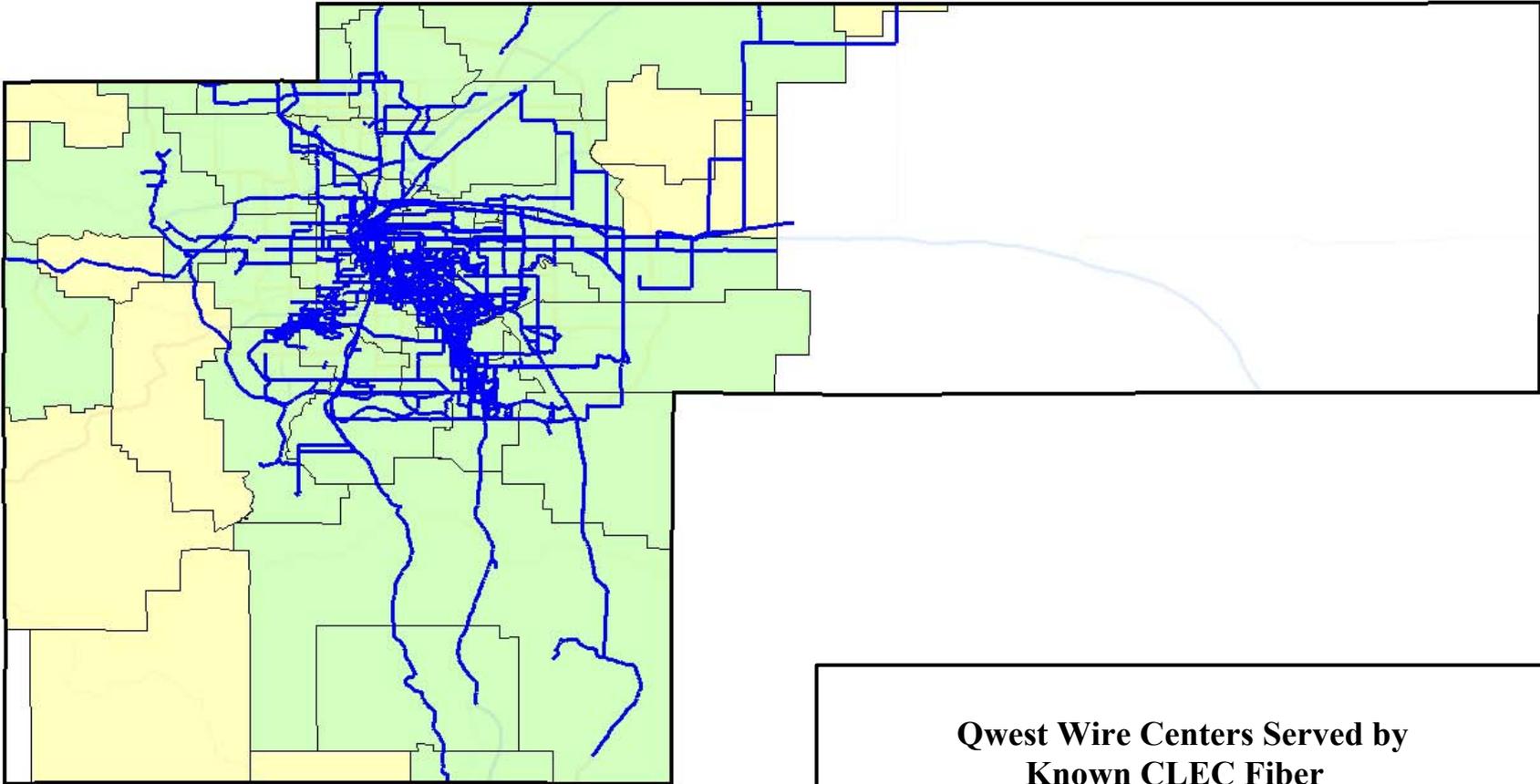


Known CLEC Lit Buildings in Qwest Service Territory

-  Known CLEC Lit Buildings
-  Qwest Service Territory with Wire Center Boundaries*
-  Qwest Wire Centers Served by Known CLEC Fiber
-  Non-Qwest Service Territory

* Qwest offers Special Access throughout the MSA

Denver, CO - MSA

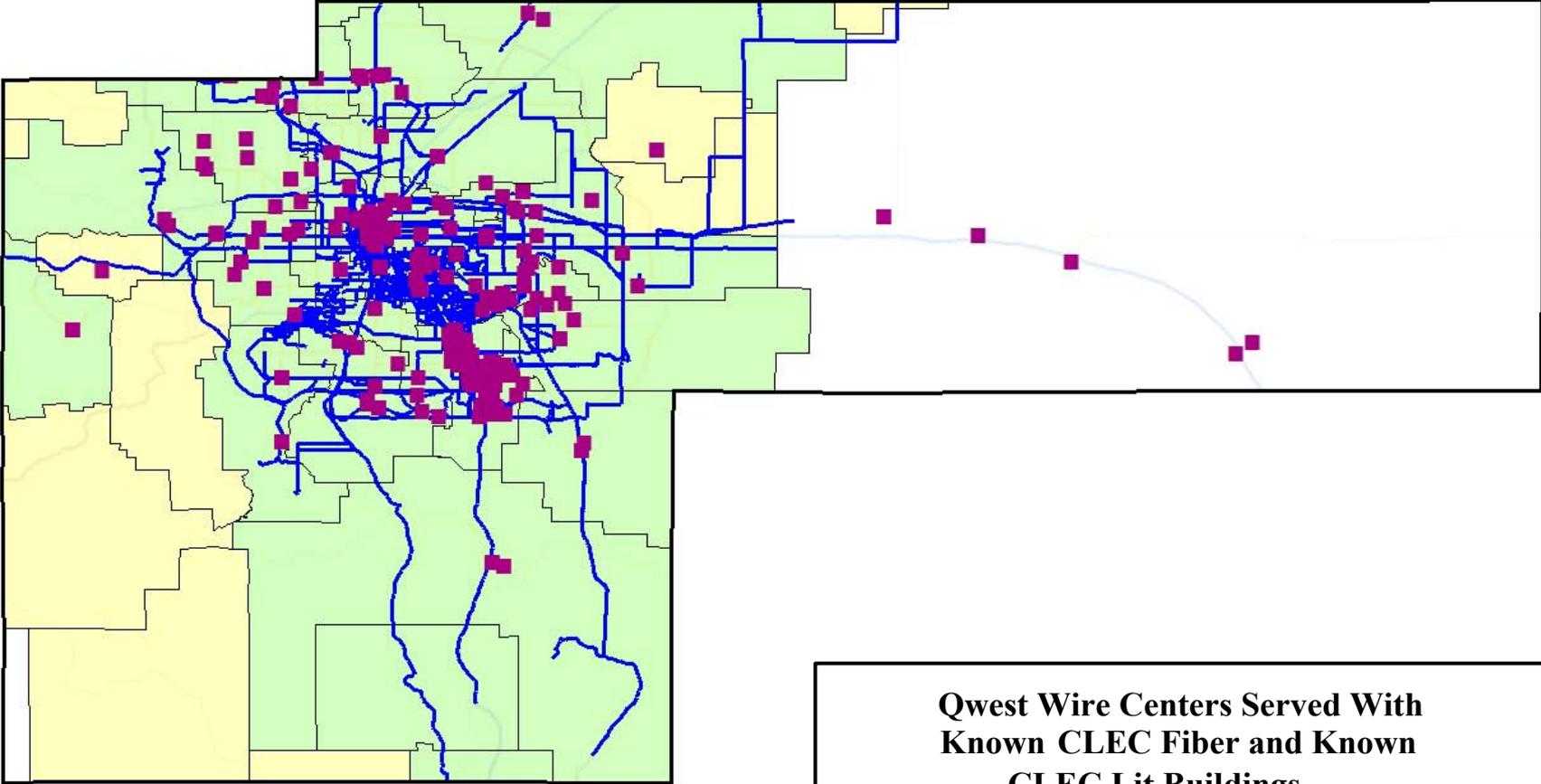


Qwest Wire Centers Served by Known CLEC Fiber

- Competitive Fiber
- Qwest Service Territory with Wire Center Boundaries*
- Qwest Wire Centers Served by Known CLEC Fiber
- Non-Qwest Service Territory

* Qwest offers Special Access throughout the MSA

Denver, CO - MSA

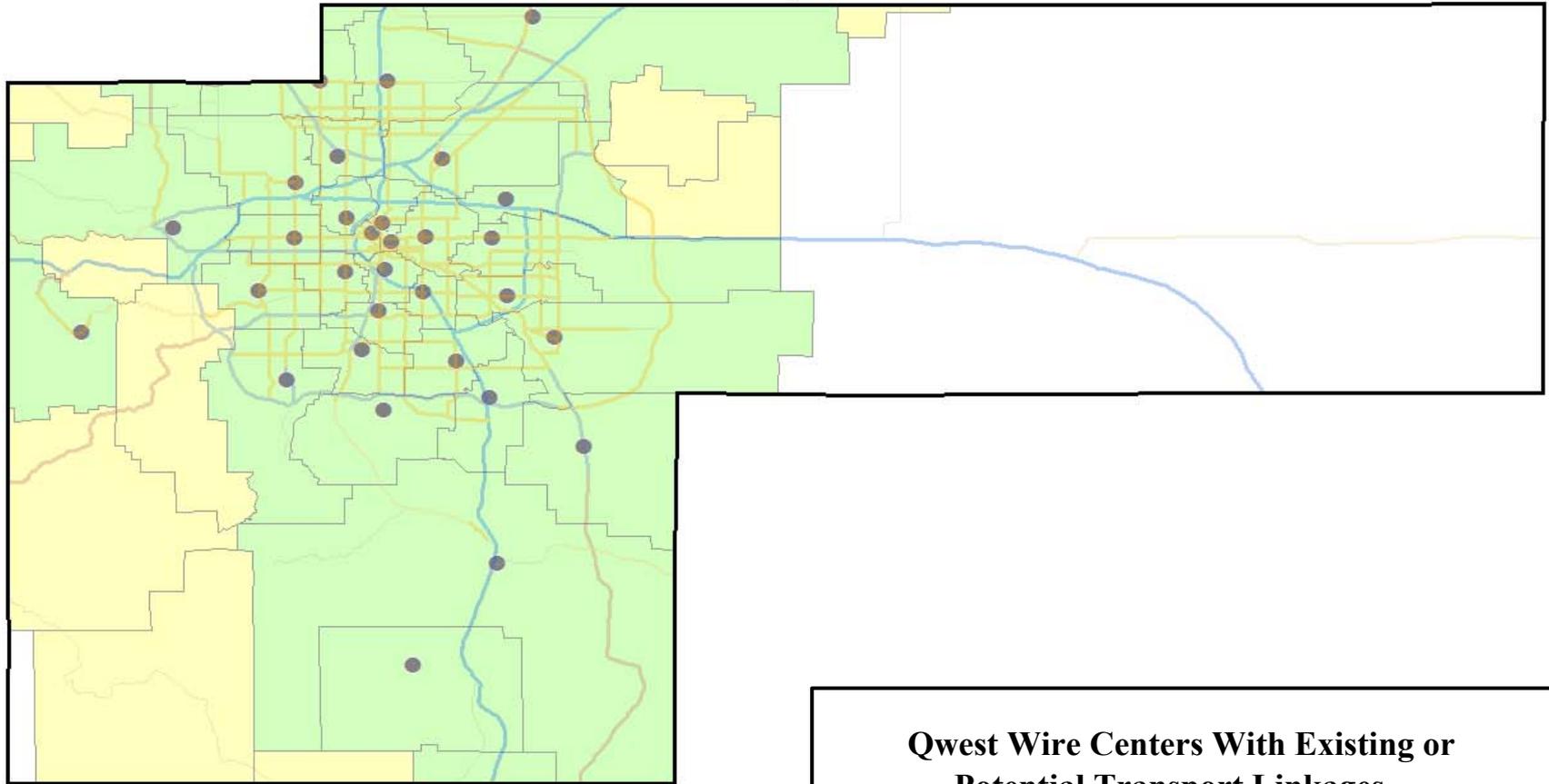


Qwest Wire Centers Served With Known CLEC Fiber and Known CLEC Lit Buildings

- Known CLEC Lit Buildings
- Competitive Fiber
- Qwest Service Territory with Wire Center Boundaries*
- Qwest Wire Centers Served by Known CLEC Fiber
- Non-Qwest Service Territory

* Qwest offers Special Access throughout the MSA

Denver, CO - MSA

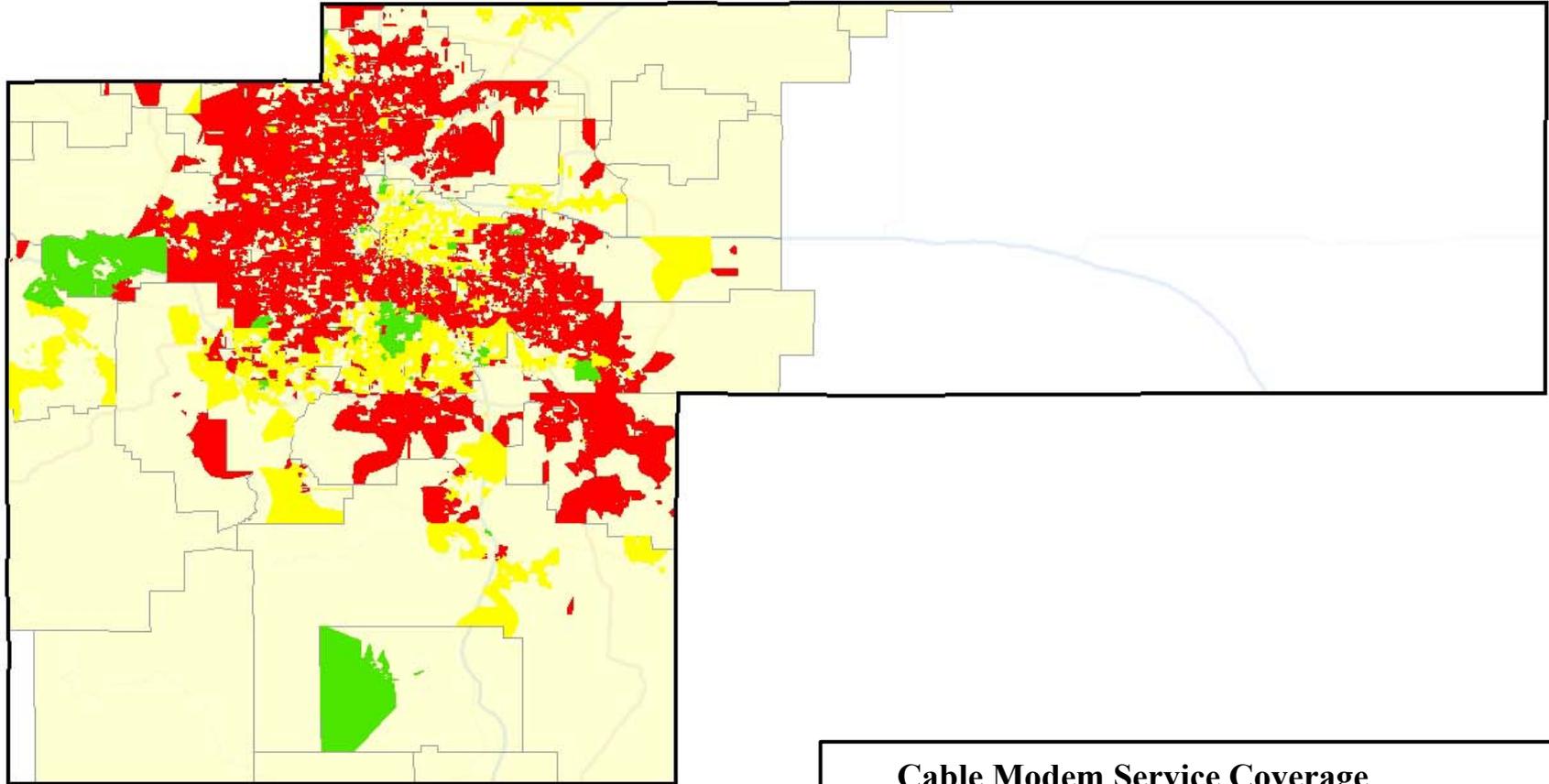


Qwest Wire Centers With Existing or Potential Transport Linkages

- COs with Known CLEC Fiber Collocations
- Qwest Service Territory with Wire Center Boundaries*
- Qwest Wire Centers Served by Known CLEC Fiber
- Non-Qwest Service Territory

* Qwest offers Special Access throughout the MSA

Denver, CO - MSA



Cable Modem Service Coverage

Cable Modem Coverage Area

 Singleplay

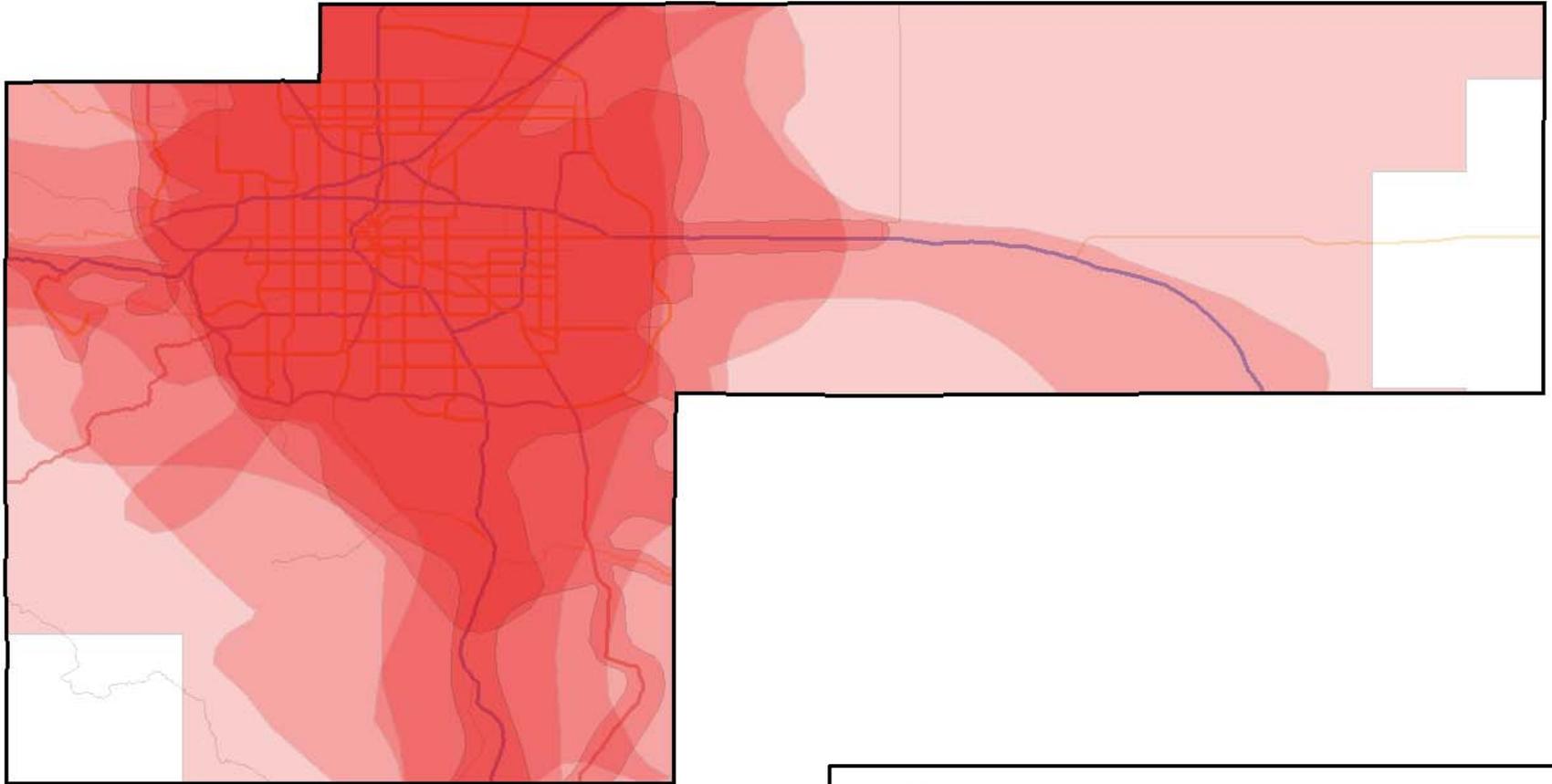
 Doubleplay

 Tripleplay

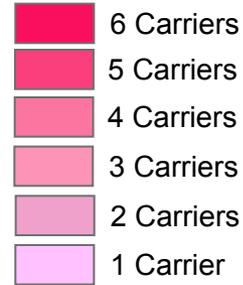
 Qwest Service Territory with Wire Center Boundaries

 Non-Qwest Service Territory

Denver, CO - MSA



Wireless Service Coverage By Number of Carriers



Denver MSA Data

Denver MSA Wire Centers	37
Number of Denver MSA Wire Centers with Competitive Fiber	31
Percentage of Denver MSA Wire Centers with Competitive Fiber	84%
Number of Lit Buildings in the Denver MSA	979
Total Route Miles of Competitive Fiber in the Denver MSA	3162