

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Unbundled Access to Network Elements)	WC Docket No. 04-313
)	
Review of the Section 251 Unbundling)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange)	
Carriers)	

OPPOSITION OF QWEST COMMUNICATIONS INTERNATIONAL INC.

Qwest Communications International Inc. (“Qwest”) hereby submits its Opposition to the petitions for reconsideration of the *Triennial Review Remand Order*¹ submitted by Birch Telecom, Inc., *et al.* (“Birch”), Cbeyond Communications (“Cbeyond”), CTC Communications Corp., *et al.* (“CTC”), and T-Mobile USA, Inc. (“T-Mobile”).²

I. **INTRODUCTION AND SUMMARY**

In their petitions, the competitive local exchange carriers (“CLECs”) seek to undo the limited unbundling relief for high capacity facilities that the Federal Communications Commission (“Commission” or “FCC”) provided in the *TRRO*. Similarly, T-Mobile attempts to nullify the Commission’s holding that commercial mobile radio service (“CMRS”) providers are not entitled to access to unbundled network elements (“UNEs”). All of these petitioners fail to raise any arguments that have not already been considered and rejected by the Commission. As a result, the petitions for reconsideration should be denied. In particular, the Commission should retain the cap on DS1 dedicated transport, preserve the service eligibility criteria adopted in the

¹ *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-290 (rel. Feb. 4, 2005) (“*TRRO*” or “*Order*”), *appeals pending sub nom. Covad v. FCC*, No. 05-1095 and *cons. cases* (D.C. Cir.).

² Petitions for Reconsideration were filed Mar. 28, 2005.

Triennial Review Order,³ reject the proposed revisions to the triggers for dedicated transport and the definition of “business line,” and maintain the prohibition on the purchase of UNEs by CMRS providers. The Commission should address the impact of the SBC-AT&T and Verizon-MCI mergers in those merger dockets, rather than in this proceeding.

II. THE COMMISSION SHOULD RETAIN THE CAP ON DS1 DEDICATED TRANSPORT

As the Commission concluded in the *TRRO*, a requesting carrier will not be impaired without access to more than 10 DS1s on a route, and therefore is not entitled to such access pursuant to the statutory unbundling standard. As a result, the Commission should reject Birch and Cbeyond’s requests to eliminate the current cap on the number of DS1 dedicated transport available to a requesting carrier on a particular route.

Cbeyond erroneously suggests that the cap on DS1 transport precludes reliance on enhanced extended links (“EELs”), because “EELs can only be efficiently utilized as combinations of DS1 loops and transport.”⁴ On the contrary, if a CLEC has more than 10 DS1 loops in an incumbent local exchange carrier (“ILEC”) wire center, it is more efficient to connect those loops to a multiplexed DS3 transport facility, rather than individual DS1 transport facilities, regardless of whether the transport is competitively supplied, or purchased from the

³ *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*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) (“*Triennial Review Order*” or “*TRO*”), vacated and remanded in part, affirmed in part, *United States Telecom Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (“*USTA IP*”), cert. denied, 125 S. Ct. 313 (2004)

⁴ Cbeyond at 2. See also Birch at 6.

ILEC.⁵ Cbeyond's suggestion that it should be permitted to purchase up to 435 DS1s per route is simply ludicrous.⁶

The cap on DS1s should apply regardless of whether UNE DS3 transport is available on that route. To the extent there is any inconsistency on this point between the rules adopted in the *TRRO* and the text of the *Order*, as Birch suggests,⁷ the language of the rule should govern. The applicable rule states unequivocally that the cap on DS1 transport UNEs applies on all routes, regardless of whether DS3 transport is available as a UNE on that route.⁸ The rules for DS3 transport and DS1 and DS3 loops impose similar caps on UNEs for all routes and buildings, respectively,⁹ as does the text of the *Order*.¹⁰ Furthermore, the logic underlying the cap on DS1 transport circuits applies on all routes: it is efficient for a carrier to use a DS3 to carry traffic that would fill more than 10 DS1s, regardless of whether the DS3 is provided as a UNE, or by some other means. As a result, a "reasonably efficient" competitor will not be impaired without access

⁵ Earlier in this proceeding, Integra stated that in Qwest's region "it makes economic sense for Integra to purchase a DS-3' . . . 'where 8 DS-1s are needed.'" See *TRRO* n.358 (quoting Integra Comments at 36). Prior to the *Triennial Review Order*, the commingling prohibition precluded a CLEC from connecting a UNE loop to a special access transport facility. Once a CLEC's interconnection agreement with Qwest has been amended to reflect the *Triennial Review Order*, the CLEC can commingle a DS1 UNE loop and DS3 special access transport facility as long as it meets the service eligibility requirements adopted in the *Triennial Review Order*. At least in Qwest's region, a CLEC can continue to purchase DS3 transport as a UNE on all routes until its interconnection agreement has been modified to reflect both the *Triennial Review Order* and *TRRO*.

⁶ For one thing, Cbeyond's analysis appears to ignore the possibility of connecting DS1 loops to a DS3 special access transport facility, using an ILEC-provided multiplexer, which would eliminate the need for collocation in the ILEC end office.

⁷ Birch at 3.

⁸ 47 C.F.R. § 51.319(e)(2)(ii)(B).

⁹ See 47 C.F.R. §§ 51.319(a)(4)(ii), 51.319(a)(5)(ii), 51.319(e)(2)(iii)(B).

¹⁰ *TRRO* ¶¶ 131, 181, 177.

to more than 10 unbundled DS1s on each route.¹¹ Thus, it appears that the discussion in paragraph 128 of the *Order* reflects an inadvertent error.¹² For the sake of clarity, Qwest agrees with Birch that the Commission should correct this apparent error.¹³ In the meantime, section 51.319(3)(ii)(B)'s cap of 10 DS1 transport circuits per route applies to all routes.

III. THE COMMISSION SHOULD PRESERVE THE SERVICE ELIGIBILITY CRITERIA ADOPTED IN THE *TRIENNIAL REVIEW ORDER*

The Commission should also reject arguments by Birch and CTC to eliminate the service eligibility requirements adopted in the *Triennial Review Order*. Those requirements are more necessary than ever to enforce the prohibition on the use of UNEs exclusively for long distance services.

Birch claims that the service eligibility requirements are superfluous because the Commission “for the first time” in the *TRRO* adopted a “direct prohibition on the use of UNEs exclusively for the provision of long distance services.”¹⁴ Birch has its facts wrong. The *Triennial Review Order* contained an identical prohibition in the form of the qualifying service requirement. Despite the existence of that prohibition, the Commission determined that the service eligibility requirements were still necessary to enforce the prohibition with regard to high-capacity circuits, “due to the potential for ‘gaming’ by non-qualifying providers that is uniquely possible because of the technical characteristics of these facilities.”¹⁵ Such gaming

¹¹ *TRRO* ¶ 24 (clarifying that the impairment standard refers to a “reasonably efficient” carrier).

¹² Footnote 489 in the *TRRO* supports this interpretation, as it implies that the caps on DS1 loops and DS1 transport are similarly broad (*i.e.*, that they do not depend on the availability of DS3 UNEs). The footnote, which is found in the discussion of the caps on unbundled DS1 loops, states that the Commission had “impose[d] a similar cap on the number of DS1 transport circuits that can be purchased by a given competitive LEC on a single route.”

¹³ Birch at 3.

¹⁴ *Id.* at 7.

¹⁵ *TRO*, 18 FCC Rcd at 17351 ¶ 591.

includes “the intentional circumvention of the intent of [the Commission’s] rules to restrict unbundled network access to bona fide providers of qualifying service, such as a national data network provider carrying minimal qualifying service solely to obtain UNE pricing.”¹⁶ Although the qualifying service rules were vacated in *USTA II*, the prohibition in the *TRRO* on the use of UNEs exclusively for long distance services fulfills the same intent as the vacated qualifying service rules.

The risk of unlawful conversions of special access services to UNEs in Qwest’s region is as acute as ever, as CLECs are seeking to convert thousands of special access circuits to UNEs or combinations of UNEs. Whatever marginal protection the service eligibility criteria provide from regulatory arbitrage between special access services and UNEs must be preserved. CTC’s suggestion that the pending SBC/AT&T and Verizon/MCI mergers warrant the elimination of the service eligibility criteria is misguided. Those mergers will only strengthen the largest competitors in Qwest’s region. For all these reasons, the Commission should deny requests to eliminate or weaken the service eligibility requirements.

IV. THE COMMISSION SHOULD NOT ADOPT BIRCH’S PROPOSED REVISIONS TO THE TRANSPORT TRIGGERS

The Commission also should reject Birch’s proposed revisions to the non-impairment triggers for dedicated transport that were established in the *TRRO*. As it stands, those triggers are overly restrictive, thus requiring more unbundling than is warranted. They fail to account for the existence of actual competition in many areas in Qwest’s region that do not satisfy the collocation or business line thresholds.¹⁷ Even worse, the triggers work completely backwards with regard to intermodal competition: the more lines the ILEC loses to intermodal competitors

¹⁶ *Id.*

(and presumably the less impaired CLECs are), the harder it is for the ILEC to meet the business line triggers adopted in the *TRRO*. The collocation triggers also often cannot be met in such circumstances, because intermodal competitors generally do not need to collocate in the ILEC's wire centers.

Birch's proposed changes to the dedicated transport triggers would exacerbate these problems, by requiring that both the business line *and* the collocation test be satisfied in order to eliminate the transport unbundling requirement on a route. To the extent there is any inconsistency in the Commission's justification for the loop and transport triggers, the Commission should make the loop test disjunctive. With this modification, the unbundling requirement for DS1 or DS3 loops would be eliminated in a wire center if there are more than the required number of collocators in that wire center *or* the wire center has more than the specified number of business lines. The current loop test completely ignores actual competition in smaller wire centers that have a substantial number of fiber-based collocators, and also overlooks potential competition in large wire centers that might not yet have the requisite number of collocators.

As Iowa Telecom notes, there is a great deal of competition in many relatively rural areas that do not satisfy the unbundling triggers adopted by the Commission, particularly because facilities-based competitors often need not collocate in the incumbent's central offices.¹⁸ The "one size fits all" approach advocated by Birch would lead to even more inequitable -- and unlawful -- results. The Commission should therefore deny Birch's request.

¹⁷ Reply Comments of Qwest Communications International Inc., WC Docket No. 04-313 at 48-64, filed Oct. 19, 2004.

¹⁸ See Petition for Reconsideration of Iowa Telecommunications Services, Inc. (d/b/a Iowa Telecom), filed herein, Mar. 28, 2005 at 3.

V. THE COMMISSION SHOULD REJECT THE CLECS' PROPOSED MODIFICATIONS TO THE DEFINITION OF "BUSINESS LINE" IN THE TRRO

Birch and CTC also seek to reduce the minimal unbundling relief in the *TRRO* for high capacity loops and transport by modifying the definition of "business line" in that *Order*. Their proposed revisions to this definition would dramatically understate the potential revenues available in a wire center, by treating DS1s and DS3s as equivalent to DS0s, even though the potential revenue from the higher capacity services are many times higher than that for a DS0. This revision would directly conflict with the Commission's finding in the *TRRO* that "there are significant differences between the potential revenues available from circuits of different capacities."¹⁹ Excluding channels in a CLEC-leased circuit that are not in use also would ignore potential revenues available to the CLEC in that wire center.²⁰ Contrary to CTC's and Birch's petitions,²¹ it was completely reasonable for the Commission to use voice grade channels to define business lines, since each of those business channels represents an incremental amount of potential revenue for a CLEC in that wire center.²²

There is also no need for the Commission to modify its treatment of UNE-P lines. As Qwest has noted, it has not previously kept track of whether a CLEC uses UNE-P lines purchased from Qwest to provide business, rather than, residential services. Qwest therefore developed a methodology for estimating the number of business UNE-P lines in a wire center. Since UNE-P lines each have an associated telephone number, a reasonable estimate of

¹⁹ *TRRO* ¶ 86.

²⁰ This proposal also would be administratively unworkable, because Qwest generally cannot monitor the number of channels that a CLEC is using on a leased facility.

²¹ CTC at 13; Birch at 11.

²² If the Commission were to adopt any of these proposed revisions to the definition of "business line," it would have to reduce the levels of the triggers accordingly, as the Commission

residential and business UNE-P lines can be developed by determining whether the UNE-P telephone numbers appear in the residential section of the white pages telephone directory database. Qwest estimated UNE-P business lines by simply deducting UNE-P residential telephone number listings from total UNE-P lines in service, with the remainder attributed to business. In view of the fact that the majority of residential lines are listed in the telephone directory database, while a much lower proportion of business lines are listed in that database, this methodology provides a very conservative estimate of actual business UNE-P lines in service. Whether or not a telephone number is officially considered “unlisted” or “unpublished” has no impact on Qwest’s determination of the number of UNE-P business customers in a wire center, because Qwest’s methodology used all types of listings, including those that are unlisted and unpublished, to determine the number of business lines in a wire center.

VI. THE COMMISSION SHOULD RETAIN THE PROHIBITION ON THE PURCHASE OF UNES BY CMRS PROVIDERS

In a curious reading of the *TRRO*, T-Mobile finds ambiguity where there is none. T-Mobile suggests that it is not clear in the *Order* whether CMRS providers are barred from purchasing UNEs, if they are competing with ILECs in the provision of telephone service to mass market customers. The Commission could not have been more plain on this point: “we deny all unbundled access to incumbent LEC network elements for the exclusive provision of mobile wireless service[.]”²³ The Commission found that competition in the wireless market had

presumably established the current thresholds with full recognition of the impact of counting a DS1 as 24 lines and the other adjustments that were made to the ARMIS data in the *TRRO*.

²³ *TRRO* ¶ 34 n.99. Furthermore, the Commission’s rules now prohibit a requesting carrier from accessing a UNE “for the exclusive provision of mobile wireless services,” 47 C.F.R. § 51.309(b), which the Commission defined as “any mobile wireless telecommunications service, including any commercial mobile radio service.” *Id.* § 51.5 (emphasis supplied).

evolved sufficiently without such access, such that it was “unable to justify imposing the costs of mandatory unbundling to promote competition.”²⁴

There also is no reason for the Commission to reconsider this issue. As the Commission found in the *TRRO*, CMRS providers are in no sense impaired without access to UNEs. The CMRS market has exploded over the past several years, without access to UNEs by CMRS providers, and it is beyond question that CMRS services are a frequent substitute for landline services. Moreover, the number of customers who have “cut the cord” of landline telephone service is steadily growing. According to a 2004 report by Instat, 14 percent of consumers used their wireless handset as their primary phone, but 26% of the remaining consumers would consider replacing their landline phone with a wireless phone.²⁵

T-Mobile’s proposed exception to the CMRS prohibition would completely eliminate that prohibition, because all CMRS providers compete with landline providers today. T-Mobile also incorrectly attempts to characterize the link between a CMRS base station and an ILEC central office as something other than an entrance facility. Since this facility links two carriers’ networks, it cannot reasonably be classified as anything other than an entrance facility, which the Commission eliminated as a UNE for all requesting carriers. Finally, the impairment standard that T-Mobile appears to articulate in its petition -- whether the availability of UNEs would reduce its monthly costs of service²⁶ -- is flatly inconsistent with the standard adopted in the *TRO*

²⁴ *TRRO* ¶ 34.

²⁵ See Instat, *Landline Displacement to Increase as More Wireless Subscribers Cut the Cord* (Feb. 25, 2004) at <http://www.instat.com/press.asp?ID=895&sku=IN0401644MCM>.

²⁶ T-Mobile at 6.

and *TRRO*.²⁷ The Commission should retain the prohibition on the purchase of UNEs that it adopted in the *TRRO*, consistent with the D.C. Circuit's decision in *USTA II*.

VII. THE COMMISSION SHOULD ADDRESS THE IMPACT OF THE PROPOSED MERGERS IN THE PENDING MERGER DOCKETS

CTC suggests that the Commission should adopt certain changes to its unbundling rules for all ILECs in light of the proposed SBC/AT&T and Verizon/MCI mergers. Qwest disagrees. Irrespective of the mergers, AT&T and MCI will remain CLECs in Qwest's region. If anything, these companies will be stronger competitors, given the financial heft of SBC and Verizon. The Commission should address the impact of those mergers and any necessary conditions on those mergers in the merger dockets, rather than in this rulemaking proceeding, which applies to all incumbents.

VIII. CONCLUSION

For the foregoing reasons, the Commission should deny the petitions for reconsideration submitted by Birch, Cbeyond, CTC, and T-Mobile.

Respectfully submitted,

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²⁷ See *TRRO* ¶¶ 24, 26.

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **OPPOSITION OF QWEST COMMUNICATIONS INTERNATIONAL INC.** to be 1) filed with the FCC via its Electronic Comment Filing System in WC Docket No. 04-313 and CC Docket No. 01-338, 2) served, via e-mail on the FCC's duplicating contractor Best Copy and Printing, Inc. at fcc@bcpiweb.com, and served via First Class United States mail, postage prepaid, on the parties listed on the attached service list.

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