

Qwest Corporation  
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Jason D. Topp  
Corporate Counsel

RECEIVED  
200 South 5th Street, Room 2200  
Minneapolis, MN 55402

DEC 10 2008

**PUBLIC SERVICE COMMISSION**



December 9, 2008

Ms. Illona Jeffcoat-Sacco  
Executive Secretary  
North Dakota Public Service Commission  
600 East Boulevard Avenue, 12<sup>th</sup> Floor  
Bismarck, ND 58505-0480

**Re: In the Matter of Qwest Corporation Petition for Commission  
Approval of Non-impaired Wire Center Lists Pursuant to the  
Triennial Review Remand Order  
Docket No. PU-08-373**

Dear Ms. Jeffcoat-Sacco:

Enclosed for filing are the original and seven copies of Qwest Corporation's  
Withdrawal of Petition for Commission Approval of Non-Impaired Wire Center List Due to  
Lack of Commission Jurisdiction regarding the above-referenced matter.

Very truly yours,

A handwritten signature in black ink, appearing to be "Jason D. Topp".

Jason D. Topp

JDT/bardm

Enclosures

cc: Service List

**CERTIFICATE OF SERVICE**

I hereby certify that on this 10th day of December, 2008, the original and seven copies of the foregoing **Qwest Corporation's Withdrawal of Petition for Commission Approval of Non-Impaired Wire Center List Due to Lack of Commission Jurisdiction** were served upon the following party:

Ms. Illona Jeffcoat-Sacco  
Executive Secretary  
North Dakota Public Service Commission  
600 East Boulevard Avenue, 12<sup>th</sup> Floor  
Bismarck, ND 58505-0480

and copies sent electronically or via U.S. mail, addressed to the following:

Kent Blickensderfer  
Qwest Corporation  
220 North 5<sup>th</sup> Street  
P.O. Box 5508  
Bismarck, ND 58501  
[Kent.Blickensderfer@qwest.com](mailto:Kent.Blickensderfer@qwest.com)



Dianne Barthel

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

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<b>In the Matter of</b>  <b>QWEST CORPORATION</b>  <b>Petition for Commission Approval of Non-impaired Wire Center Lists Pursuant to the Triennial Review Remand Order</b>	<b>Docket No. PU-08-373</b>  <b>QWEST CORPORATION'S WITHDRAWAL OF PETITION FOR COMMISSION APPROVAL OF NON- IMPAIRED WIRE CENTER LIST DUE TO LACK OF COMMISSION JURISDICTION</b>
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On Friday, June 20, 2008, Qwest Corporation (“Qwest”) petitioned the Commission to open a docket for approval of Qwest’s non-impaired wire center list in North Dakota. This petition declared that the West Fargo and Fargo-Moorhead wire centers were “Tier 2” non-impaired wire centers for DS3 Transport and Dark Fiber, meaning that Qwest no longer has any obligation to provide these services and facilities to CLECs as unbundled network elements (“UNEs”) pursuant to the Federal Communications Commission’s (“FCC’s”) *Triennial Review Remand Order (“TRRO”)*. The Commission docketed this petition as Docket No. PU-08-373. Thereafter, on June 27, 2008, Qwest submitted its data in support of its petition and asked that the Commission designate the wire centers identified therein as non-impaired.

However, Commission Staff has concluded that it does not have jurisdiction to address Qwest’s petition.<sup>1</sup> Accordingly, Qwest hereby withdraws its petition under these

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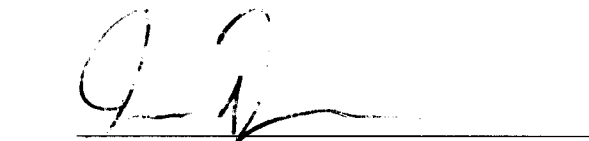
<sup>1</sup> Staff has concluded that applying the general policy that the Commission only has authority given to it by the Legislature, there are only two types of proceedings through which the Commission can address the non-impairment status of a Qwest wire center. First, under NDCC 49-21-01.7(8), the Commission has the authority to mediate or arbitrate interconnection agreements under Sections 251 and 252 of the Telecommunications Act of 1996. Thus, if a CLEC requests interconnection from Qwest that includes DS1 or DS3 high-capacity facilities and the CLEC finds

circumstances. Qwest also notes that it will continue to designate those wire centers in North Dakota that Qwest believes are non-impaired pursuant to the FCC's *Triennial Review Remand Order*.<sup>2</sup> Thereafter, if a CLEC in North Dakota requests interconnection from Qwest that includes unbundled loops or DS1 or DS3 high-capacity facilities in a North Dakota wire center that Qwest believes qualifies for non-impairment designation, Qwest will deny such request for interconnection unless such CLEC has filed an arbitration under Section 252 and NDCC 49-21-01.7(8) and the Commission has found that the particular North Dakota wire center is not non-impaired.

DATED: December 9, 2008

Respectfully submitted,

QWEST CORPORATION



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200 South Fifth Street, Room 2200  
Minneapolis, MN 55402  
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Attorney for Qwest Corporation

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that Qwest does not intend to provide such interconnection (because Qwest believes the wire center qualifies for non-impairment designation), the CLEC may ask the Commission to arbitrate pursuant to Section 252 and NDCC 49-21-01.7(9). Second, under NDCC 49-21-01.7(10), the Commission has authority to receive and approve or reject a statement of generally available terms ("SGAT") under 252(f) of the Act.

<sup>2</sup> At the present time, the only non-impaired wire centers in North Dakota are the West Fargo and Fargo-Moorhead wire centers, which are non-impaired at the "Tier 2" level for DS3 Transport and Dark Fiber.