

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Qwest's Petition for  
Approval of Additions for 2008 to the Non-  
Impaired Wire Center List

**FIRST PREHEARING ORDER**

This matter came on for a prehearing conference before Administrative Law  
Manuel J. Cervantes on November 24, 2008. The following persons appeared:

Dan Lipschultz, Attorney at Law, Moss & Barnett, P.A., 90 South Seventh Street,  
Suite 4800, Minneapolis, Minnesota 55402-4129, on behalf of the CLEC  
Coalition.

Jason D. Topp, Corporate Counsel, Qwest Corporation, 200 South Fifth Street,  
Room 2200, Minneapolis, Minnesota 55402, on behalf of Qwest Corporation.

Karen Finstad Hammel, Assistant Attorney General, 445 Minnesota Street, Suite  
1400, St. Paul, Minnesota 55101-2131, appeared on behalf of the Department of  
Commerce (Department). Edward Fagerlund also participated.

Kevin O'Grady appeared for the staff of the Commission.

Based on the discussions during the Prehearing Conference, and all the files and  
proceedings herein, the Administrative Law Judge makes the following:

**ORDER**

**Scope of Proceeding**

1. This proceeding will focus on the status of the Bloomington South Wire  
Center. On November 21, 2008, the Department withdrew its objection to the  
classification of the Little Falls Wire Center as Tier 2. Accordingly, the portion of this  
proceeding related to the Little Falls Wire Center is remanded to the Commission for a  
final order approving reclassification of the Little Falls Wire Center as a Tier 2 Wire  
Center.

## **Parties and Petitions for Intervention**

2. The initial parties in this matter are Qwest, and the Department. The CLEC Coalition, consisting of DIECA Communications, Inc. d/b/a Covad Communications Company, Inc., Integra Telecom of Minnesota, Inc., McLeodUSA Telecommunications Services, Inc., POPP.com, Inc., TDS Metrocom, Inc., tw telecom inc., and XO Communications Services, Inc. (formerly XO Communications of Minnesota, Inc.) appeared at the Prehearing Conference, and is admitted as a full party to this proceeding.

3. The final date for filing Petitions to Intervene as a full party is January 16, 2009. Any persons petitioning to intervene after that date may be restricted as to the scope of their participation. Any objection to a Petition to Intervene shall be filed within seven days of service of the Petition, in accordance with Minn. R. 1400.6200, subp. 2.

4. Any person who desires to remain on the service list as a non-party participant must file a notice of appearance by the intervention deadline of January 16, 2009. Any person who is not affiliated with a party or a participant will be removed from the service list after that date.

### **Schedule**

5. The following schedule is adopted:

Intervention Deadline	January 16, 2009
Direct Testimony	January 30, 2009
Rebuttal Testimony	February 27, 2009
Evidentiary Hearing, beginning at 9:30 a.m. at the PUC	March 24, 2009
Briefing Schedule	To be determined
ALJ Report	To be determined

### **Procedure**

6. The rules of the Office of Administrative Hearings govern the conduct of the hearings, and the Professionalism Aspirations adopted by the Minnesota Supreme Court will be observed.

### **Filing of Documents**

7. Prefiled testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier.

8. All documents, including prefiled testimony **but excluding information requests and responses**, shall be filed using the E-file system of the Public Utilities Commission, the Department, and the Office of Administrative Hearings. E-filing constitutes service on those offices and upon any other party that has agreed to accept E-filing as service (see attached Service List). Parties using the E-filing system must retain the unique document identifier as proof of service through that system. Proof of service shall be filed with each document or within three business days thereafter.

9. The original document shall be filed using the E-file system wherever feasible. Otherwise, the original document shall be filed by delivery or mail with the Administrative Law Judge.

10. The effective date of filing shall be the date the document is E-filed, mailed by U.S. Mail, or delivered to the Administrative Law Judge.

11. With the exception of Trade Secret and other Nonpublic data, copies of all documents that are filed shall be served by e-mail according to the attached Service List, and a hard copy shall also be mailed or delivered that day to the persons so indicated on the Service List. The list will be revised as necessary by the Office of Administrative Hearings.

12. After the Administrative Law Judge's Report is issued, the parties shall file the original of all documents with the Executive Secretary of the Commission.

13. If Trade Secret or Nonpublic data are filed with the Administrative Law Judge, it shall be prepared and marked in accordance with the Public Utilities Commission's September 1, 1999, Revised Procedures for Handling Trade Secret and Privileged Data. The procedures may be viewed at [www.puc.state.mn.us/docs/tradsecret.pdf](http://www.puc.state.mn.us/docs/tradsecret.pdf). Access to nonpublic data shall be governed by a protective agreement and order.

## **Discovery**

14. A party may serve requests for information on any other party. All requests for information shall be made in writing or by e-mail. Upon request, a copy of the information request shall be sent to all parties. Any request received after 4:30 p.m. on a business day, on a weekend day, or on a state holiday is considered received on the next business day.

15. The party responding to the request shall provide the requested information to the requesting party within eight business days of receipt of the request. A business day does not include weekend days or state holidays.

16. Responses to information requests shall be submitted on or before 4:30 p.m. on the due date.

17. In the event that requested information cannot be supplied within the required response time, the responding party shall notify the requesting party as soon

as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and to work out a schedule of compliance with the requesting party. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon motion of a party. Such motion should be made by e-mail notice requesting a telephone conference among the Administrative Law Judge and affected parties.

18. Parties asked to provide Trade Secret or Nonpublic information may require the requesting party to comply with the terms of the protective order issued by the Commission on July 18, 2008.

### **Prefiled Testimony and Order of Testimony**

19. Prefiled testimony shall be marked as an exhibit and offered for admission into the record at the hearing. A hard copy shall be provided for that purpose, and the offering party shall provide the unique E-file identifying number. The Administrative Law Judge will assign a hearing exhibit number to the document at the time that it is offered for admission at the hearing.

20. Prefiled testimony that is amended, or not offered into the record, shall be considered withdrawn, and no witness shall be cross-examined concerning the withdrawn testimony. Except for good cause shown, all substantive revisions or corrections to any prefiled testimony shall be in writing and served upon the Administrative Law Judge and the parties no later than three days prior to the commencement of the evidentiary hearing.

21. Except for good cause shown, any new affirmative matter that is not offered in reply to another party's direct case will not be allowed in rebuttal testimony or exhibits.

22. Unless the parties agree otherwise, the order of testimony and questioning in the evidentiary hearing shall be: Qwest, CLEC Coalition, and the Department. The parties shall attempt to agree on the order of presentation of issues and witnesses.

### **Examination of Witnesses**

23. For good cause shown, witnesses will be permitted oral responses to the written rebuttal testimony filed on February 27, 2009.

24. Parties shall examine and cross-examine witnesses through their attorneys.

25. Except for good cause shown, objections by any party relating to the qualifications of a witness or the admissibility of any portion of a witness's prefiled testimony shall be considered waived unless the objecting party states its objection by motion made to the Administrative Law Judge, and serves a copy of such objections on the parties, no later than March 24, 2009. If an objection is made by a party, the party shall be permitted to lay further foundation for the objection through cross-examination

of the witness. Any prefiled testimony that is not objected to shall be admitted during the evidentiary hearings without the necessity of laying foundation for the testimony.

**Court Reporter**

26. The Office of Administrative Hearings will arrange to have a court reporter present at the hearing. Parties must make arrangements with the Court Reporter to obtain a copy of the transcript. The Court Reporter should receive e-mail copies of all filings that address the schedule in this matter and e-mail copies of the prefiled testimony. Do not send Information Requests or Responses to the Court Reporter.

**Request for Accommodation**

27. No person has requested accommodation for a disability or appointment of an interpreter. Notify the Office of Administrative Hearings promptly if an accommodation or interpreter is needed.

Dated: December 3, 2008

s/Manuel J. Cervantes  
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MANUEL J. CERVANTES  
Administrative Law Judge