

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of	)	DOCKET UT-061625
	)	
QWEST CORPORATION	)	ORDER 06
	)	
For an Alternative Form of Regulation	)	ORDER ACCEPTING SETTLEMENT
Pursuant to RCW 80.36.135	)	AND APPROVING ALTERNATIVE
	)	FORM OF REGULATION, ON
	)	CONDITIONS
.....	)	

*Synopsis: The Commission accepts, subject to conditions, the multi-party Settlement Agreement and approves an Alternative Form of Regulation (AFOR) to be in effect for a four-year term. During the AFOR, Qwest will be allowed to determine the rates for many services formerly subject to Commission regulation and increase the monthly rates for residential basic service by \$1.00. Approval of the AFOR is subject to, among other things:*

- *Committing at least \$4 million in specific investments to increase the level of advanced telecommunications services investment in underserved areas and among underserved customer classes in Washington;*
- *Offering features à la carte and limiting bundle pricing to the sum of its elements;*
- *Maintaining certain filing requirements to monitor the progress of the AFOR;*
- *Providing specified customer notice; and*
- *Filing a plan to ensure carrier-to-carrier service quality standards.*

*This Order will not take effect unless the conditions are accepted by parties to the Settlement Agreement. If the Order takes effect, the AFOR will expire in four years. Prior to its expiration, the Commission will undertake a thorough review of the AFOR's outcomes.*

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**SUMMARY**

- 1 **PROCEEDINGS:** On October 20, 2006, Qwest Corporation (Qwest) filed a petition for an Alternative Form of Regulation (AFOR)<sup>1</sup> pursuant to RCW 80.36.135 with the Washington Utilities and Transportation Commission (Commission). Qwest asserted that changes in the structure and technology of the telecommunications industry produce conditions that can be better addressed by an AFOR rather than traditional rate base/rate-of-return regulation. Qwest requested that it be subject to the same regulation as competitively classified telecommunications carriers<sup>2</sup> with certain exceptions and transition period requirements.
- 2 On November 16, 2006, the Commission granted petitions to intervene by several parties.<sup>3</sup> On January 29, 2007, the Commission's Regulatory Staff (Staff)<sup>4</sup> and the Public Counsel Section of the Washington Office of the Attorney General (Public Counsel) filed responsive testimony. Neither party opposed the concept of an AFOR, but recommended modifications to the proposal filed by Qwest.
- 3 On February 16, 2007, Staff and Public Counsel filed cross answering testimony. The cross answering testimony supported the previous positions taken by these parties.
- 4 On February 20, 2007, Qwest filed rebuttal testimony. Qwest accepted certain Staff accounting and reporting recommendations with modification. Qwest opposed the adjustments recommended by Public Counsel.
- 5 On March 6, 2007, Qwest and all parties except Public Counsel filed a Stipulation and Settlement Agreement. The Settlement Agreement (Settlement or Agreement) recommends adoption of a modified AFOR.
- 6 The Commission conducted a public comment hearing in Tacoma, Washington, on March 6, 2007, and evidentiary hearings in Olympia, Washington, on March 13 - 15,

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<sup>1</sup> A glossary of acronyms and terms is attached for the convenience of the readers.

<sup>2</sup> RCW 80.36.320.

<sup>3</sup> The intervenors are the Department of Defense and all other Federal Executive Agencies (DoD/FEA); Integra Telecom of Washington, Inc.; Time Warner Telecom of Washington, LLC; Covad Communications; XO Communications, Inc.; the Washington Electronic Business and Telecommunications Coalition (WeBTEC); and the Northwest Public Communications Council (NWPPCC).

<sup>4</sup> In formal proceedings, such as this case, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as any other party to the proceeding. There is an "ex parte" wall separating the Commissioners, the presiding ALJ, and the Commissioners' policy and accounting advisors from all parties, including Staff. RCW 34.05.455.

2007. The parties filed Initial Briefs on April 13, 2007, and Reply Briefs on May 1, 2007. This Order resolves all remaining contested issues.

7 **PARTY REPRESENTATIVES:** Lisa Anderl, Associate General Counsel, Seattle, Washington, for Qwest. Simon ffitich, Assistant Attorney General, Seattle, Washington, for Public Counsel. Gregory J. Trautman, Assistant Attorney General, Olympia, Washington, for Staff. Stephen S. Melnikoff, attorney, Regulatory Law Office, Office of the Judge Advocate General, Arlington, Virginia, for the Department of Defense and all other Federal Executive Agencies (DoD/FEA). Greg Kopta, attorney, Davis Wright Tremaine, LLP, Seattle, Washington, for Integra Telecom of Washington, Inc., Time Warner Telecom of Washington, LLC, Covad Communications Company, and XO Communications Services, Inc.<sup>5</sup> Arthur A. Butler, attorney, Ater Wynne, Seattle, Washington, for the Washington Electronic Business and Telecommunications Coalition (WeBTEC). David Rice, attorney, Miller Nash, Seattle, Washington, for Northwest Public Communications Council (NWPPC).

8 **CONFIDENTIALITY:** Some information adduced in this proceeding has been designated as confidential or highly confidential pursuant to a protective order. The Commission respects the need for confidentiality, but also believes that its orders should be comprehensible and transparent to readers.

9 In this Order, we will quote confidential information only in generalities when precise information could have competitive sensitivity. We admit responses to Bench Request Nos. 9, 10, and 11, as Exhibit Nos. 171C, 172C, and 173C, respectively. The bench requests were issued and responses received after hearing in this matter. Any party has 10 days from the date of this Order to object to receipt of Exhibit Nos. 171C, 172C, and 173C.

10 **COMMISSION DETERMINATIONS:** The Commission accepts the Settlement Agreement, and approves the modified AFOR, subject to conditions. We summarize our determinations in Table 1.

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<sup>5</sup> Collectively referred to as the “Joint Competitive Local Exchange Carriers” or “Joint CLECs.”

**TABLE 1**  
**Summary of Commission Determinations**

<b>Element</b>	<b>Commission Decision</b>
Increase in stand-alone residential service rate	Accept
Service Connection Fees	Approve exclusion from AFOR
Service Quality Reporting Requirements	Accept
Service Quality Incentive Program (SQIP)	Reject
Limitation on Geographic Deaveraging	Accept
Directory Assistance	Accept
Residential Exchange Features	Accept subject to condition that Caller ID Blocking and Call Trace are excluded from AFOR
Other Detariffed Services	Accept
Feature Availability and Package Pricing Limit	Accept subject to condition that services must be available à la carte and package prices are capped at sum of elements
Deployment of Advanced Telecommunications Services	\$4 million be committed to expand advanced telecommunications services
Property Transfers Reporting	\$15.6 million floor
Customer Service Guarantee Program (CSGP)	Accept
Accounting & Statutory Waivers	Accept in part
Adjustments based on MR books	Accept
Capability of Calculating Commission Basis Adjustments	Calculate and make adjustments
Customer Notice	Require Customer Notice of AFOR Implementation
Reporting & Monitoring Process	Require Reporting and Regular Monitoring of AFOR
Carrier-to-carrier service quality standards	Require Filing of Plan within 30 days
End-of-Term Review of AFOR	Nine months prior to expiration

MEMORANDUM

**I. Background and Procedural History**

- 11 On October 20, 2006, Qwest filed a petition for an AFOR pursuant to RCW 80.36.135 seeking relief from traditional rate base/rate-of-return regulation. Qwest requested that the service quality requirements in WAC 480-120-439(1) be waived and that it be subject to the service quality requirements in WAC 480-120-439(2). Qwest further requested that it be relieved of the reporting requirements in the Seventeenth Supplemental Order in Docket UT-991358.<sup>6</sup>
- 12 Qwest proposed that the recurring and non-recurring charges for basic stand-alone residential flat-rate local exchange (1FR) and measured local exchange (1MR) service remain under tariff. Qwest requested authority to increase the rate for 1FR<sup>7</sup> service up to \$0.50 per year for the four-year transition period, or a total of \$2.00. Qwest argued that its rates for noncompetitive services were established during its last general rate case or were offered under tariffs that had been submitted to and approved by the Commission. Under these circumstances, Qwest asserted that it was reasonable to assume that these services were not subsidizing competitive services. Qwest agreed not to deaverage rates for certain competitively classified services.
- 13 The Commission conducted a prehearing conference on November 8, 2006, before Chief Administrative Law Judge C. Robert Wallis. On November 16, 2006, the Commission entered Order 02, granting various pending petitions to intervene, authorizing formal discovery, and establishing a procedural schedule. On January 19, 2007, the Commission entered Order 04 reassigning this matter to Administrative Law Judge Patricia Clark.
- 14 The parties prefiled extensive testimony and numerous exhibits sponsored by 12 witnesses, including five for Qwest, two for Public Counsel, and five for Staff. On March 6, 2007, Staff filed a multi-party Stipulation and Settlement entered into between Qwest, Staff, the Joint CLECs, WeBTEC, DoD/FEA and the NWPCC. Public Counsel is not a signatory to the Stipulation and Settlement Agreement.
- 15 The Commission held a public comment hearing in Tacoma, Washington, during the evening of March 6, 2007, and conducted evidentiary hearings in Olympia, Washington on March 13 - 15, 2007. Chairman Mark H. Sidran, Commissioner

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<sup>6</sup> *In the Matter of the Application of US WEST, INC., and QWEST COMMUNICATIONS INTERNATIONAL, INC. For an Order Disclaiming Jurisdiction, or in the Alternative, Approving the US WEST, INC., and QWEST COMMUNICATIONS INTERNATIONAL, INC. Merger.*

<sup>7</sup> 1MR service was not addressed in the Settlement. The service will remain under tariff during the AFOR.

Patrick J. Oshie, and Commissioner Philip B. Jones were assisted at the bench by presiding Administrative Law Judge Patricia Clark. The record includes more than 170 exhibits consisting of more than 1,000 pages and a transcript of nearly 680 pages.

- 16 On April 13, 2007, the DoD/FEA, Qwest, Staff, and Public Counsel filed initial briefs. The Joint CLECS, WeBTEC, and the NWPCC did not file initial briefs. On May 1, 2007, Qwest, Staff, and Public Counsel filed reply briefs.
- 17 During the briefing cycle, on April 27, 2007, Qwest filed a Petition for Forbearance (Petition) with the Federal Communications Commission (FCC). Qwest seeks “forbearance from significant, burdensome regulation, particularly loop and transport unbundling and dominant carrier regulation throughout the Seattle Metropolitan Statistical Area (MSA).”<sup>8</sup> On May 14, 2007, the Commission issued bench requests to Qwest inquiring whether the terms and conditions of the Settlement would be binding for the term of an AFOR regardless of the outcome of the Petition and requesting copies of unredacted documents. Responses to the bench requests were filed on May 29, 2007.

## II. Discussion and Decisions

### A. Multi-party Settlement Agreement

#### 1. Modified AFOR.

- 18 According to the Settlement, the modified AFOR will be effective upon final approval by the Commission and will remain in effect for four years unless extended or modified by the Commission. Six months prior to expiration, Qwest will provide Staff financial information and Qwest and Staff will conduct a review of the provisions of the AFOR to determine if changing conditions warrant its modification.
- 19 Qwest will be treated as a competitively-classified company subject to certain exceptions. Local exchange services will be removed from Qwest’s tariff except for stand-alone residential exchange service, hunting service, public response calling service, directory listing service, custom number service, local operator service surcharges, interrupt service, and operator-verification/interrupt service. Free directory assistance calls will be limited to persons incapable of using a published telephone directory and for calls originating from hospitals. Washington Telephone Assistance Program (WTAP), Tribal Lifeline, Link-up programs, basic and enhanced 911 service, local interconnection, resale, and public access line access service will remain under tariff.

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<sup>8</sup> *Wireline Competition Docket No. 07-97.*

- 20 The rate for residential stand-alone service (1FR) may be increased by \$1.00 at any time during the AFOR if Qwest agrees to maintain and augment the Customer Service Guarantee Program. Qwest will provide service quality reports consistent with Class A company reporting requirements<sup>9</sup> and will continue providing CSGP reports on a semi-annual basis.
- 21 Qwest will deploy Digital Subscriber Line (DSL) service in wire centers where it currently does not offer this service. At the conclusion of the AFOR, Qwest will report on its goal of ensuring high-speed Internet service is available to over 83 percent of its Washington customers.
- 22 Qwest will not geographically deaverage digital business service, analog private line services, and residential exchange service features, and packages during the AFOR.
- 23 Public Counsel opposes the modified AFOR because of concerns that it would: (1) potentially increase the 1FR rate; (2) fail to assure adequate service quality; (3) eliminate the Directory Assistance (DA) free call allowance; (4) fail to expand DSL deployment; and (5) inadequately protect against price increases for residential exchange features.

## 2. Standard of Review.

- 24 We must determine whether the Settlement meets all pertinent legal and policy standards.<sup>10</sup> We approve settlements when doing so is lawful, supported by an appropriate record, and the result is consistent with the public interest.<sup>11</sup> The standards for approval of an AFOR are set forth in RCW 80.36.135, which directs the Commission to “order implementation of the alternative plan of regulation unless it finds that, on balance, an alternative plan as proposed or modified fails to meet the considerations stated in subsection (2) of this section.” Those considerations are, first, whether it will:

- Facilitate the broad deployment of technological improvements and advanced telecommunications services to underserved areas or underserved customer classes;
- Improve the efficiency of the regulatory process;

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<sup>9</sup> A “Class A Company” is a local exchange company with two percent or more of the access lines within the state of Washington. WAC 480-120-021. Service quality reporting requirements for Class A companies are set forth in WAC 480-120-439.

<sup>10</sup> The parties requested approval of the Settlement according to WAC 480-09-465 and WAC 480-120-466, neither of which is in effect. The applicable regulation is WAC 480-07-740.

<sup>11</sup> WAC 480-07-750.



- Preserve or enhance the development of effective competition and protect against the exercise of market power during its development;
- Preserve or enhance service quality and protect against the degradation of the quality or availability of efficient telecommunications services;
- Provide for rates and charges that are fair, just, reasonable, sufficient, and not unduly discriminatory or preferential; and
- Not unduly or unreasonably prejudice or disadvantage any particular customer class.<sup>12</sup>

25 Second, the statute requires that the Commission consider the public policies set forth in RCW 80.36.300 as follows:

- Preserve affordable universal telecommunications service;
- Maintain and advance the efficiency and availability of telecommunications service;
- Ensure that customers pay only reasonable charges for telecommunications service;
- Ensure that rates for noncompetitive telecommunications service do not subsidize the competitive ventures of regulated telecommunications companies;
- Promote diversity in the supply of telecommunications services and products in telecommunications markets throughout the state; and
- Permit flexible regulation of competitive telecommunications companies and services.

26 In addition, RCW 80.36.135(3) requires the AFOR to include a proposal for ensuring adequate carrier-to-carrier service quality, including service quality standards or performance measures for interconnection and appropriate enforcement or remedial provisions in the event the company fails to meet those standards or measures.

27 When the Legislature amended the AFOR statute in 2000, it eliminated the requirement in the predecessor statute that we make specific findings of fact regarding each statutory goal. However, we must address these goals in our consideration of the Settlement.<sup>13</sup> We are to approve the proposed AFOR unless we determine that, on balance, it fails to further these goals.

28 We organize our analysis of the Settlement's proposed AFOR around the goals of RCW 80.36.135 and RCW 80.36.300, conflating related, overlapping, or redundant statutory provisions where appropriate.

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<sup>12</sup> RCW 80.36.135(2).

<sup>13</sup>2000 Final Legislative Report, EHB 2881 at 77.

## B. Statutory Goals

### 1. Facilitate the broad deployment of technological improvements and advanced telecommunications services to underserved areas or underserved customer classes<sup>14</sup> and promote diversity in the supply of telecommunications services and products in telecommunications markets throughout the state.<sup>15</sup>

- 29 The Settlement proposes to meet the goal of broad deployment by initiating DSL service in the seven wire centers<sup>16</sup> where that service is currently unavailable.<sup>17</sup> Qwest will initiate that deployment in the first quarter of 2008 and complete it within 30 months.<sup>18</sup> Qwest is also required to file a report four years from the date of final approval of the AFOR regarding its progress toward a goal of ensuring that wire-line high speed Internet service is available to 83 percent of consumers in its Washington service area.
- 30 Public Counsel proposes an investment plan that would make DSL service available to 75 percent or more of customers in each wire center. Public Counsel targets the Qwest wire centers with less than 75 percent DSL capability for additional investment over the four-year term of the plan, with specific targets for each year.<sup>19</sup> Public Counsel proposes to allow Qwest to choose either developing a “broadband lifeline” plan or contributing funds to an existing community technology program which provides Internet access to people needing access to computers.
- 31 In its initial brief, Qwest argues the Commission lacks jurisdiction to impose Public Counsel’s proposal for DSL deployment. Public Counsel replies that jurisdiction is not an issue because the AFOR statute is essentially a consensual mechanism<sup>20</sup> and further that the Commission has authority to order “betterments,” such as network standards to ensure the availability of DSL, to ensure that the appliances, instrumentalities, and service provided are “modern, adequate, sufficient, and efficient.”<sup>21</sup>
- 32 We turn now to an assessment of the Settlement’s relevant terms. We note that when the Legislature amended the AFOR statute in 2000, it changed the order of the statutory goals. “Facilitating the broad deployment of advanced telecommunications

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<sup>14</sup> RCW 80.36.135(2)(a).

<sup>15</sup> RCW 80.36.300(5).

<sup>16</sup> These wire centers are Easton, Elk, Northport, Pateros, Roy, Springdale, and Waitsburg.

<sup>17</sup> Reynolds and Saunders, Exh. No. 4 at 7-8:¶4.

<sup>18</sup> *Id.*

<sup>19</sup> Public Counsel Initial Brief, ¶¶ 78-79.

<sup>20</sup> Public Counsel Reply Brief ¶ 12.

<sup>21</sup> RCW 80.36.260; RCW 80.36.080. Public Counsel Reply Brief ¶ 13.

services” was elevated from fourth to become the first goal.<sup>22</sup> We infer from this change that the Legislature attached particular importance to broadening the deployment of advanced services, such as DSL, across the state. We also note that the 2000 amendment changed the goal that technological improvements be disseminated to “all classes of ratepayers” to focus instead on deployment to “underserved areas or underserved customer classes.

33 The seven wire centers that would receive DSL service are in sparsely populated areas. Although relatively few consumers would directly benefit by this high-speed Internet deployment, it does broaden access to at least Qwest’s service.<sup>23</sup>

34 Qwest also commits to filing a report regarding its progress toward achieving the goal of ensuring that DSL service is available to over 83 percent of consumers in its Washington service area. First, we note that this commitment only requires Qwest to file a report, not actually achieve this level (or any level) of DSL deployment by the conclusion of the AFOR. Second, the infrastructure plan is not focused on underserved areas or underserved customer classes. Rather, it proposes an availability of service premised on an area-wide goal. Conceivably, that goal could be accomplished by planning expansion in densely populated wire centers, thus driving up the percentage of availability to consumers as a whole while leaving underserved areas in the same condition.

35 Beyond expanding access to DSL, the Settlement does not address the goal of promoting diversity in telecommunications products and service.<sup>24</sup>

36 Although the Settlement’s DSL-related provisions are steps in the right direction, we find they do not sufficiently facilitate the broad deployment of advanced telecommunications services, promote diversity in such services, nor meaningfully increase access to such services in underserved areas or among underserved customer classes. In light of the importance attached to these goals by the Legislature, we conclude that the Settlement’s proposed AFOR should be rejected as inconsistent with the public interest unless modified as suggested below.

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<sup>22</sup> “[A]n amendment to an unambiguous statute indicate a purpose to change the law.” *Allen v. Employment Security Department*, 83 Wn. 2d 145 (1973), citing *1 J. Sutherland, Statutory Construction § 1930, at 159 (Supp. 1972)*. “When a material change is made in the wording of a statute, a change to legislative purpose must be presumed.” *WR Enterprises, Inc., v. Department of Labor & Indus.*, 147 Wn. 2d 213, 111, 53 P.3d 504 (2002).

<sup>23</sup> There is no evidence in the record as to the availability of other broadband providers such as cable and wireless companies in those areas.

<sup>24</sup> *RCW 80.36.300*.

- 37 We believe that Qwest must expand the deployment of DSL services if the AFOR is to facilitate the “broad” deployment of advanced telecommunications services to underserved areas and customer classes.<sup>25</sup> In the Settlement, Qwest commits to expanding its DSL investment to seven additional wire centers. The financial impact of that commitment is within the range of \$1.2 to \$2 million dollars.<sup>26</sup> While that level of investment will provide some benefit, we conclude that it is insufficient to expand meaningfully the deployment of advanced services. To meet the statute’s goal and the public interest, Qwest must commit to broader deployment than is proposed in the Settlement. Therefore, we condition approval of the AFOR upon Qwest’s commitment in the amount of \$4 million dollars to support the expansion of advanced services throughout its territory.
- 38 We do not pretend to calculate with precision a funding commitment level that would satisfy the goals of the AFOR statute. This would be especially difficult given that neither Qwest nor Public Counsel provided studies estimating the costs of extending DSL capability to additional lines in Qwest service territory or forecasting the number of customers who would subscribe to DSL services if available.<sup>27</sup> However, the record reflects that in 2006, Qwest’s DSL investment per access line was lower in Washington than in all other states in Qwest’s 14-state service territory.<sup>28</sup> We also recognize that Qwest has accepted AFORs in other states that have required much greater investment in advanced telecommunications services than what it commits to in the Settlement.<sup>29</sup> At the same time, we accept Qwest’s representation that its network and facilities in Washington are more modern, robust, and capable of handling additional capacity than the networks in these other states.
- 39 We find that a \$4 million commitment level is reasonably necessary to facilitate the broad deployment of advanced services in underserved areas or among underserved customer classes as contemplated by the AFOR statute. We have reviewed confidential financial information submitted by Qwest and conclude that there will be sufficient revenue to fund this infrastructure development as a consequence of the Settlement as modified herein such that the Company will not be unduly burdened.
- 40 Furthermore, we require Qwest to submit within 90 days of final approval of this AFOR an initial plan for Commission approval that specifies where, when, and how these funds would be expended. While we do not direct Qwest to include any specific projects in the proposal, we envision that initial monies would be directed to wire centers with no DSL capability and those with less than 75 percent DSL availability.

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<sup>25</sup> RCW 80.36.135(2)(a).

<sup>26</sup> Reynolds, TR 0566:6-11.

<sup>27</sup> Reynolds, Exh. No. 75; Loube, Exh. No. 113.

<sup>28</sup> Reynolds, TR 0592: 6-25; Reynolds, TR 0593: 1-22; Ex. No. 3C.

<sup>29</sup> Exh. No. 2.

Finally, Qwest must submit an annual report on each anniversary of the date of final approval of this AFOR describing how these monies have been spent until fully disbursed.

- 41 Under RCW 80.36.300, it is the policy of the state to promote diversity in telecommunications products and services. One means to achieve that goal is to support the deployment of advanced services such as stand-alone broadband service, because that allows competing providers access to customers and makes available Voice over Internet Protocol (VOIP) service. Thus, stand-alone DSL allows for a greater diversity in the supply of telecommunications products and services. In another proceeding,<sup>30</sup> we adopted the FCC's standard for stand-alone DSL service. We conclude that same result would be reasonable here. Accordingly, we adopt many of the terms of the FCC Order 05-184 as our own in this proceeding. Specifically, we require Qwest to continue to provide stand-alone DSL service to current customers who wish to use another provider for voice services and to new subscribers who wish to purchase only DSL service from Qwest. This service must remain available for the four-year term of the AFOR.
- 42 Finally, the Settlement commits Qwest to filing a report at the conclusion of the AFOR regarding its plan to make DSL available to 83 percent of its Washington customers. However, the Agreement contains no requirements as to the content of the report, no standards against which to measure it, and no stated consequences for failing to file. We find that this report would be more useful for our analysis of the effectiveness of the AFOR if Qwest annually updated its Supplemental Response to Bench Request 3 with 2007, 2008, 2009 and 2010 data for each state it serves and with data covering wire centers for Washington. We will analyze these annual filings in conjunction with Qwest's current filing to aid us in evaluating Qwest's success in achieving its goal over the term of the AFOR. The annual filings should be filed on the anniversary of the date of final approval of this AFOR.

## **2. Improve the efficiency of the regulatory process.**

- 43 In general, regulatory efficiency is improved if regulatory filings, reports, and requirements are rendered less burdensome to the utility while providing sufficient information for the Commission to effectively carry out its statutory duty to protect consumers.
- 44 In its initial filing, Qwest argues that regulatory constraints impede its ability to offer services in a manner comparable to its competitors<sup>31</sup> and financial and service quality

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<sup>30</sup>Docket No. UT-050814, *In the Matter of the Joint Application of Verizon Communications, Inc. and MCI, Inc. for Approval of Agreement and Plan of Merger.*

<sup>31</sup> Reynolds, Exh. No. 68 at 4:22-23.

regulations and reporting requirements impose costs not borne by its competitors.<sup>32</sup> Qwest requests that it be regulated like a competitively-classified company, with certain exceptions, and subjected to the same regulatory requirements as those companies.<sup>33</sup> Treatment like a competitively-classified company would result in waiving its obligations set forth in RCW 80.08 (securities), RCW 80.12 (transfers of property) and RCW 80.16 (affiliated interests).

- 45 Public Counsel opposes waiver of the service quality reporting requirements<sup>34</sup> noting that they apply to all Class A companies with more than two percent of the access lines.<sup>35</sup> The Class A designation is not linked to a company's classification as a competitive carrier under RCW 80.36.320.<sup>36</sup> Public Counsel argues that it is premature to grant Qwest a waiver of reporting requirements that would not take effect for four years from when an AFOR becomes effective.<sup>37</sup> Public Counsel also opposes waiver of the CSGP reports<sup>38</sup> and recommends that the reports be updated using a format to be developed by Qwest, Staff, and Public Counsel.<sup>39</sup> Public Counsel opposes terminating any of Qwest's current reporting and recordkeeping requirements regarding earnings<sup>40</sup> or reports on affiliate transactions, property leases, securities transactions, and investigation of accidents.<sup>41</sup> In addition, Public Counsel supports imposing the trunk blocking standards in WAC 480-120-401.<sup>42</sup>
- 46 Under the Settlement, Qwest will file CSGP reports semi-annually and comply with Class A company service quality reporting requirements set forth in WAC 480-120-139. Qwest will continue to submit annual reports of affiliated interest transactions, cash transfer filings, transfer of property transactions, access charges, and universal service reports. Qwest will keep its books of account in accordance with WAC 480-120-355. Qwest will file annual reports in accordance with WAC 480-120-385(1) and an annual report of its Washington intrastate results of operation adjusted on a commission adjusted basis.
- 47 In determining which statutes and/or regulations are appropriate to waive during the term of the AFOR, we balance Qwest's need to be relieved from allegedly onerous regulatory requirements against the Commission's need for information to evaluate

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<sup>32</sup> Reynolds, Exh. No. 68 at 4:24 to 5:2.

<sup>33</sup> Reynolds, Exh. No. 68 at 7:3-5.

<sup>34</sup> Kimball, Exh. No. 118 at 2:8-9.

<sup>35</sup> Kimball, Exh. No. 118 at 3:19-20.

<sup>36</sup> Kimball, Exh. No. 118 at 4: 1-2.

<sup>37</sup> Kimball, Exh. No. 118 at 5:9-10.

<sup>38</sup> Kimball, Exh. No. 118 at 5:16-17.

<sup>39</sup> Kimball, Exh. No. 118 at 6:8 and 12-13.

<sup>40</sup> Loube, Exh. No. 90C at 15:3-10.

<sup>41</sup> Loube, Exh. No. 90C at 16:13-20.

<sup>42</sup> Kimball, Exh. No. 118C at 23:17-18.

the effectiveness of the AFOR during and at the conclusion of its term. Qwest contends that the current regulatory regime of reporting is a significant burden that precludes it from serving customers on parity with competitors. However, Qwest reports that it will only save \$25,000 to \$50,000 annually if the Settlement is adopted.<sup>43</sup> Thus, it appears that compliance with the current reporting regime is not a significant financial burden.

48 Nonetheless, under the AFOR statute we are obligated to ease the regulatory burden on companies as markets become more competitive. Even if the regulatory burden is not financially onerous, we are inclined to waive compliance with a statute or regulation in the interest of regulatory efficiency if it will not impair our ability to protect the public interest and to adequately evaluate the effectiveness of the AFOR.

49 We consider waiver of WAC 480-120-365 and WAC 480-120-389 together because both regulations relate to the reporting requirements for issuing securities. WAC 480-120-365 requires reporting for each issuance. We recognize that having the ability to track securities issuances is important because a large issuance can have a significant impact on a utility's capital structure. Absent some reporting, we would have no indication of a potential shift in the debt/equity ratio. However, we conclude that it is unnecessary to require Qwest to report each individual transaction provided we have information to review those transactions annually. Therefore, we grant the request for waiver of WAC 480-120-365 and deny waiver of WAC 480-389. During our review of the AFOR, we will compare the annual securities reports with those filed prior to the AFOR.

50 We grant, in part, the waivers applicable to property transfers.<sup>44</sup> While we believe that an AFOR should provide Qwest greater flexibility to dispose of property, we conclude that a \$78 million floor is too high. Currently, Qwest is required to report property transfers of relatively *de minimis* value. We believe that such reporting can be reduced, requiring Qwest to report only those transactions that involve property transfers of relatively significant value. We conclude that reporting transactions amounting to less than one percent of Qwest's rate base, or \$15.6 million, should be waived.<sup>45</sup> Several transactions noted in the record during the past seven years lead us to the conclusion that this is a reasonable level.<sup>46</sup>

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<sup>43</sup> Exh. No. 168.

<sup>44</sup> RCW 80.12.020, RCW 80.12.030, RCW 80.12.040, WAC 480-120-379, WAC 480-143-120, WAC 480-143-130, and WAC 480-143-180.

<sup>45</sup> Reynolds, Exh. No. 152C at 11:11-18.

<sup>46</sup> Reynolds, Exh. No. 152C at 11:14-17, e.g. reporting the sale of computer equipment valued at \$725,000 and an in-kind trade of real property at \$20 million.

- 51 We reject, however, the Settlement provision waiving WAC 480-143-190 regarding property transferred without authorization. We conclude that it would be advisable to monitor annually Qwest's property transfers during the course of the AFOR. This report simply requires verification that none of the property was necessary or useful to perform public duties and that Qwest received fair market value for the items transferred.
- 52 We also reject the Settlement's provision relating to affiliated interest transactions.<sup>47</sup> The purpose of these statutes and regulations is to protect ratepayers from shifting costs to regulated operations and shifting profits to unregulated operations.<sup>48</sup> As the Washington telecommunications market makes a transition from the traditional ratemaking paradigm, services remain on both sides of the "regulatory fence." The Settlement's AFOR is an excellent example. While stand-alone residential exchange service remains under tariff, the features purchased with that service are subject to alternative regulation and pricing flexibility. Accordingly, it is reasonable to monitor transactions with unregulated operations during the term of the AFOR to determine if there is an unreasonable shifting of either costs or benefits. Absent the reporting required in these statutes and regulations, we would have insufficient data to analyze such potential transactions during the AFOR.
- 53 We accept the Settlement's proposed partial waiver of the accounting regulations in WAC 480-120-359(1)(a) and (2)(b). These waivers are designed to streamline and reduce the frequency of financial reporting, and are consistent with the statutory goal of promoting regulatory efficiency. Granting these waivers does not eliminate all filing requirements, and will preserve substantial financial information to evaluate the AFOR.
- 54 We accept the Settlement's proposal to change the filing of CSGP reports from monthly to semi-annually. We believe a semi-annual submission will be adequate to monitor the effectiveness of the CSGP, which has been augmented with three additional metrics.
- 55 We accept the Settlement's proposed waivers listed in Table 2 under the heading Miscellaneous Waivers, with two exceptions. First, we deny waiver of that portion of WAC 480-120-102 that is applicable to stand-alone residential exchange service. This service will remain under tariff during the AFOR, so the tariff should continue to list the services available to residential customers. Second, we deny waiver of WAC 480-120-344 relating to reports on expenditures for political or legislative activities. Public policy strongly favors disclosure of such spending and no substantive reason supports waiver.

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<sup>47</sup> RCW 80.16.020, WAC 480-120-375, and WAC 480-120-395.

<sup>48</sup> Reynolds, Exh. No. 152C at 17.



56 The following table summarizes the statutes and/or regulations in contention and our decision regarding each requested waiver.

**Table 2: Summary of Contested Issues Regarding Waivers of Statute/Regulations**

STATUTE AND/OR REGULATION	DISPOSITION OF WAIVER		DECISION
	Settlement	Public Counsel	
<b>Securities</b>			
WAC 480-120-365 Securities Filings	Grant	Deny	Accept
WAC 480-120-389 Securities Report	Grant	Deny	Deny
<b>Transfers of Property</b>			
RCW 80.12.020 Order required to sell, merge, etc.	Grant, in part (\$78 million floor)	N/S <sup>49</sup>	Grant, in part (\$15.6 million floor)
RCW 80.12.030 Disposal without authorization void.	Grant, in part (Same as above)	N/S	Same as above
RCW 80.12.040 Authority required to acquire property or securities of utility.	Grant, in part (Same as above)	N/S	Same as above
WAC 480-120-379 Transfers of property	Grant in part (Same as above)	N/S	Same as above
WAC 480-143-120 Transfers of property.	Grant, in part (Same as above)	N/S	Same as above
WAC 480-143-130 Purchase of property.	Grant, in part (Same as above)	N/S	Same as above
WAC 480-143-180 Disposal and determination of necessary or useful property.	Grant in part (Same as above)	N/S	Same as above

<sup>49</sup> Not specifically addressed.

WAC 480-143-190 Annual filing of property transferred without authorization.	Grant	Deny	Deny
<b>Affiliated Interests</b>			
RCW 80.16.020 Dealings with affiliated interests	Grant	Deny	Deny
WAC 480-120-375 – Affiliated interests Contracts or arrangements.	Grant	Deny	Deny
WAC 480-120-395 Affiliated interest and subsidiary transactions report. (Part 4)	Grant	Deny	Deny
<b>Cash Transfers</b>			
WAC 480-120-369 – Transferring cash or assuming obligations Subject to court decision			
<b>Accounting</b>			
WAC 480-120-359(1)(a)	Grant, in part (Use FCC Part 32 subject to advance Commission review and investigation )	Deny	Accept
WAC 480-120-359(2)(b)	Grant, in part (Maintain certain adjustments, calculate all for transition report and if requested)	N/S	Accept

<b>Reporting</b>			
WAC 480-120-385(1)	Grant (Continue filing results of operations report with certain regulatory adjustments)	Deny	Accept
WAC 480-120-385(2)	Grant	N/S	Accept
<b>Customer Service Guarantee Program</b>			
17 <sup>th</sup> Supplemental Order in UT-991358 Order Directing Qwest to File Customer Service Guarantee Reports	Grant in part (Report semi-annually in lieu of monthly)	Deny	Accept
<b>Miscellaneous Waivers<sup>50</sup></b>			
RCW 80.04.300 – Budgets to be filed by companies – Supplementary budgets	Grant	N/S	Accept
RCW 80.04.310 Commission’s control over expenditures	Grant	N/S	Accept
RCW 80.04.330 Effect of unauthorized expenditures – Emergencies	Grant	N/S	Accept
RCW 80.04.360 Earnings in excess of reasonable rate – Consideration in fixing rates	Grant	N/S	Accept
RCW 80.04.460 Investigation of accidents	Grant	N/S	Accept
RCW 80.04.520 Approval of lease of utility facilities	Grant	N/S	Accept

<sup>50</sup> The waiver would apply to all statutes and regulations that are waived for competitive telecommunications companies pursuant to RCS 80.36.320 excluding excepted services.

RCW 80.36.100 Tariff schedules to be filed and open to public	Grant, in part (Tariffs for excepted services unchanged)	N/S	Accept
RCW 80.36.110 Tariff changes – Statutory Notice-Exception	Grant, in part (Tariffs for excepted services unchanged)	N/S	Accept
WAC 480-80-101 – 143 Tariff requirements- Special contracts for gas, electric, water companies	Grant, in part (Tariffs for excepted services unchanged)	N/S	Accept
WAC Chapter 480-140 Budgets	Grant	N/S	Accept
WAC 480-120-102 Service offered	Grant	N/S	Deny, in part
WAC 480-120-344 Expenditures for political or legislative activities	Grant	N/S	Deny, in part

- 3. Preserve or enhance the development of effective competition and protect against the exercise of market power during its development;<sup>51</sup> provide for rates and charges that are fair, just, reasonable, sufficient, and not unduly discriminatory or preferential;<sup>52</sup> and ensure that customers pay only reasonable charges for telecommunications service.<sup>53</sup>**

57 Competition is preserved or enhanced in an AFOR that does not undo or weaken the regulatory protections in place when markets were opened to competition. Protection

<sup>51</sup> RCW 80.36.135(2)(c).

<sup>52</sup> RCW 80.36.135(2)(e).

<sup>53</sup> RCW 80.36.300(3).

against the exercise of market power is attained in two ways. In markets for telecommunications services where Qwest has effective competition, the presence of active competitors can protect against Qwest's exercise of market power. In markets where Qwest has little or no competition, safeguards must exist or be put in place to assure that Qwest will not unduly exercise market power during the AFOR. These safeguards must ensure that rates are not unduly discriminatory or preferential, and that customers pay only reasonable charges for telecommunications service.<sup>54</sup>

58 We begin with our analysis of the Settlement's proposed increase in the residential rate.

**a.) Increase in stand-alone residential rate.**

59 The Settlement specifically excludes stand-alone residential service (1FR and 1MR) from the AFOR, but allows Qwest to raise the monthly rate for 1FR service up to \$1.00 during its term. The settling parties assert that Qwest's current intrastate rate of return is below its authorized level and that even if Qwest were to increase the 1FR monthly rate by \$1.00, the rate of return would still fall below the authorized level. They argue that the Commission need not require a fully developed rate case to determine whether the Settlement would provide for fair, just and reasonable rates, but need only review the evidence in this case.<sup>55</sup>

60 Public Counsel objects to the proposed rate increase asserting it fails to meet the statutory goals of preserving affordable telecommunications service and ensuring that customers pay only reasonable charges for telecommunications services.<sup>56</sup> Public Counsel argues that the record does not support the addition of \$1.00 to the monthly charge for stand-alone residential service.

61 Public Counsel contends that an increase in the 1FR rate would conflict with the claim that the residential market is competitive and that requesting an increase is an admission that the market is not competitive, presumably because in competitive markets, rates cannot be increased without losing market share and profitability.<sup>57</sup>

62 Finally, Public Counsel argues that the proposed rate could be anti-competitive because Qwest could use the additional revenue to supplement its earnings while offering price reductions or other incentives to increase its share in competitive markets.

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<sup>54</sup> RCW 80.36.135(2)(e) and RCW 80.36.300(3) respectively.

<sup>55</sup> Qwest Brief at ¶41.

<sup>56</sup> Loube, Exh. No. 90C at 21-22.

<sup>57</sup> Loube, Exh. No. 90C at 19.

63 Qwest responds by noting that its residential rates have increased by an average of 1.7 percent since 1998, while the Consumer Price Index has increased by an average of 2.7 percent.<sup>58</sup> Thus, Qwest argues its residential rates actually decreased by one percent annually in real terms. Qwest also notes that the median household income in Washington has increased by 3.1 percent annually since 1998. Qwest rejects Public Counsel's contention that a rate increase belies the assertion of a competitive market because the market for stand-alone residential service remains under tariff during the AFOR. Thus, the competitiveness of this market is a moot issue. Finally, Qwest points out that the record contains no evidence that monies generated by its tariffed services would be used to subsidize unregulated ventures.

64 Having reviewed the parties' arguments and the supporting evidence in the record, we conclude that the Settlement's provision allowing Qwest to increase the monthly rate for 1FR stand-alone residential service up to \$1.00 during the AFOR is reasonable and consistent with the law.

65 Qwest's current rates were established more than nine years ago, and while it may be reasonable to assume that Qwest's costs to provide residential service have increased over this period, we find most persuasive the evidence presented by Staff regarding Qwest's current intrastate rate of return. Based upon analysis of Qwest's annual reports over the last several years, Staff concluded that Qwest's rate of return for intrastate services has declined overall.<sup>59</sup> We find Staff's testimony compelling and conclude that the evidence showing Qwest's current rate of return to be below that authorized in the last rate case is sufficient to demonstrate a \$1.00 increase in the monthly rate for residential service would not result in unjust or unreasonable rates. Further, in the context of the statutory criteria that customers pay reasonable charges for telecommunications services, we believe the possible maximum monthly charge until 2011 of \$13.50 for 1FR stand-alone residential service is reasonable.<sup>60</sup>

66 With respect to Public Counsel's argument that Qwest could not increase rates for residential service if the market were truly competitive, we agree with Qwest that the issue is moot. It appears uncontested that this market is not truly competitive. Most importantly, the residential market remains under tariff and is not treated as competitive during the AFOR's term.

67 We also agree that the evidence in this record does not support a conclusion that Qwest will use regulated revenues to subsidize unregulated ventures. As we indicate several times in this decision, we will closely monitor Qwest's transactions with

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<sup>58</sup> Taylor, Exh. No. 66 at 29:20-22.

<sup>59</sup> Strain, Exh. No. 127C at 13:9-11.

<sup>60</sup> The AFOR statute does not require us to conduct a rate case to make a determination whether rates are just and reasonable or even make a specific finding of fact to that effect.

affiliated interests, its property transfers, and other factors during the AFOR. Should Public Counsel's concern ripen into fact, we will take appropriate action upon review of the AFOR.

68 We turn now to whether the pricing flexibility permitted by the Settlement for certain services will provide for fair and reasonable rates so that customers pay only reasonable charges for telecommunications services.

### **b.) Pricing Flexibility for Certain Service Features**

69 Regarding pricing flexibility in the Settlement, Public Counsel raises the following issues: Should the pricing for residential custom calling features be restricted? Should custom calling features continue to be offered on an à la carte basis and should package prices be limited to the sum of their components? Should geographic deaveraging be extended beyond the commitments contained in the Settlement?

70 Qwest responds that the AFOR furthers effective competition by putting Qwest on parity with its unregulated cable and wireless competitors and that competition will protect against Qwest's exercise of market power. Qwest testimony and exhibits demonstrate that Qwest has lost substantial market share in the residential market and that there are an increasing number of competitive alternatives to traditional land-line telephone service.<sup>61</sup>

71 However, the Settlement acknowledges that some protection against the exercise of market power is necessary during the AFOR. It provides that Qwest will not geographically deaverage digital business service, analog private line service and residential exchange service features and packages.<sup>62</sup>

72 Public Counsel recommends that we limit price increases for Qwest custom calling features to the annual change in the Consumer Price Index less two percent. Public Counsel performed an analysis and concluded that Qwest has market power in the market which it defined as the "residential primary-line market" or "stand-alone residential market."<sup>63</sup> Public Counsel measures the degree of competition in the residential market according to the U.S. Department of Justice and the Federal Trade Commission's Horizontal Merger Guidelines.<sup>64</sup> These guidelines rely on the

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<sup>61</sup> Teitzel, Exh. No. 11C at 2:25-3:6 and Reynolds, Exh. No. 68 at 3:12-21

<sup>62</sup> Reynolds and Saunders, Exh. No. 4 at 9:¶2.

<sup>63</sup> Loube, Exh. No. 90C at 12:21-22.

<sup>64</sup> Loube, Exh. No. 90C at 39:6-7.

Herfindahl-Hirschman Index (HHI) which measures concentration within a market.<sup>65</sup> Public Counsel asserts that as the HHI value approaches 10,000, the existence of a monopoly is indicated while lower values indicate competitive markets.<sup>66</sup> Public Counsel estimates Qwest's market share at over 75 percent and an HHI value of 5658.<sup>67</sup> Public Counsel notes that while the HHI value indicates a highly concentrated market, it does not prove that Qwest has market power.<sup>68</sup> To demonstrate that Qwest has market power, Public Counsel calculates a critical elasticity that measures the highest price elasticity of demand at which Qwest would be able to impose profitably a price increase.<sup>69</sup> Because the calculated critical elasticity of demand range is 2.1 – 2.5 and the estimated demand elasticity for telephone service is .1, Public Counsel concludes that Qwest has market power in the stand-alone residential market.<sup>70</sup>

73 Qwest asserts that Public Counsel's analysis is wrong for several reasons. Qwest contends that Public Counsel used incorrect inputs in its formula, used an incorrect formula, and performed the wrong comparison.<sup>71</sup> Qwest also argues that the critical price elasticity cannot demonstrate whether market power exists or not because the current price is not a price set in a competitive market.<sup>72</sup> Finally, Qwest asserts that the stand-alone residential market is not a proper definition of market for HHI analysis.<sup>73</sup>

74 Public Counsel further recommends that package prices not exceed the sum of prices for the components of the package and that services included in bundles remain available on an à la carte basis.<sup>74</sup> Public Counsel's underlying premise is that Qwest is a dominant firm that can influence the market, affect the well-being of consumers and affect the level of competition offered by alternative carriers. As a result, it argues that Qwest should be subject to a more stringent regulatory requirement than non-dominant carriers.<sup>75</sup>

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<sup>65</sup> Loube, Exh. No. 90C at 39:17-18. The HHI is a commonly accepted measure of market concentration that is calculated by squaring the market share of each competitor and summing the resulting numbers. Markets in which the HHI is between 1000 and 1800 are considered moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated.

<sup>66</sup> Loube, Exh. No. 90C at 39:22-23.

<sup>67</sup> Loube, Exh. No. 93 at 9.

<sup>68</sup> Loube, Exh. No. 90C at 45:9.

<sup>69</sup> Loube, Exh. No. 90C at 46:18-19.

<sup>70</sup> Loube, Exh. No. 90C at 48:5-19.

<sup>71</sup> Taylor, Exh. No. 66 at 17-20.

<sup>72</sup> *Id.*

<sup>73</sup> Taylor, Exh. No. 66 at 7:4-13.

<sup>74</sup> Loube, Exh. No. 103 at 1.

<sup>75</sup> Loube, Exh. No. 90C at 14.



- 75 Public Counsel's specific concern is that without any explicit pricing constraint on residential feature prices, Qwest could increase prices for features such that consumers would find it attractive to purchase one of Qwest's packaged services rather than continue purchasing services on an à la carte basis.<sup>76</sup> Alternatively, if Qwest withdraws stand-alone features from the market, a customer would be obligated to purchase them in a package, with other features he or she may not want.
- 76 Qwest did not address Public Counsel's specific recommendations regarding price limits for residential features or the availability of à la carte features. However, with respect to price caps for bundled services, Qwest argues that capping package prices at the sum of the component services is not necessary because the criteria of the competitive classification statute<sup>77</sup> are clearly met for the packages and that price caps would serve no useful purpose. Further, Qwest objects to creating stand-alone services for technical features that might be offered in packages as part of a competitive offering.<sup>78</sup>
- 77 While we agree that Public Counsel's analysis has shortcomings, we do not agree that all of its concerns are totally without merit. We need not enter the analytical thicket of the HHI calculus of market concentration because, as previously noted, stand-alone residential service is one of the specific exceptions to the AFOR and will remain under tariff. Qwest cannot exercise market power because we will continue to set the rates, terms, and conditions for that service.
- 78 The issue of market power, however, may be relevant to the pricing of other elements of residential service. Evidence produced by Public Counsel shows that 70 percent of residential customers purchase only an access line or a line with one or two features.<sup>79</sup> We decline, however, to adopt pricing limitations for residential exchange features as proposed by Public Counsel. We believe that the existing competition in the residential market and the AFOR conditions will combine to restrain Qwest's market power over residential features. The Settlement does not permit Qwest to deaverage the price for residential features between urban and rural areas even though it does afford Qwest pricing flexibility for these services. We anticipate that the presence of active competitors in the residential market will discipline Qwest's pricing behavior during the AFOR. We will closely monitor Qwest's pricing for features and evaluate Qwest's actions at the expiration of the AFOR.
- 79 One of the intended benefits of competition is greater choice in the goods and services available. It would be regressive to reduce the options available to consumers as a

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<sup>76</sup> Loube, Exh. No. 90C at 19.

<sup>77</sup> RCW 80.36.330.

<sup>78</sup> Taylor, Exh. No. 66 at 26-27.

<sup>79</sup> Loube, Exh. No. 90-C at 29:8-9.

result of implementing greater regulatory flexibility for utilities. We believe that consumers should have the choice of purchasing services either á la carte or in a bundle of services.

- 80 While consumers make decisions based on many factors, price is certainly one consideration. We believe consumers should not be financially penalized for selecting a bundle that costs more than if they individually purchased the same features. Nor should consumers be led to the mistaken assumption of the unwary that bundles will not cost more than buying the same services separately. We note that several of the other states that have granted Qwest an AFOR have included in their orders a limitation on pricing of the sum of components.<sup>80</sup>
- 81 It is better public policy to allow this customer group to continue to have choices in the services they wish to purchase. We therefore require that Qwest continue to offer these residential service features on an á la carte basis during the AFOR and the price of a bundle not exceed the sum of the components.

### **c.) Limits on Geographic Deaveraging**

- 82 Services to be removed from tariff that have no limitations on geographical deaveraging prohibitions include call management services, central office alarm services, construction charges, and miscellaneous services.<sup>81</sup>
- 83 Public Counsel argues that deaveraging restrictions should also apply during the AFOR to services such as analog business lines services that are already competitively classified statewide.<sup>82</sup>
- 84 In its brief, Qwest responds that “[S]uch a restriction would contravene the statutory provisions that allow competitively classified services to be priced without such restrictions” and that “competitors are not subject to any such regulatory obligation.”<sup>83</sup>
- 85 We accept the Settlement’s limitation on geographic deaveraging. The services for which Public Counsel proposes a deaveraging limitation were already determined to be competitive statewide. As such, we believe the forces of the competitive market will govern pricing for these services.

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<sup>80</sup> Exh. No. 2.

<sup>81</sup> Exh. No. 166.

<sup>82</sup> Loube, TR 495-497.

<sup>83</sup> Qwest Brief at ¶73.

**d.) Elimination of Directory Assistance one-free call allowance.**

86 The Settlement contains a provision to remove from Qwest's tariff the one-free directory assistance call. Limited Directory Assistance (DA) service will remain in Qwest's tariff,<sup>84</sup> thus charges will not be applicable to requests originating from persons certified incapable of using a published telephone directory<sup>85</sup> or for calls originating from hospitals.<sup>86</sup> In support of this provision, the settling parties state that DA was classified as a competitive service years ago and there is no justification for requiring Qwest to continue to provide this service without compensation.

87 Public Counsel proposes that customers continue to have one free DA call per month, continuing the service as an adjunct to basic telephone service that is included in the basic price of residential phone service. The free call allowance originated, in part, in recognition that some DA calls are not successful and acts as a surrogate for waiver of the charges for those calls.<sup>87</sup>

88 We accept the Settlement provision. DA today is offered in a competitive marketplace. Customers have competitive alternatives if they do not want to pay Qwest for DA information. As we transition toward increased competition for residential consumers, we recognize that there will be changes in the manner in which services are offered to consumers in competitive markets. As part of this transition, we believe competitive services such as DA should be "unbundled" from their historic connection to the provision of local exchange residential service.

**4. Preserve or enhance service quality and protect against the degradation of the quality or availability of efficient telecommunications services.**<sup>88</sup>

89 To protect service quality and efficiency, the Settlement provides that Qwest will continue to offer customer service guarantees that provide monetary compensation to customers adversely affected by service problems.<sup>89</sup> The service guarantees

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<sup>84</sup> Reynolds and Saunders, Exh. No. 2 at 8:¶3(a)(iv).

<sup>85</sup> Both intraLATA and National Directory Assistance calls.

<sup>86</sup> IntraLATA calls.

<sup>87</sup> Public Counsel Brief at ¶75.

<sup>88</sup> RCW 80.36.135(2)(d).

<sup>89</sup> Reynolds and Saunders, Exh. No. 4, Appendix C.

identified in the Settlement include those currently provided in the existing CSGP, to which two additional measures, Delayed Primary Service and Trouble Reports, are added. The Settlement also modifies the existing out-of-service measure by instituting a two-tier credit program. As further support for their position, the settling parties argue that competition for customers motivates Qwest to preserve and protect its service quality.

- 90 In the alternative, Public Counsel recommends an incentive-based, self-executing Service Quality Incentive Plan (SQIP)<sup>90</sup> arguing that such a plan would serve as an anti-backsliding measure and provide an incentive for Qwest to maintain investment in the network. Public Counsel asserts that Qwest's investment in Washington has been declining since 2002<sup>91</sup> which could ultimately result in degradation of the network.<sup>92</sup>
- 91 As support, Public Counsel provides data for two measures demonstrating a decline in telephone response time at repair centers and a general upward trend in the aggregate number of out-of-service conditions not restored within the Commission's standard. Public Counsel also argues that the monies paid by Qwest to provide out-of-service pro-rata credits in 2006, "cannot reasonably be characterized as any kind of meaningful financial incentive ...to improve performance."<sup>93</sup>
- 92 Public Counsel also states that Qwest's wholesale performance plan is linked to retail service quality as parity measures governed by the Qwest Performance Assurance Plan (QPAP). The QPAP contains numerous service quality measures and Qwest is required to make payments to CLECs and the Commission for failure to provide service quality in parity to what Qwest provides its own retail customers.<sup>94</sup> Public Counsel argues that if there are no financial incentives on the retail service side, then Qwest arguably has an incentive to provide inferior service to retail customers because doing so would make it easier to meet certain QPAP standards.<sup>95</sup>
- 93 Lastly, Public Counsel notes that AFORs in other Qwest states contain self-executing retail service quality plans.<sup>96</sup>

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<sup>90</sup> Public Counsel's proposed SQIP includes the same service quality measures and standards that were in effect for Qwest until 2005, and calls for annual payments to customers of up to \$16 million annually depending on performance. Kimball, Exh. No. 118C at 2 and 23-26.

<sup>91</sup> Kimball, Exh. No. 120C.

<sup>92</sup> Kimball, Exh. No. 118C at 17.

<sup>93</sup> Public Counsel Brief at ¶ 108.

<sup>94</sup> Kimball, Exh. No. 118C at 21:18-21.

<sup>95</sup> Kimball, Exh. No. 118C at 22.

<sup>96</sup> Kimball, Exh. No. 118C at 18-21.

- 94 In response to the downward trend in investment noted by Public Counsel, Qwest contends that investment per line has very little correlation to service quality performance noting service quality measures improved during the same period investment has been declining.<sup>97</sup> Further, Qwest argues that the Commission already has authority to compel compliance and/or impose fines if service quality degrades.<sup>98</sup>
- 95 Qwest states that no justification has been presented for reinstating a Service Quality Performance Program (SQPP).<sup>99</sup> The first full year following expiration of the SQPP was 2006 during which Qwest states that its service quality continued to improve. Qwest also contends that Public Counsel did not offer any service quality-based data or other evidence demonstrating that service quality declined to a point that such a plan should be instituted.<sup>100</sup>
- 96 Qwest responds to Public Counsel's concern regarding the relationship between retail and wholesale service quality levels stating that the factors that affect service quality regulation in the wholesale market are fundamentally different than those in the retail market. On the wholesale side, the Telecommunications Act of 1996 (the Act) called for non-discrimination, which led to the use of parity measures and the anti-backsliding plan to counter any incentive to act to the detriment of competitors. In contrast, Qwest states that in the retail market there is no provider/customer competitive conflict as there is in the wholesale market. Rather, with respect to service quality, all providers have an incentive to constantly seek ways to continually improve service quality to competitive levels.<sup>101</sup>
- 97 In response to Public Counsel's argument regarding AFORs in other states, Qwest notes that only three states -- Minnesota, Arizona, and Colorado -- currently have any service quality measures or incentives in their plans. New Mexico's AFOR does not contain service quality incentives because they are included in rules. Qwest also states that service quality has continued to improve in states where service quality incentive plans were allowed to expire.<sup>102</sup>
- 98 We concur with the settling parties that a service quality incentive plan is not necessary to ensure against declining service quality during the term of the AFOR. We agree that infrastructure investment is not necessarily related to overall service quality, because a number of service quality measures have improved over the same time period that investment has been declining. We are persuaded that Qwest's

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<sup>97</sup> Williams, Exh. No. 47 at 17.

<sup>98</sup> Williams, Exh. No. 47 at 12.

<sup>99</sup> The SQPP was instituted as part of the US West/Qwest merger settlement. (Ninth Supplemental Order issued in Docket UT-991358).

<sup>100</sup> Williams, Exh. No. 47 at 2-3.

<sup>101</sup> Williams, Exh. No. 47 at 14-16.

<sup>102</sup> Williams, Exh. No. 47 at 6-8.

overall service quality compares favorably to that of other telecommunications companies in this state.<sup>103</sup> In addition, the presence of competition provides an incentive for Qwest to provide service quality as good as or better than competitors. If customers are displeased with Qwest's service, they are likely to leave for a competitive provider. The Settlement provides for continuation and expansion of the CSGP, which should provide sufficient incentive for Qwest to maintain service quality.

99 We observe that while several other Qwest AFORs do contain self-executing service quality penalties, the trend toward requiring such plans is on the decline. This is consistent with the belief that the competitive market, not regulatory structure, will govern the level of service quality in the future.

100 Finally, we agree that retail and wholesale markets are not comparable and competition requires Qwest to keep retail service quality at acceptable levels.

**5. Not unduly or unreasonably prejudice or disadvantage any particular customer class.<sup>104</sup>**

101 We must consider whether the AFOR ensures that all customer classes are treated equally.

102 The Settlement provides that certain services -- digital business services, analog private line services, and residential exchange service features and packages -- will be treated as competitively classified services. Qwest agrees to not deaverage the rates for these services.<sup>105</sup> As previously noted, the modified AFOR excludes stand-alone residential service so there will be no change in its current level of regulation.<sup>106</sup>

103 Public Counsel argues that by increasing the rates for residential basic service customers only, the Settlement is unduly discriminatory and unreasonably prejudiced against this customer class.<sup>107</sup>

104 We conclude that the Settlement is not unduly discriminatory or unreasonably prejudicial. Public Counsel focuses on the fact that Qwest proposes a rate increase exclusively for stand-alone residential service. Having found above the potential rate increase itself reasonable, we find the Settlement sufficiently protects customers

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<sup>103</sup> Russell, Exh. No. 134 at 19.

<sup>104</sup> RCW 80.36.135(2)(f).

<sup>105</sup> Reynolds and Saunders, Exh. No. 2 at 10:¶2.

<sup>106</sup> Reynolds and Saunders, Exh. No. 2 at 8:¶3(a).

<sup>107</sup> Loubé, Exh. No. 90C at 4:25-27 and at 8:13-16.

taking services over which Qwest has market power by retaining such services under full Commission oversight.<sup>108</sup>

105 The Settlement affords Qwest the flexibility to modify the rates for its other services in response to competition. There is nothing prejudicial or discriminatory in treating customers in competitive markets differently from customers in non-competitive markets. We find no merit in Public Counsel’s contention that the proposed increase in rates for residential customers is discriminatory in intent or effect.

106 Finally, the Settlement eliminates concern with rate discrimination between urban and rural areas. About 38.8 percent of Qwest exchanges are urban.<sup>109</sup> Access line densities in 2006 ranged from 2,621 access lines per square mile in Seattle to two access lines per square mile in Pomeroy, with a statewide estimated average of 150 access lines per square mile.<sup>110</sup> Qwest is losing a substantial number of access lines to competition in both urban and rural areas.<sup>111</sup> Thus, Qwest has a strong incentive to deaverage rates across its service territory to more effectively reflect economies of scale.<sup>112</sup> The Settlement eliminates this possibility.

## 6. Carrier-to-Carrier Service Quality.

107 RCW 80.36.135(3) provides that an AFOR “. . . must also contain a proposal for ensuring adequate carrier-to-carrier service quality, including service quality standards or performance measures for interconnection, and appropriate enforcement or remedial provisions in the event the company fails to meet service quality standards or performance measures.” (Emphasis supplied).

108 The Settlement’s AFOR does not meet this statutory requirement. Indeed paragraph 1 of the Exceptions Section of the AFOR specifically states that the AFOR does not “address existing carrier-to-carrier service quality requirements, including service quality standards or performance measures for interconnection and appropriate enforcement or remedial provisions in the event Qwest fails to meet service quality standards or performance measures.”<sup>113</sup> The settling parties offer no explanation for this apparent contradiction of the statutory mandate to include “a proposal for ensur[ing] adequate carrier-to-carrier service quality.”

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<sup>108</sup> Wilson, Exh. No. 142C at 77.

<sup>109</sup> Wilson, Exh. No. 142C at 62:2-3.

<sup>110</sup> Wilson, Exh. No. 142C at 62:3-6.

<sup>111</sup> Wilson, Exh. No. 142C at 62:11-12.

<sup>112</sup> Wilson, Exh. No. 142C at 62:16-18.

<sup>113</sup> Reynolds and Saunders, Exh. No. 2 at 8:¶1.

- 109 The obvious legislative intent in requiring an AFOR petition to include an adequate carrier-to-carrier service quality plan is to advance twin statutory goals; “preserve or enhance competition” and “protect against the exercise of market power.”<sup>114</sup> We have previously discussed why carrier-to-carrier service quality matters in our analysis of wholesale service quality performance plans<sup>115</sup> and will not repeat that discussion here.
- 110 Reading RCW 80.36.135 as a whole, we find as a matter of law that an AFOR petition which fails to include any “proposal for ensuring adequate carrier-to-carrier service quality” fails to meet the statutory goals related to competition. This failure by itself would be sufficient grounds for our rejection of the Settlement’s AFOR plan.<sup>116</sup>
- 111 On balance, however, and considering our other determinations in this Order, we conclude that the settling parties should be given the opportunity to cure this defect in their proposed AFOR.<sup>117</sup> We condition our approval of the Settlement upon an acceptable submittal of a carrier-to-carrier service quality plan within 30 days of the date of this Order.

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<sup>114</sup> RCW 80.36.135(2)(c).

<sup>115</sup> See p. 28, ¶ 92

<sup>116</sup> We find no comfort in relying upon the Settlement’s reference to “existing carrier-to-carrier service quality requirements” in light of Qwest’s recent revisions to its wholesale agreements to reduce “remedial provisions” in the event Qwest fails to meet service quality standards. See, e.g. Docket Nos. UT-063076, UT-063086, UT-063087, UT-073002, UT-073003, and UT-073019. Further, even if the settling parties thought existing carrier-to-carrier service quality requirements sufficient, we interpret the statute to require them to explicitly identify those requirements and explain how they “ensure” adequate service quality.

<sup>117</sup> During the post-hearing briefing cycle, Qwest filed a Petition for Forbearance throughout the Seattle Metropolitan Statistical Area with the FCC. The Petition seeks to relieve Qwest from complying with several key aspects of its obligations to provide, among other things, unbundled loop and transport to interconnecting wholesale carriers, and to eliminate dominant tariff requirements. This Petition could have significant consequences for the availability of high-capacity loops on reasonable terms for wholesale carriers because of the loss of unbundled network elements (UNEs). The availability of UNEs at reasonable prices has been an important factor in our analysis of competitive classification requests. We issued bench requests to Qwest asking whether the terms and conditions of the Settlement would be binding for the term of an AFOR regardless of the outcome of the Petition. Qwest and Staff affirmed that the AFOR would be binding regardless of the outcome of the Petition. The parties may revise or update their responses and/or comments to Bench Request No. 11 when the carrier-to-carrier service quality plan is filed.



## 7. Additional Conditions.

112 We believe the following additional conditions on our acceptance of the Settlement are reasonably necessary to further regulatory efficiency and protect the public interest:

- Establish a defined reporting and monitoring process
- Extend the AFOR review period from six to nine months
- Ensure sufficient customer notice
- Retain regulation of Caller ID blocking service and Call Trace

### a) Defined reporting and monitoring process.

113 The Settlement provides an outline of the review process to begin six months prior to the AFOR's expiration date with all parties having access to the same information requested by Staff.<sup>118</sup> There is no specific requirement for more regular reporting or monitoring of the relevant information.

114 With respect to the review process, Public Counsel questions whether requests for information other than what Staff had sought would be allowable under the Settlement. Qwest responds that the Commission will determine how the review process would work at that time.<sup>119</sup> On cross, Qwest indicated measures to assess the AFOR would include financial results, service quality results, prices for packages, and market share.<sup>120</sup> Appendix B to the Settlement only discusses financial reporting items and permits the Commission to ask for additional information. We accept Appendix B's provisions on reporting of financial results, but find more measures should be provided and data reported annually.

115 We agree with Qwest that the specifics of the AFOR review process do not have to be determined now. However, we believe that a six month review period may be insufficient to allow a timely and fully informed decision on whether or how the AFOR should continue. The review period proposed by Public Counsel, nine months prior to the expiration of the AFOR, is a more reasonable period to allow thorough evaluation of three years of operational results under the AFOR. We condition our acceptance of the Settlement accordingly.

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<sup>118</sup> Exh. No. 2 at 7:¶2.

<sup>119</sup> Reynolds, TR. 284.

<sup>120</sup> Reynolds, TR. 285.

116 We are concerned that the lack of any interim reporting on the operation of the AFOR may impair the ability of parties to meaningfully analyze Qwest's performance during its term. Annually reporting four categories of data will aid our review. As a condition of our approval of the Settlement we require Qwest to file annual reports containing market share, and pricing change data within 90 days of each anniversary of the final approval of this AFOR. The financial and service quality data should be consistent with the Settlement. The market share data should consist of updates to Qwest's exhibit that show access line counts by wire center for business, residential, and public access lines.<sup>121</sup> The pricing information should include data for changes in prices, terms, and conditions for all services that are detariffed by the AFOR as well as changes to residential package prices. The other parties to this proceeding may comment on these annual reports.

**b) Customer Notice regarding AFOR.**

117 If ultimately approved, the AFOR will introduce significant changes that will affect customers' interests. Accordingly, we require that Qwest must provide adequate notice to customers of the terms of the approved AFOR prior to its taking effect.

118 The AFORs approved for Qwest by other state commissions have almost uniformly required some form of customer notice regarding the terms of the AFOR. To date, the only notice Washington customers have received indicates that Qwest is petitioning for an AFOR. That notice did not, and could not, describe the AFOR finally approved by the Commission. Qwest must notify customers of the terms of the AFOR if ultimately approved, including a list of formerly tariffed services for which Qwest will have pricing flexibility. With respect to rate changes during the AFOR, Qwest indicated that the Commission's notice requirements would apply to any tariff rate changes such as a change in the 1FR rate. With respect to price changes for detariffed services, Qwest would use its existing notification process for competitive services. The existing rate change notice practices appear to be sufficient for any rate changes that occur during the AFOR.

119 We require that Qwest file a draft customer notice for Commission approval within ten days of the final approval of this AFOR

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<sup>121</sup> Teitzel, Exh. No. 12C.

**c.) Retention of Caller ID Blocking and Call Trace tariff.**

120 In Qwest's AFORs in other states, certain residential features such as Call Trace and Caller ID Blocking services were not approved for detariffing because they were found to have public interest characteristics.

121 Caller ID Blocking Service allows customers to block their name and telephone number from appearing on a recipient's Caller ID unit on a per line or per call basis. We believe Caller ID Blocking service should remain in the local exchange tariff because the service is essential to a customer's ability to maintain privacy. Call Trace creates a record of calls received which can be used by law enforcement to protect a customer from obscene, harassing, or threatening calls. These features are free today because the Commission established a policy of giving customers control over calls received and when and how their telephone numbers are released when they make a call. If these features are detariffed, Qwest would be free to undo this policy by imposing a charge for the services, changing their terms, or even eliminating them. We conclude that Caller ID Blocking and Call Trace protect customers from unwanted and perhaps unlawful invasions of privacy, and the public interest is best served by keeping these features under tariff during the AFOR.

**III. Summary of Conditions**

122 We accept the Settlement Agreement and approve the modified AFOR subject to the following conditions:

- A plan, subject to Commission approval, for a \$4 million investment to facilitate the deployment of advanced telecommunications services to underserved areas or customer classes must be filed within 90 days of the final order approving this AFOR;
- Stand-alone DSL service must continue as a service offering;
- Caller ID Blocking and Call Trace are excluded from the AFOR and remain in tariff;
- Features must continue to be available á la carte and package prices are capped at the sum of the elements;
- Property transfers under \$15.6 million do not require reporting;
- Statutory and regulatory waivers are limited as set forth herein;
- Customer notice of terms of the approved AFOR must be issued;
- A proposal for ensuring adequate carrier-to-carrier service quality standards must be filed within 30 days of this Order;
- Reports of financial, service quality, market share, and pricing data must be filed annually; and

- The formal AFOR review must commence nine months prior to the AFOR's expiration.

### **FINDINGS OF FACT**

- 123 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings<sup>122</sup> and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:
- 124 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including telecommunications companies.
- 125 (2) Qwest Corporation (Qwest) is a “public service company” and a “telecommunications company,” as those terms are defined in RCW 80.04.010 and as those terms otherwise are used in Title 80 RCW. Qwest is engaged in Washington State in the business of supplying telecommunications service for hire, sale, or resale to the general public for compensation.
- 126 (3) The terms of the multi-party Settlement Agreement (Settlement) and modified alternative form of regulation, attached to this Order as Appendix A and incorporated herein by this reference, fail to meet the telecommunications policy goals of RCW 80.36.0135 and RCW 80.36.300 and are not consistent with the public interest unless modified.
- 127 (4) The Settlement's proposed additional deployment of Digital Subscriber Line (DSL) service is insufficient to facilitate the broad deployment of technological improvements and advanced telecommunication services to underserved areas or underserved customer classes.
- 128 (5) An increase of up to \$1.00 in the stand-alone residential service (IFR) rate over four years would result in a rate that is fair, just, reasonable and sufficient.
- 129 (6) There is sufficient competition in the relevant market to grant Qwest pricing flexibility over exchange service features with some exceptions and limitations to protect customers.

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<sup>122</sup> See n. 10. The Commission is not required to make specific findings of fact before ruling on an AFOR.

- 130 (7) The Settlement does not include a plan to ensure carrier-to-carrier service quality as required by RCW 80.36.135(3).
- 131 (8) The terms of the Settlement and modified alternative form of regulation, as conditioned by the Commission, meet the telecommunications policy goals in RCW 80.36.135 and RCW 80.36.300 and are in the public interest.

### CONCLUSIONS OF LAW

- 132 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:
- 133 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings. *Title 80 RCW.*
- 134 (2) The Commission is authorized to employ an alternative form of regulation if that alternative is better suited to achieving the state's telecommunications public policy goals. *RCW 80.36.135(1)(a), RCW 80.36.300, and RCW 80.36.145.*
- 135 (3) On balance, the terms of the multi-party Settlement Agreement and modified alternative form of regulation fail to meet the considerations stated in RCW 80.36.135(2) or sufficiently advance the policy goals stated in RCW 80.36.300 and should be rejected.
- 136 (4) A proposed alternative form of regulation that fails to include any proposal for ensuring adequate carrier-to-carrier service quality does not comply with RCW 80.36.135(3) and is insufficient to warrant adoption.
- 137 (5) If accepted, the Commission's modifications to and conditions on the Settlement will establish an alternative form of regulation that, on balance, meets the considerations stated in RCW 80.36.135(2) and the policy goals stated in RCW 80.36.300.
- 138 (6) The Commission Executive Secretary should be authorized to accept by letter, with service to all parties to this proceeding, filings that comply with the requirements of this Order.

- 139 (7) The Commission should retain jurisdiction over the subject matters and the parties to this proceeding to effectuate the terms of this Order. *Title 80 RCW.*

**ORDER**

THE COMMISSION ORDERS THAT:

- 140 (1) The multi-party Settlement Agreement concerning an alternative form of regulation, attached as Appendix A and incorporated herein by prior reference, is accepted, subject to conditions set forth in the body of this Order.
- 141 (2) Within 30 days from the date of this Order, Qwest Corporation must file an acceptable carrier-to-carrier service quality plan meeting the requirements of RCW 80.36.135(3). The parties to this proceeding may file comments on the plan within 14 days of the plan being filed.
- 142 (3) Within 60 days from the date of this Order, Qwest Corporation must accept the conditions imposed on the Settlement by the Commission or elect not to proceed with the alternative form of regulation as modified by the Commission.
- 143 (4) The Commission retains jurisdiction to effectuate the terms of this Final Order.

Dated at Olympia, Washington, and effective July 24, 2007.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

**NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.**

**APPENDIX A**

**Multi-party Settlement Agreement**

**and**

**Modified AFOR**



**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION**

In the Matter of the Petition of

QWEST CORPORATION

To be Regulated Under an Alternative  
Form of Regulation Pursuant to RCW  
80.36.135.

Docket No. UT-061625

**STIPULATION AND SETTLEMENT  
AGREEMENT**

**INTRODUCTION**

The following parties (“Parties”) enter into this Settlement Agreement (the “Agreement”) as of March 6, 2007: Qwest Corporation (“Qwest”); Commission Staff (“Staff”); Integra Telecom of Washington, Inc., Time Warner Telecom of Washington, LLC, Covad Communications Company, and XO Communications Services, Inc. (collectively, “Joint CLECs”); Northwest Public Communications Council (“NPCC”); WeBTEC; and, the Department of Defense on behalf of the consumer interest of the Department of Defense and all other Federal Executive Agencies (“DOD”) (Joint CLECs, NPCC, WeBTEC, and DOD are also collectively referred to as “Intervenors”). The Parties agree this Agreement is in the public interest. The Parties understand this Agreement is subject to Commission approval.

**BACKGROUND**

On October 20, 2006, Qwest filed a petition with the Washington Utilities and Transportation Commission (“Commission”) asking for approval of an alternative form of regulation (“AFOR”). The Intervenors herein were granted intervention in the proceeding. In accordance with the procedural schedule, all parties have filed testimony in this proceeding, and hearings are scheduled to begin on March 12, 2007.

The parties to this proceeding have engaged in settlement discussions regarding the contested issues in this proceeding. The Parties identified in Section I above have now reached agreement on certain issues presented in this proceeding, and wish to present their agreement on these issues for the Commission’s consideration. The Parties to the settlement therefore adopt the following Agreement. The Parties enter into this Agreement voluntarily to resolve the matters in dispute among them and to expedite the orderly disposition of this proceeding.

## AGREEMENT

Now, therefore, the Parties hereby agree as follows:

### A. SCOPE OF AGREEMENT.

The Parties agree that the terms of this Agreement resolve, as among them, the contested issues in this proceeding. If approved, this Agreement would constitute a full settlement of all issues raised by the Parties in Docket No. UT-061625. This Agreement is presented for the Commission's approval under WAC 480-09-465 (Alternative Dispute Resolution) and WAC 480-120-466 (Settlement conference; settlements). The Parties request that the Commission approve this Agreement as soon as practicable.

### B. AFOR IS IN THE PUBLIC INTEREST

By this Agreement Qwest and Staff agree that Qwest's modified proposal for an AFOR (attached hereto as **Exhibit 1**, and incorporated herein by this reference) is in the public interest and should be approved by the Commission. The Joint CLECs, WeBTEC, DOD and NPCC agree not to oppose Qwest's AFOR proposal, as modified herein.

### C. SPECIFIC TERMS AND CONDITIONS

**1. Terms of the AFOR.** Qwest has agreed to modify its AFOR proposal as shown on the attached Exhibit 1, which, for purposes of this Agreement, supersedes any previously-filed AFOR proposals. Exhibit 1 contains the specific terms and conditions of the AFOR.

**2. Intervenor's Issues.** Qwest's DS1 and DS3 private line services currently are classified as competitive telecommunications services. Qwest's AFOR filing does not raise the issue of whether Qwest's rates for these services are fair, just, and reasonable. The Parties, therefore, are aware of no procedurally proper way to raise that issue in this docket without expanding the issues beyond those raised by the filing, which the intervening Parties have represented they would not do as a condition of their intervention. The participation of the Joint CLECs, WeBTEC, and DOD in this Settlement is based on that understanding and should not be construed or interpreted in any way as a lack of willingness or failure to pursue that issue in whatever forum is available.

### D. GENERAL PROVISIONS

**1. Settlement Discussions.** The Parties agree that this Agreement represents a compromise in the positions of the Parties between them on the

matters contained in this Agreement and represents a fair and reasonable resolution between them of these matters. As such, all discussions, documents, other evidence or conduct disclosed in the negotiation of the Agreement and relating to this Agreement are privileged, confidential, and inadmissible in this or any other proceeding. This provision does not apply to pre-filed testimony or testimony/memoranda developed for submission to the Commission in support of the Agreement.

**2. Effective Date of Agreement.** This Agreement shall become effective only upon (1) the Commission entering an Order approving this Agreement in accordance with Section III.A. above, and (2) the approval of the AFOR proposal as set forth herein or as otherwise acceptable to the Parties. If this Agreement does not become effective according to its terms, it shall be null and void and no party shall be bound or prejudiced by the terms of the Agreement. The effective date of the Agreement shall be the date of the Commission order approving the AFOR proposal in Exhibit 1.

**3. No Precedent.** The Parties enter into this Agreement to avoid further expense, uncertainty, and delay. Except to the extent expressly stated in this Agreement, nothing in this Agreement shall be (1) cited or construed as precedent or as indicative of the Parties' positions on a resolved issue, or (2) asserted or deemed in any other proceeding, including those before the Commission, the commission of any other state, the state courts of Washington or of any other state, the federal courts of the United States of America, or the Federal Communications Commission to mean that a Party agreed with or adopted another Party's legal or factual assertions. The limitation in this Section D.3 shall not apply to any proceeding to enforce the terms of this Agreement, any implementing agreements, or any Commission order adopting this Agreement.

**4. Entire Agreement.** The Parties acknowledge that this Agreement is the product of negotiations and compromise and shall not be construed against any Party on the basis that it was or was not the drafter of any or all portions of this Agreement. This Agreement constitutes the Parties' entire agreement on all matters set forth herein, and supersedes any and all prior oral and written understandings or agreements on such matters that previously existed or occurred in this proceeding, and no such prior understanding or agreement or related representations shall be relied upon by the Parties. Accordingly, the Parties recommend that the Commission adopt this Agreement and related documents in their entirety.

**5. Execution in Counterparts.** This Agreement may be executed by the Parties in several counterparts and as executed shall constitute one agreement. Copies sent by facsimile are as effective as original documents.

**6. Necessary Actions.** Each Party shall take all actions necessary and appropriate to enable it to carry out this Agreement.

**7. Successors.** This Agreement applies to, inures to the benefit of, and is binding upon the Parties and their successors.

**8. Procedure.** The Agreement shall be filed with the Commission on March 6, 2007. All Parties shall cooperate in submitting this Agreement promptly to the Commission for acceptance, so that it may be approved as soon as practicable. The Parties shall request one or more hearing dates during the week of March 12, 2007 to present the Agreement and shall cooperate, in good faith, in the development of such other information as may be necessary to support and explain the basis of the Agreement and to supplement the record accordingly. Any Party may elect to file with the Commission a memorandum explaining the Agreement or additional testimony. The Parties agree among themselves to suspend all existing due dates in this docket including evidentiary hearings, and the briefing date, and to jointly request that the Commission so order. This agreement among the Parties with regard to the due dates and hearings does not affect the evidentiary hearings scheduled for the week of March 12, 2007 for purposes of presentation of other parties' evidence and cross-examination, and Qwest's evidence and cross-examination, with regard to the non-settling parties.

**9. Support of Agreement.** The Parties shall cooperate in submitting this Agreement promptly to the Commission for acceptance, and shall support adoption of this Agreement in proceedings before the Commission, through testimony and/or briefing as resolution of these issues in this proceeding. No Party to this Agreement or its principals, consultants or attorneys will engage in any advocacy or public relations contrary to the Commission's adoption of this Agreement as resolution of these issues in this proceeding. Intervenors request that they be permitted by the Commission to support the Agreement through statements of counsel. Each Party shall make available one or more witnesses in support of this Agreement if determined necessary by the Commission. Each party may seek the admission of its pre-filed testimony in addition to testimony in support of the Agreement. Each Party shall not oppose any Commission order which adopts this Agreement in its entirety through the appellate process, if any, until final. In the event the Commission rejects all or any material portion of this Agreement, or adds additional, material conditions, each Party reserves the right, upon written notice to the Commission and all Parties to this proceeding within seven (7) days of the date of the Commission's order, to withdraw from this Agreement. If any Party exercises its right of withdrawal, this Agreement shall be void and of no effect, and all Parties shall support a joint request for a prompt Prehearing Conference and the reestablishment of those dates specifically suspended by the Commission pursuant to the above request.

**10. Public Information. The Parties will submit for mutual review by all other Parties any written statement to be issued to the news media regarding this Agreement or any elements of this Agreement at least two hours prior to issuance.**

QWEST CORPORATION

Commission Staff

By: \_\_\_\_\_

Lisa A. Anderl  
Associate General Counsel  
WSBA# 13236

By: \_\_\_\_\_

Gregory Trautman, Assistant Attorney  
General  
WSBA # 15501  
NPCC

Joint CLECs

By: \_\_\_\_\_

Gregory J. Kopta, Davis Wright Tremaine,  
LLP  
WSBA # 20519

By: \_\_\_\_\_

David Rice, Miller Nash  
WSBA # 29180  
Counsel for Northwest Public  
Communications Counsel

WeBTEC

Department of Defense and all other  
Federal Executive Agencies

By: \_\_\_\_\_

—  
Stephen S. Melnikoff  
General Attorney  
U.S. Army Legal Services Agency

By: \_\_\_\_\_

Arthur Butler, Ater Wynne LLP  
WSBA # 04678

### Qwest's Modified Proposal for an AFOR

#### *Provisions:*

- 1) For the period of the AFOR, the parties agree that Qwest should be treated as if it were competitively classified, subject to certain exceptions and certain transition period requirements under this plan. Qwest is also subject to the provisions specified in **Appendix A** which provides for regulation similar to those companies who are competitively classified pursuant to RCW 80.36.320. **Appendix A** provides an overview of specific waivers of regulatory requirements that will be granted, granted in part, denied, or not affected.
- 2) The terms of this plan for AFOR will be effective upon approval by the Commission and will remain in effect for 4 years unless extended or modified by Commission order.
  - a) No less than six months prior to the 4-year anniversary of the AFOR, Qwest will file information on its financial condition as set forth in **Appendix B** to this AFOR agreement.
  - b) During the six months prior to the 4-year anniversary of the AFOR, Qwest and the Commission's Staff will conduct a review of the provisions of this AFOR to determine if changing conditions warrant modifications to the plan. All parties to the AFOR proceeding will have access to the same material made available to Commission Staff by Qwest.
  - c) During the course of that review any of the parties to this AFOR proceeding may propose or oppose modifications for consideration by Commission Staff. Upon conclusion of the review but not later than the 4-year anniversary the Commission will provide notice to the parties and hold a proceeding in which parties may advocate for or against proposed modifications.
  - d) While the Commission deliberates, the terms of this AFOR shall continue in force.
- 3) Qwest expressly agrees that if the Commission determines, after an appropriate proceeding, to revoke the previously-granted competitive classification for Qwest's DS-1 or DS-3 private line services, Qwest will not contend that the provisions of this AFOR nonetheless require those services to be treated as competitively classified. In such instance, the parties reserve their rights to advocate that an appropriate mechanism be established to ensure that rates for such services are fair, just and reasonable.

- 4) Qwest will implement a plan for broadband infrastructure development in which it will deploy high speed Internet, specifically DSL, services in its Washington wire centers where it currently does not offer DSL.<sup>123</sup> The deployment will commence during the first quarter of 2008 and will be completed within 30 months. At the end of the AFOR, for the review process, Qwest will file a report<sup>124</sup> on broadband infrastructure development informing the commission about Qwest's progress in implementing the infrastructure plan to deploy DSL in 100 percent of its wire centers and towards the goal of ensuring that wire-line high speed internet service is available to over 83% of customers in its Washington service area.<sup>125</sup>

***Exceptions:***

- 1) This AFOR does not address the commission's authority to regulate Qwest's wholesale obligation under the Telecommunications Act of 1996, nor does it address existing carrier-to-carrier service quality requirements, including service quality standards or performance measures for interconnection and appropriate enforcement or remedial provisions in the event Qwest fails to meet service quality standards or performance measures.
- 2) Qwest will provide service quality reporting consistent with the 'Class A' company reporting requirements in WAC 480-120-439 (1). Qwest will modify its current service quality report such that it complies with WAC 480-120-439, but provides a level of reporting detail consistent with that provided by other Class A companies. Qwest will continue filing customer service guarantee reports in accordance with the Seventeenth Supplemental Order in Docket No. UT-991358, albeit semi-annually rather than monthly.
- 3) The following services will remain in Qwest's tariff for the duration of the AFOR:
  - a) Stand-alone Residential Exchange Services:
    - i) Exchange Areas; Flat/Measured Exchange Service Options; Hunting Service; Public Response Calling Service; (WN U-40, Sections 5.1 - 5.2.5)

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<sup>123</sup> The Qwest Washington wire centers in which Qwest does not currently offer its high speed Internet (DSL) services are Easton, Elk, Northport, Pateros, Roy, Springdale, and Waitsburg.

<sup>124</sup> The report will break out data by wire center and by technology (DSL, VDSL, IPTV, etc.)

<sup>125</sup> In evaluating Qwest's performance towards the goal of ensuring 83% high speed internet service availability in its Washington service area during the review process, consideration shall be given to Qwest's access line loss and the loss of high speed internet service customers to other broadband service providers operating in its territory.

- ii) Directory Services – Listing Services (WN U-40, Section 5.7.1) and Custom Number Service (WN U-40, Section 5.7.7)
  - iii) Operator Services – Local Operator Service Surcharges (WN U-40, Section 5.8.2); Intercept Service (WN U-40, Section 5.8.4); and Operator Verification/Interrupt Service (WN U-40, Section 6.2.8)
  - iv) Directory Assistance - IntraLATA and National Directory Assistance charges will not be applicable to requests originating from telephone services Qwest has determined are used on a continuing basis by a person(s) certified incapable of using a published telephone directory. IntraLATA Directory Assistance charges will not be applicable for calls that originate from hospitals. (WN U-40 Section 6.2.4 (c) and (d))
  - v) Customer Service Guarantee Programs (WN U-40, Section 2.2.2 B)
  - b) Washington Telephone Assistance Program (WTAP) (WN U-40, Section 5.2.6 A.)
  - c) Tribal Lifeline (WN U-40, Section 5.2.6 B.)
  - d) Link-up Programs (WN U-40, Sections 5.2.6 C. & D.)
  - e) Basic and Enhanced Universal Emergency Number Service – 911 (WN U-40 Section 9.2.1)
  - f) Interconnection Service (WN U-42)
  - g) Resale Service (WN U-43)
  - h) Access Service (WN U-44)
  - i) Payphone services (defined as services listed in Section 5.5.7 of Qwest's Washington QC Exchange and Network Services Tariff as of March 6, 2007) will remain unaffected by the AFOR.
- 4) Qwest will continue to file:
- a) annual reports of affiliated interest transactions,
  - b) cash transfer filings (subject to Exception 6 below)
  - c) transfer of property transactions
    - i) greater than five percent of its rate base or
    - ii) involving the sale of one or more entire exchanges, or
    - iii) involving the merger or acquisition of Qwest Corporation.
  - d) Access charge and universal service reporting per WAC 480-120-399
- 5) Qwest agrees that it will abide by RCW 80.08.030 regarding the use of funds.
- 6) Qwest agrees to bound by the parts of WAC 480-120-369 and WAC 480-120-395 that are currently being challenged in the Court of Appeals of the State of Washington Division II pending a final decision on that appeal (either by that court or by the Supreme Court should either party pursue the action further). If



the decision is in Qwest's favor the rules will not apply to Qwest. If the decision is in the Commission's favor, Qwest agrees to be bound by the rules.

- 7) Qwest agrees to be bound by the provisions of RCW 80.36.330(3), and the Commission's implementing regulations, in connection with below-cost pricing.

***Transition Period Requirements:***

The following requirements will apply during a 4 year transition period:

- 1) The stand-alone residential exchange service recurring rate is capped at \$13.50 during the transition period. Qwest may increase the rate by \$1.00 any time during the transition period if it agrees to maintain and augment the Customer Service Guarantee Programs as described in **Appendix C**.
- 2) Notwithstanding that Qwest's digital business services, analog private line services, and residential exchange service features and packages will be treated as competitively classified services in accordance with #1 above (Provisions), Qwest agrees not to geographically de-average the non-recurring and monthly recurring rates for these services. This provision does not modify or restrict Qwest's ability to enter into individual contracts for service that specify rates other than state-wide average rates.
- 3) Qwest will keep its books of accounts in accordance with WAC 480-120-355. The accounting method that Qwest commits to use is the same accounting method that it uses to maintain its books for FCC reporting purposes (MR Books). When, in accordance with 47 CFR 32.16, Qwest informs the FCC of its intention to follow a new accounting standard Qwest shall also file notice of intent with the Commission. Qwest will provide available information concerning the new accounting standard as requested by Staff. If the FCC does not accept the new accounting standard, it shall be deemed unacceptable to the Commission. If the FCC accepts the new accounting standard then it shall be deemed acceptable to the Commission unless Staff opens a docket to investigate adoption of the new accounting standard within 30 days of its acceptance by the FCC or 120 days of Qwest's filing of its notice of intent, whichever is later. If the FCC changes accounting methods used in 47 CFR Part 32, Staff may open a docket to investigate the changes to determine whether such methods are acceptable to the Commission.

- 4) Unlike competitively classified companies, which file an annual report in accordance with [WAC 480-120-382](#), Qwest shall continue to file an annual report in accordance [WAC 480-120-385\(1\)](#).
- 5) Qwest shall file an annual report of Washington intrastate regulated results of operations. The report shall be based on Qwest's MR Books and shall include the following adjustments:
  - a) a directory revenue credit in the amount specified by the settlement agreement the Commission approved in the Dex case;
  - b) a credit to its depreciation reserve required for prior sale of rural exchanges;
  - c) a credit to its depreciation reserve for sharing under a prior AFOR; and
  - d) a standing adjustment reflecting the difference in rate base between its MR Books and its Washington Jurisdictional Books of Account (JR Books) on the date of transition from JR books to MR Books.
- 6) Also, in addition to the four adjustments listed above, Qwest shall maintain the capability of calculating the following Commission Basis Adjustments that it included in its quarterly financial reports to the Commission for 2006:
  - a) Pension Asset
  - b) Post-Retirement Benefits
  - c) Disallowed Plant
  - d) Interest Synchronizations
  - e) End-of-Period Deferred Income Tax

**APPENDIX A**

<b>Statute or rule to be waived</b>	<b>Disposition of Waiver</b>	<b>Conditions</b>
<b>Securities</b>		
<a href="#">RCW 80.08</a> Securities	Grant	Will comply with RCW 80.08.030 regarding the use of funds
<a href="#">WAC 480-120-365</a> Securities Filings	Grant	
<a href="#">WAC 480-120-389</a> Securities Report	Grant	
<b>Transfers of Property</b>		
<a href="#">RCW 80.12.010</a> Definition	Deny	
<a href="#">RCW 80.12.020</a> Order required to sell, merge, etc.	Grant in part	\$78 million floor or merger or acquisition involving QC, or sale of exchange(s)
<a href="#">RCW 80.12.030</a> Disposal without authorization void.	Grant in part	Same as .020
<a href="#">RCW 80.12.040</a> Authority required to acquire property or securities of utility.	Grant in part	Same as .020
RCW 80.12.045 Small local exchange company -- Chapter does not apply.	Not applicable	
RCW 80.12.050 Rules and regulations.	Deny	
RCW 80.12.060 Penalty.	Deny	
<a href="#">WAC 480-120-379</a> Transfers of property	Grant in part	Same as .020
WAC 480-143-100 Application of rules.	Deny	
WAC 480-143-110 Filing.	Deny	
<a href="#">WAC 480-143-120</a> Transfers of property.	Grant in part	Same as .020
<a href="#">WAC 480-143-130</a> Purchase of property.	Grant in part	Same as .020
WAC 480-143-140 General contents.	Deny	
WAC 480-143-150 Statement required for nonpublic service company purchases.	Deny	
WAC 480-143-160 Public hearing.	Deny	
WAC 480-143-170 Application in the public interest.	Deny	
<a href="#">WAC 480-143-180</a> Disposal and determination of necessary or useful property.	Grant in part	Same as .020

WAC 480-143-190 Annual filing of property transferred without authorization.	Grant	
WAC 480-143-200 Certain telephone leases are exempt.	Deny	
WAC 480-143-210 Transfer customer notice requirements.	Deny	
<b>Affiliated Interests</b>		
RCW 80.16.010 Definitions.	Deny	
RCW 80.16.020 Dealings with affiliated interests -- Prior filing with commission required -- Commission may disapprove.	Grant	
RCW 80.16.030 Payments to affiliated interest disallowed if not reasonable.	Deny	
RCW 80.16.040 Satisfactory proof, what constitutes.	Deny	
RCW 80.16.050 Commission's control is continuing.	Deny	
RCW 80.16.055 Small local exchange company -- Chapter does not apply.	Deny	
RCW 80.16.060 Summary order on no approved payments.	Deny	
RCW 80.16.070 Summary order on payments after disallowance.	Deny	
RCW 80.16.080 Court action to enforce orders.	Deny	
RCW 80.16.090 Review of orders.	Deny	
WAC 480-120-375 - Affiliated interests — Contracts or arrangements.	Grant	
WAC 480-120-395 - Affiliated interest and subsidiary transactions report. (Parts 1-3)	Deny	
WAC 480-120-395 - Affiliated interest and subsidiary transactions report. (Part 4)	Grant	
<b>Cash Transfers</b>		
WAC 480-120-369 - Transferring cash or assuming obligations.	Subject to court decision	

<b>Accounting</b>		
<a href="#">WAC 480-120-359</a> (1)(a)	Grant in part	Use FCC Part 32 subject to advance Commission review and investigation
<a href="#">WAC 480-120-359</a> (2)(b)	Grant	Maintain certain adjustments, calculate all for transition report and if requested
<b>Reporting</b>		
<a href="#">WAC 480-120-385</a> (1)	Grant	Continue filing results of operations report with certain regulatory adjustments
WAC 480-120-385(2)	Grant	
<b>Service Quality</b>		
WAC 480-120-439 Service quality performance reports	Deny	
<b>Customer Service Guarantee Program</b>		
17 <sup>th</sup> Supplemental Order in UT-991358 Order Directing Qwest to File Customer Service Guarantee Reports	Grant in part	Report semi-annually in lieu of Monthly
<b>Miscellaneous Waivers</b>		
RCW 80.04.300 Budgets to be filed by companies - - Supplementary budgets	Grant	
RCW 80.04.310 Commission's control over expenditures	Grant	
RCW 80.04.320 Budget rules		
RCW 80.04.330 Effect of unauthorized expenditure -- Emergencies	Grant	
RCW 80.04.360 Earnings in excess of reasonable rate -- Consideration in fixing rates	Grant	
RCW 80.04.460 Investigation of accidents	Grant	
RCW 80.04.520 Approval of lease of utility facilities	Grant	

<a href="#">RCW 80.36.100</a> Tariff schedules to be filed and open to public	Grant in part	Tariffs for excepted services unchanged.
<a href="#">RCW 80.36.110</a> Tariff changes -- Statutory notice -- Exception	Grant in part	Tariffs for excepted services unchanged.
<a href="#">WAC 480-80-101</a> Tariff requirements through WAC 480-80-143 Special contracts for gas, electric, and water companies	Grant in part	Tariffs for excepted services unchanged.
Chapter 480-140 WAC Commission general -- Budgets	Grant	
WAC 480-120-102 Service offered	Grant	
WAC 480-120-339 Streamlined filing requirements for Class B telecommunications company rate increases	Not applicable	
WAC 480-120-399 Access charge and universal service reporting	Deny	
WAC 480-120-344 Expenditures for political or legislative activities	Grant	
WAC 480-120-352 Washington Exchange Carrier Association (WECA)	Not applicable	

## APPENDIX B – FINANCIAL REPORTING

Six months before the fourth anniversary of the AFOR, Qwest will file with the Commission:

1. Confidential copies of the Annual Results of Operations reports for each completed calendar year of the AFOR transition period.
2. A copy of the most recent calendar year annual Results of Operations report adjusted with five Commission Basis Adjustments for which Qwest agreed to maintain the capability to calculate, along with supporting calculations and workpapers. The five Commission Basis Adjustments are:

Pension Asset,  
Post-Retirement Benefits,  
Disallowed Plant,  
Interest Synchronization and  
End-of-Period Deferred Income Tax.

3. During the term of the AFOR, additional information may be needed to properly assess the effect of changes in accounting requirements, law, or policy on Qwest's financial performance. Nothing in this agreement limits Commission authority to request information pertinent to the analysis of Qwest's financial performance.

### APPENDIX C – Customer Service Guarantee Program

Qwest agrees to augment its Customer Service Guarantee Program Tariff (WN U-40, Section 2.2.2) with the following provisions:

1. Delayed Primary Basic Exchange Alternative<sup>126</sup>

Primary basic exchange service is defined as the first residential line or first two business lines at a given location (address). If the Company is unable to provide primary basic exchange service (service) within five business days of the due date, and the reason for the delay is caused by the Company, the Company will:

- Credit the monthly recurring charge,
- Credit the nonrecurring charge,
- Assign a telephone number,
- Provide a directory listing and,
- Remote call forwarding and,
- Voice messaging service.

2. Out-of-Service Trouble Condition Credit<sup>127</sup>

- a. Customers who have an out-of-service condition (no dial tone) on their lines that is not cleared within two working days (excluding Sundays and holidays) will receive a credit of \$5.00.
- b. If the out-of service condition exceeds seven calendar days, the customer will receive a credit equal to their monthly local exchange service rate, including any associated regulated features for the month in which the outage occurred.
- c. These credits do not apply if the out-of service condition or the Company's inability to clear the condition is due to:
  - emergency situations,
  - unavoidable catastrophes,
  - force majeure,
  - work stoppage,
  - inside wiring,
  - customer premises equipment.

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<sup>126</sup> This provision is the same as the current tariff provision with the addition of the credit for the monthly recurring charge.

<sup>127</sup> This provision will replace Section 2.2.2 B. 3., Allowance for Service Interruptions, in Qwest Tariff WN U-40 in its entirety.



- d. All other reported service interruptions (i.e. noise on line, intermittent static, etc.) will be restored within 72 hours. Sundays and legal holidays are excluded from the 48 hour and 72 hour periods.

**3. Trouble Report Rate Credit**

- a. In the event the Company has an exchange with a trouble report rate greater than 4.0 per one hundred access lines, for two consecutive months or four months out of a twelve month period, the customers served by that exchange will receive a credit of \$0.25 per line. The credit will not exceed \$0.25 in any month.
- b. The credits do not apply to trouble reports:
  - Related to customer premises equipment,
  - Extraordinary or abnormal conditions of operation, such as those resulting from emergency or catastrophe,
  - Disruptions of service caused by persons or entities other than the Company

**GLOSSARY**

TERM	DESCRIPTION
AFOR	Alternative Form of Regulation authorized by RCW.80.36.135.
Act	The Telecommunications Act of 1996. 47 U.S.C. Section 101, <i>et. seq.</i>
CLEC	Competitive local exchange company. Not an ILEC, and generally subject to very limited regulation.
Commercial Agreement	An agreement between telecommunications carriers for services, terms, and conditions not subject to Section 251 of the Act. Use of which has increased since D.C. Circuit's <i>USTA II</i> decision.
CSGP	Customer Service Guarantee Program.
DA	Directory Assistance.
DSL	Digital Subscriber Line – A feature that allows existing telephone circuits to carry additional signals including relatively high bandwidth. These frequencies enable a customer to access the internet or send and receive information or data.
FCC	Federal Communications Commission.
HHI	Herfindahl-Hirschman Index, a commonly accepted measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers.
ILEC	Incumbent local exchange company; a company in operation at the time the Act was enacted (August 1996).
Interconnection	Connection between facilities or equipment of a telecommunications carrier with a local exchange carrier's network under Section 251(c)(2).
LATA	Local Access and Transport Area means a contiguous geographic area.
MSA	Metropolitan Service Area.
QPAP	Qwest Performance Assurance Plan . A plan governing wholesale service quality.
SQIP	Service Quality Incentive Plan.
SQPP	Service Quality Performance Plan.
VOIP	Voice over Internet Protocol.
WTAP	Washington Telephone Assistance Program.