

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Qwest’s Petition to be Regulated Under an Alternative Form of Regulation Pursuant to RCW 80.36.135

Docket No. UT-061625

QWEST’S SUBMITTAL REGARDING CARRIER-TO-CARRIER SERVICE QUALITY PROVISIONS IN THE AFOR

RCW 80.36.135(3) The plan 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.

THE AFOR’S CARRIER-TO CARRIER SERVICE QUALITY PLAN

- 1 The modified AFOR, as set forth in the Settlement Agreement, meets the statutory requirement that the AFOR contain a proposal for ensuring adequate carrier-to-carrier service quality. That proposal is the simple statement that the AFOR *does not, in any way* affect existing carrier-to-carrier service quality requirements.

- 2 The AFOR does not affect existing service quality standards or performance measures for interconnection. Nor does it affect or negate any existing enforcement or remedial provisions in the event Qwest fails to meet service quality standards or performance measures. In other words, wholesale customers receive the same benefits and protections under the AFOR as they would under traditional regulation, and whatever protections are afforded them by virtue of their interconnection agreements (“ICAs”), Commission rules, or FCC requirements, continue under the AFOR unless and until changed by negotiation

or by the appropriate regulatory body. This is consistent with the Commission's observation in footnote 116 – Qwest believes that the settling parties that took a position on the AFOR thought existing carrier-to-carrier service quality requirements to be sufficient.

3 Without arguing the merits of whether the AFOR's original proposal is sufficient under the statute, and in order to respond to the Commission's directive and expedite the implementation of the AFOR, Qwest hereby identifies those requirements and explains how they ensure adequate service quality.¹

4 The following wholesale service quality requirements currently exist in Washington. The AFOR does not modify those requirements. It also does not limit the ability of the Commission, the parties, or other appropriate regulatory bodies to change these requirements during the term of the AFOR, to the extent that ability otherwise exists. Inadvertent omission of any existing service quality requirements in the following recitation should not be interpreted to mean that they do not exist or otherwise do not apply by operation of the AFOR.

5 **The Qwest Performance Assurance Plan ("QPAP").** The QPAP is a major component of the existing carrier-to-carrier service quality requirements. The QPAP (Exhibit K to Qwest's SGAT and to the ICAs of numerous CLECs, along with the Performance Indicator Definitions ("PIDs") in Exhibit B to the SGAT and ICAs), contains numerous service quality measures. Qwest is required to make payments to CLECs and the Commission for failure to provide service quality in parity to what Qwest provides its

¹ Order No. 06, ¶ 110, fn. 116. Footnote also references Qwest's commercial agreements that it has previously filed in various dockets and expresses the Commission's concern that such agreements reduce remedial service quality from that in the QPAP. However, differences between service quality provisions in the commercial agreements and the QPAP are legitimately related to the change in the federal regulation of the underlying service from that of an essential element or service (or an unbundled network element, or "UNE") to that of a competitive service. For competitive services, Qwest is free to negotiate the terms and conditions of the product, including service quality provisions. This in no way effects the operation of the QPAP on services that are subject to its provisions.

own retail customers, and in some cases as measured against benchmarks. The QPAP contains specific measures and self-executing remedies with regard to unbundled network elements, unbundled network element combinations (i.e., EEL), resale and interconnection, including measures addressing provisioning and repair intervals and service quality.

6 The QPAP was originally approved by the Commission in connection with Qwest's section 271 application for interLATA relief as an appropriate anti-backsliding mechanism. The Commission engaged in an extensive review process before approving the QPAP, and in fact after the initial review the Commission entered an order requiring 27 separate modifications to the QPAP as conditions of Commission approval.²

7 Based on the extensive review and analysis in that docket, and after nearly four years of operational history under the QPAP, it does not now seem open to reasonable debate whether the QPAP is a mechanism that ensures adequate carrier-to-carrier service quality. Indeed, the Commission issued a number of orders, subsequent to the Thirtieth Supplemental Order, addressing the QPAP. The Thirty-third Supplemental Order granted in part and denied in part Qwest's petition for reconsideration of the Thirtieth Supplemental Order. The 37th Supplemental Order identified areas of non-compliance in Qwest's resubmitted QPAP, and ordered refiling. In the 38th Supplemental Order, the Commission clarified two of the compliance requirements. In the 39th Supplemental Order, the Commission found that Qwest had complied with the 37th Supplemental Order and that "Qwest has developed an adequate performance assurance plan to protect local competition once the company enters the long-distance business. . . ."

² See, Docket Nos. UT-003022 and UT-003040, Thirtieth Supplemental Order, Commission Order Addressing Qwest's Performance Assurance Plan, April 2002. The Commission noted at paragraph 209 that it has "independent authority to review Qwest's overall service quality. The Commission will not relinquish its authority over service quality, nor is it required to do so in approving the QPAP."

8 The QPAP has been modified by Commission Order on several occasions, and further modifications are currently pending in Docket No. UT-073034.

9 The QPAP ensures adequate service quality in much the same way that the CSGP does on the retail side – it provides monetary incentive to Qwest to provide good service, and it compensates customers who are impacted when service falls below a certain standard. There are a significant number of requirements in the QPAP to ensure good service, and there are a significant number of metrics upon which service is measured. And even though Qwest has significantly fewer wholesale customers and revenues than it does retail, Qwest has more monetary risk under the QPAP than it does under the CSGP. Any carrier who has an ICA which contains the QPAP has enforcement rights in accordance with that ICA, and may proceed under the Commission’s rule regarding enforcement (WAC 480-07-650), the operation and effectiveness of which is not affected by the AFOR. The current QPAP and PIDs are attached hereto as Attachment 1. Qwest’s QPAP filings with the Commission for 2007 are attached hereto as Attachment 2 – those documents show that Qwest has paid \$279,766 in CLEC and other payments related to wholesale performance for the [7] months shown, a sum greater than Qwest paid under its retail repair and provisioning metrics during all of 2006.³

10 **Service Quality for Tariffed Services – Switched Access and Payphones.** Certain wholesale services will remain in the tariff for the term of the AFOR, including switched access and public access lines. The fact that these wholesale services remain tariffed ensures service quality because they are subject to the terms and conditions in the tariff, as well as Commission oversight on pricing. The tariffs contain detailed terms and conditions regarding pricing, provisioning and other elements that ensure service quality.

³ Approximately \$160,000. Exhibit 62 – Qwest response to Public Counsel Data Request 91.

- 11 **Provision 3 of the Settlement AFOR.** There are certain wholesale services that are not tariffed because they have previously been found to be competitive by the Commission. Those services, particularly DS1 and DS3 services, were previously moved from the tariff to the price list, and then to the catalog when price lists were eliminated. There are no current complaints pending regarding service quality in connection with those services, nor was evidence introduced at the hearings in this matter to suggest that there are service quality issues with these services. Nevertheless, the Settlement AFOR contains an additional provision, specifically compliant with RCW 80.36.135(3), that ensures adequate service quality for those services.
- 12 Provision 3 of the Settlement AFOR states that: 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.
- 13 What this provision means is that the Commission could, after an appropriate proceeding, revoke the competitive classification and that those services would then be subject to regulation, up to and including tariffing requirements if that were determined to be appropriate. Regulation under tariff, and regulation of pricing, ensures service quality for non-competitive services. So long as the services are competitively classified they are subject to the Commission's prior findings that they are subject to effective competition, and effective competition in a market ensures service quality. Although the Commission distinguished between wholesale and retail markets in Order No. 06, the Commission correctly observed in paragraph 98 (discussing retail services) that "the presence of

competition provides an incentive for Qwest to provide service quality as good as or better than competitors” and at paragraph 100 that “competition requires Qwest to keep retail service quality at acceptable levels.” This is also true for these DS1 and DS3 services, which are offered to both wholesale and retail customers, and which are subject to effective competition.

- 14 **Wholesale Service Quality as Addressed in Commission Rules.** Other Commission rules that impact service quality and that benefit wholesale customers are not affected by the AFOR. For example, the provisions of WAC 480-120-401, - 402, and -411 (Network performance standards, Safety, and Network maintenance) all operate to ensure good service quality for both wholesale and retail customers, and are unaffected by the AFOR, nor does the AFOR modify the collocation requirements in WAC 480-120-560.

Respectfully Submitted,

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QWEST

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