BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of	)	
	)	DOCKET UT-061625
QWEST CORPORATION,	)	
	)	JOINT CLEC COMMENTS ON
For an Alternative Form of Regulation	)	QWEST CARRIER-TO-CARRIER
Pursuant to RCW 80.36.135	)	SERVICE QUALITY PLAN
	)	SUBMITTAL
. . . . .	)	

Pursuant to the Commission's Order 06 in this proceeding, Covad Communications Company, Integra Telecom of Washington, Inc., Time Warner Telecom of Washington, LLC, and XO Communications Services, Inc. (collectively "Joint CLECs") provide the following comments on the Submittal of Qwest Corporation ("Qwest") regarding carrier-to-carrier service quality provisions in the alternative form of regulation ("AFOR").

1. The Commission observes in Order 06 that an AFOR "must contain a proposal for ensuring adequate carrier-to-carrier service quality." RCW 80.36.135(3). Qwest contends that it has provided such a proposal in the form of "the simple statement that the AFOR *does not, in any way* affect existing carrier-to-carrier service quality requirements." Qwest Submittal at 1 (emphasis in original). Qwest misses the point. The issue is not whether the AFOR affects carrier-to-carrier service quality standards and performance measures but whether sufficient standards and measures will be in place during the term of the AFOR to ensure that the market, rather than full Commission regulation, will provide consumers with telecommunications services at fair, just, and

reasonable rates, terms, and conditions. Qwest's statement does not meet this requirement.

2. The Joint CLECs are signatories to the Settlement Agreement, and they continue to support Commission approval of that agreement. The Commission in Order 06 accepted that agreement. The Commission, however, accurately observes that the Settlement Agreement does not address the issue of carrier-to-carrier service quality, and the Commission has required Qwest to file an acceptable plan. In response to the Commission order, to events that have occurred after the Joint CLECs executed that agreement, and to Qwest's Submittal, the Joint CLECs observe that the service quality standards and performance measures and remedies that are currently in place are not, or will not be, sufficient to ensure adequate carrier-to-carrier service quality during the life of the AFOR as the Commission has required in Order 06.

3. The Qwest Performance Assurance Plan ("QPAP") is effectively the only existing carrier-to-carrier service quality plan for the vast majority of services and facilities that competitors obtain from Qwest to be able to provide alternatives to Qwest retail services. The Joint CLECs do not dispute that the QPAP, as approved by the Commission, generally provides a strong incentive for Qwest to provide adequate carrier-to-carrier service quality. Several factors, however, will, or threaten to, erode or eliminate the effectiveness of the QPAP.

4. First, Qwest has petitioned the Federal Communications Commission ("FCC") to forbear from enforcing Qwest's obligations to provide unbundled network elements

("UNEs") in the greater Seattle metropolitan area.[1] The QPAP, by its terms, applies only to UNEs, interconnection, collocation, and resale under interconnection agreements. Indeed, Qwest in its "commercial agreements" for services that are intended to replace UNEs that are no longer available excludes those services from the QPAP.[2] If UNEs are no longer available in Seattle, the QPAP would be almost meaningless. Qwest's petition, moreover, also seeks deregulation of Qwest's federal special access services, the other services on which facilities-based providers like the Joint CLECs depend for transport and the "last mile" connectivity to customer locations required to provide competing local service. Qwest already has competitive classification for its intrastate private line services. Thus there could be virtually **no** carrier-to-carrier service quality standards and performance measures and remedies in the greater Seattle metropolitan area for most of the term of the AFOR if the FCC grants Qwest's petition.

5. Second, Section 16.3 of the QPAP provides that it expires six years from its effective date, which the Commission has determined was December 23, 2002.[3] The QPAP thus will expire on December 23, 2008, again less than 18 months into the four year term of the AFOR. The QPAP does provide that certain submeasures and payments will continue beyond six years, but Section 16.3 also requires, "Five and one-half years after the QPAP's effective date, a review shall be conducted with the objective of

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[1] *In re Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160(c) in the Seattle, Washington Metropolitan Statistical Area*, WC Docket No. 07-97.

[2] *See, e.g.*, Docket Nos. UT-063076, UT-073022, UT-073003, and UT-073019 (requests for approval of Qwest Local Services Platform Agreements discussed at the Commission's open public meeting on May 23, 2007, with respect to the issue of exclusion from the QPAP of services substituting for the UNE-Platform provided under "commercial agreements").

[3] *See In re Six-Month Review of QPAP*, Docket No. UT-033020, Request for Comments on Process for Commission's Six-Month Review of QPAP (May 15, 2003).

phasing-out the QPAP entirely." The QPAP, therefore, may no longer exist – or may be substantially altered – long before the end of the AFOR term.

6. Finally, Qwest views the QPAP as part of a "voluntary" agreement with CLECs that is subject to revision even after it has been included in a Commission-approved interconnection agreement. Qwest recently filed with the Commission in Docket No. UT-073034 a stipulation with certain CLECs that substantially changes the performance measures and remedies in the QPAP. Qwest proposes to make these changes applicable to all CLECs – including CLECs that have already incorporated the prior version of the QPAP in their interconnection agreements. Indeed, Qwest no longer maintains a statement of generally available terms ("SGAT") – to which the QPAP was an exhibit – with the Commission and apparently has already made these changes unilaterally to the QPAP that Qwest makes available to carriers who seek new interconnection agreements with Qwest, without Commission review or approval.

7. The QPAP, if any, that exists four years from now will likely bear little resemblance to the QPAP that was in place when the Settlement Agreement was presented to the Commission. Accordingly, Qwest cannot rely on the QPAP, without more, to demonstrate compliance with Order 06.

8. The Commission, therefore, should permit Qwest to rely on the QPAP to comply with the Commission's order only if Qwest agrees to the following: (1) the QPAP in place at the time the Settlement Agreement was presented to the Commission will remain in place during the entire term of the AFOR unless and until it has been modified by the Commission; and (2) if the FCC grants Qwest's current Seattle forbearance petition or otherwise relieves Qwest of its unbundling obligations under sections 251(c) and 271 of

the federal Telecommunications Act of 1996 in any part of the state of Washington, the QPAP will apply to all services Qwest provides to other carriers as a substitute for UNEs, regardless of whether those services are provided by tariff, commercial agreement, or other means.

DATED this 14th day of August, 2007.

DAVIS WRIGHT TREMAINE LLP
Attorneys for Covad Communications Company, Integra Telecom of Washington, Inc., Time Warner Telecom of Washington, LLC, and XO Communications Services, Inc.

By _____
Gregory J. Kopta
WSBA No. 20519