

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of  
  
QWEST CORPORATION  
  
for an Alternative Form of Regulation  
Pursuant to RCW 80.36.135.

DOCKET NO. UT-061625  
  
COMMISSION STAFF  
COMMENTS ON QWEST  
CARRIER-TO-CARRIER SERVICE  
QUALITY PLAN SUBMITTAL

1           The Commission's staff (Staff) submits the following comments on Qwest's carrier-to-carrier service quality plan, filed July 31, 2007, in response to paragraph 141 of the Commission's Order 06. Staff is a signatory to the Settlement Agreement and continues to support that agreement. Staff recommends that the QPAP not be permitted to expire entirely during the term of the AFOR. Staff also seeks clarification of the question whether a plan for ensuring adequate carrier-to-carrier service quality must apply the same or similar standards to commercial agreements and interconnection agreements.

**Policy**

2           AFOR is a powerful and flexible tool at the disposal of the Commission to modify or evolve the regulation of telecommunications, but it depends on consent. It is neither an instrument of traditional regulation, nor a path to deregulation. AFOR lacks the history and economic assurance of competitive classification; it also lacks the sweeping breadth of legislation. The settlement's plan for AFOR offers an incremental approach, a limited time

frame, company-specific provisions and substantial flexibility in preserving the public interest.

### **Settlement and Order**

3           Order 06 states that the Commission accepted the parties' Settlement Agreement and approved the modified AFOR, provided that certain conditions are met. In particular, the Commission required Qwest, within 30 days of the Order, to file "an acceptable carrier-to-carrier service quality plan meeting the requirements of RCW 80.36.135(3)." *Order 06*, ¶¶ 122, 141. Qwest has filed a plan for Commission consideration. It includes: (1) the current Qwest Performance Assurance Plan (QPAP); (2) Retail service quality rules that will apply to services that remain tariffed under the AFOR; (3) Provision 3 of the Settlement AFOR, under which the Commission could revoke the competitive classification of some Qwest wholesale services; and (4) Commission rules for network performance, safety, and network maintenance that impact service quality and can benefit wholesale and retail customers, as well as the Commission's collocation rules. More specifically, Qwest's submittal identifies existing requirements and explains how they "ensure" adequate service quality. Staff agrees that these service quality requirements are all in place today, and they are not altered or affected in any way by the settlement's plan for AFOR. Staff continues to support the settlement as proposed, and agrees that these requirements meet the statutory mandate of RCW 80.36.135(3) that the AFOR contains a proposal to ensure adequate carrier-to-carrier service quality.

4           By placing carrier-to-carrier service quality requirements in the Exceptions section of the modified AFOR, the Settlement Agreement effectively places no limitation on the

Commission's authority under federal or state law or rule to adjust or modify the specific service quality requirements in the future. Staff agrees with Qwest's observation that the AFOR does not, and should not, limit the ability of the Commission or of other parties (presumably through mutual negotiation) to change these requirements to the extent that ability otherwise exists. See *Qwest's Submittal Regarding Carrier-to-Carrier Service Quality Provisions in the AFOR ("Qwest's Submittal")*, at ¶ 4. At the end of four years, the Commission will have the opportunity to consider service quality in testing the success of the AFOR and deciding whether and how to continue the program.<sup>1</sup>

#### **Carrier-to-Carrier Service Quality**

5           During the term of the AFOR, the Commission has authority to address service quality issues. As Qwest points out, and Staff agrees, the Commission noted in Docket Nos. UT-003022 and UT-003040, Thirtieth Supplemental Order, *Commission Order Addressing Qwest's Performance Assurance Plan* (April 2002) at ¶ 109, 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." *Qwest's Submittal* at ¶ 6, n. 2 (citation corrected). Likewise, the Commission does not relinquish any of its authority by accepting the AFOR; if the Commission concludes that the settlement as supplemented by Qwest in its submittal meets the statutory requirement, it can still act to augment the state's requirements for carrier-to-carrier service quality through the QPAP review process or through adoption of rules. The Commission took this approach in 2000, when it adopted collocation rules codified as WAC 480-120-560.

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<sup>1</sup> See Testimony of Reynolds and Saunders, transcript volume 4 pp. 285-286

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Qwest, however, also states that the AFOR does not limit the ability of “other appropriate regulatory bodies” to change existing service quality requirements during the term of the AFOR. *Id.* at ¶ 4. Qwest presumably is referring here to the FCC, which has exercised its authority in recent years to significantly change federal regulations concerning carrier-to-carrier relations, and which is currently reviewing Qwest’s petition for forbearance in the Seattle Metropolitan Service Area.

### **Bench Requests 9 and 11**

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The Commission’s Bench Request No. 9 asked whether Qwest’s pending forbearance petition, if granted, would affect Qwest’s obligations under the AFOR. Bench request No. 11 concerned Qwest’s petition for forbearance in Omaha. The two requests are closely related. Staff and Qwest responded that forbearance should not affect Qwest’s AFOR obligations, including any conditions hypothetically imposed and accepted. Order 06 offered the parties opportunity to revise or update their responses or comments in connection with the filing of the carrier-to-carrier service quality plan. Qwest’s submittal did not revise its responses to bench requests, but rather focuses entirely on the carrier-to-carrier service quality provisions of the existing system of regulation. Staff, likewise, sees no need to revise its bench request responses.

### **QPAP Duration**

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The Commission has authority independent of any plan for AFOR to impose service quality and anti-backsliding regulations such as the QPAP on carriers. The QPAP proper will expire in December 2008, six years after its adoption and two years before the end of

the AFOR. However, it includes language that provides for certain provisions—identified in Attachment 3 to the QPAP—to continue beyond the expiration of the plan as a whole.

9 QPAP section 16.3 states: “this QPAP will expire six years from its effective date. Only the submeasures identified in Attachment 3 and payments will continue beyond six years and these submeasures and payments will continue until the Commission orders otherwise.” Attachment 3 includes a number of performance metrics for interconnection, and as Qwest points out in its submittal, operation of the Commission’s rule on enforcement of interconnection agreements is not affected by the AFOR.

10 Staff recommends that the QPAP not be permitted to expire entirely during the term of the AFOR. This could be achieved regardless of the outcome of the AFOR proceeding by using the QPAP as a basis for state service quality rules, by explicitly continuing the provisions of the QPAP, or through the review and modification process.

### **QPAP Applicability**

11 In separate proceedings before the Commission,<sup>2</sup> Staff has noted that relations between Qwest and other carriers are governed not only by interconnection agreements but also or alternatively by commercial agreements such as the Qwest Local Service Platform Agreement. These commercial agreements typically apply to single or multiple network elements that Qwest is no longer required to provide to competing carriers under 47 U.S.C. § 251. Relying on the Settlement AFOR’s exception regarding carrier-to-carrier obligations, Staff has advocated for Commission action in those dockets and expressed concern at the paucity of service quality measures in these contracts.

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<sup>2</sup> See, e.g. Docket Nos. UT-063076, UT-063086, UT-063087, UT-073002, UT-073003, and UT-073019, cited in Order 06 at page 32 footnote 116.

12           The Commission noted in Order 06 at page 32, footnote 116 that it “find[s] 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.”

13           Staff seeks clarification of the question whether a plan for ensuring adequate carrier-to-carrier service quality under the AFOR must apply the same or similar standards to commercial agreements and interconnection agreements.

14           If Qwest were to agree to include commercial agreements in the QPAP as part of an AFOR, Staff and the Commission would have substantially more information regarding carrier-to-carrier service quality, and Qwest would have substantially greater incentive to maintain its service quality overall.

#### **Conclusion**

15           If the Commission concludes that the proposal submitted by Qwest does not provide sufficient assurance of adequate carrier-to-carrier service quality, Qwest could with guidance still file an augmented plan and cure the deficiency. If Qwest proposed enhanced voluntary service quality provisions such as extending the duration of the QPAP or applying the QPAP to commercial agreements, then those provisions could become part of the AFOR and remain in place, even if the FCC grants Qwest’s petition for forbearance.


16           If the Commission concludes that the settlement as augmented by Qwest’s service quality proposal meets the statutory requirements, the Commission can still act in a separate docket to adopt rules to fully address wholesale service quality, standards, and reporting requirements that would apply to all carriers, including Qwest. The Commission could

likewise use the QPAP review and ROC processes to extend the QPAP or modify its provisions.

DATED this 14<sup>th</sup> day of August, 2007.

Respectfully submitted,

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