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 REPLY TO THE COMMENTS OF THE JOINT CLECS AND COMMISSION STAFF REGARDING CARRIER TO CARRIER SERVICE QUALITY

I. INTRODUCTION

1 Pursuant to the Commission's Order 06 in this proceeding, Joint CLECs[1] and Commission Staff submitted Comments on Qwest Corporation's ("Qwest") filing regarding carrier-to-carrier service quality provisions in the alternative form of regulation ("AFOR"). Qwest files this reply (and an accompanying Motion for Leave to File a Reply under WAC 480-07-370) in order to address new issues and recommendations raised by the Comments. Qwest asks the Commission to accept its plan for an AFOR, as supplemented and clarified by Qwest's July 31, 2007 filing regarding carrier to carrier service quality, as consistent with the statutory requirements for an AFOR.

2 The Joint CLECs are signatories to a Settlement Agreement which resolved the disputed issues

[1] Covad Communications Company, Integra Telecom of Washington, Inc., Time Warner Telecom of Washington, LLC, and XO Communications Services, Inc.

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between the parties in this docket. The Joint CLECs claim they still support the Settlement and ask the Commission to approve it. But they depart from the letter and spirit of the agreement by asking the Commission to place additional conditions upon the approval of the AFOR. The Joint CLECs recommend that the Commission "lock in" the terms of the QPAP as filed for the duration of the AFOR, and further that the Commission require Qwest to extend the QPAP to all services offered to CLECs regardless of whether they are offered under tariff, commercial agreement, or otherwise.

3 The conditions the Joint CLECS recommend are, at worst, unlawful. At best they constitute additional conditions upon the AFOR, in breach of the Settlement Agreement which stipulates that the Joint CLECs do not oppose Qwest's AFOR proposal, and that they will support adoption of the Settlement Agreement. Joint CLECs are now taking a position in opposition to the AFOR proposal by recommending that significant additional conditions be placed on the plan. Joint CLECs' claim that events that occurred after the signing of the Settlement (Comments at ¶ 2 and ¶ 4) justify additional conditions is unavailing. Qwest made no commitments in the AFOR with regard to forbearance, and nothing in the AFOR limits the Commission's regulatory authority over wholesale services.

4 Commission Staff, on the other hand, has honored its commitment in the Settlement Agreement. Staff states at ¶ 3 of its Comments that "Staff agrees that these service quality requirements [as identified in Qwest's submittal] 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." However, Staff goes on to make some recommendations in connection with carrier to carrier service quality that Qwest believes are not well taken and which should not be imposed in this docket.

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II. DISCUSSION

A. Joint CLECs' Comments

5 The Joint CLECs claim to continue to support the Settlement Agreement, but they simultaneously recommend that the Commission add terms to the AFOR. Those positions are inconsistent. Qwest's plan for ensuring carrier to carrier service quality is completely consistent with the terms of the Settlement Agreement – terms the Joint CLECs represented satisfied their interests in this docket.

6 Joint CLECs now claim 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." Joint CLECs fail to support that claim – there is simply no factual basis in this record upon which to conclude that the standards and measures that are in place today are insufficient. Joint CLECs presented no witnesses and no evidence regarding existing carrier to carrier service quality standards. Any speculation as to whether those standards and measures will be sufficient in the future is just that – speculation – and the Commission should wait to see if additional wholesale provisions become necessary during the term of the AFOR before ordering such provisions. As previously noted, nothing in the AFOR limits the Commission's authority in any way in this regard.

7 Contrary to their statements that current carrier to carrier requirements are insufficient, the Joint CLECs affirmatively state that "the QPAP, as approved by the Commission, generally provides a strong incentive for Qwest to provide adequate carrier-to-carrier service quality." Comments at ¶ 3. This affirms that current standards and measures are adequate to ensure carrier to carrier service quality. The Joint CLECs then go on to claim that several factors, will, or threaten to, erode or eliminate the effectiveness of the QPAP. However, this

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speculation is not supported in the record and should not form the basis for any Commission decision.

8 Joint CLECs claim that Qwest's forbearance petition with the FCC[2] might result in certain services no longer being classified as UNEs and therefore no longer subject to the QPAP. Joint CLECs are correct, but this does not affect the AFOR. The QPAP applies only to services provided under Section 251 of the Act. The FCC is, and always has been, the sole arbiter of what services are provided under Section 251. If the FCC, through forbearance, the Triennial Review, or other appropriate process, determines that services are not required to be provided as UNEs, then state Commissions cannot order otherwise without violation of federal law. This Commission has correctly and properly recognized that on several occasions in arbitration proceedings, in dockets addressing commercial agreements, and most recently in the TRRO proceeding, Docket No. UT-053025.[3] The Commission simply does not exercise jurisdiction over commercial agreements between carriers.

9 Joint CLECs observe that Qwest already has competitive classification for its intrastate private line services. This is true. The Joint CLECs use that fact as a basis for raising the alarm that "there could be virtually **no** carrier-to-carrier service quality standards and performance measures and remedies" if the FCC grants Qwest's petition. . . ." Comments at ¶ 4. To the contrary, what this really points out is that the services over which this Commission has jurisdiction, intrastate private line, have been competitively classified for years and that there was no dispute in this docket about service quality, nor was there any claim in this docket that the provision of those services as competitive somehow failed to provide adequate carrier to

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[2] *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.

[3] *In the Matter of the Investigation Concerning the Status of Competition and Impact of the FCC's Triennial Review Remand Order on the Competitive Telecommunications Environment in Washington State*, Docket No. UT-053025, Order No. 07, ¶ 14 (February 9, 2007). "Therefore, we continue to find this Commission has no authority to require Qwest to include Section 271 elements when arbitrating interconnection agreements or entering into commercial agreements or to establish rates for their use."

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carrier service quality. Indeed, Qwest made a specific concession in the AFOR regarding these services in order to address the Joint CLECs's concerns. *See*, Provision 3 of the modified AFOR. Thus, Joint CLECs do not support their contention that additional conditions are warranted.

10 Joint CLECs also claim that because certain provisions of the QPAP expire in late 2008, the AFOR does not ensure adequate carrier to carrier service quality. It is difficult to understand how and why the Joint CLECs did not raise this issue in this proceeding, because nothing has changed regarding the expiration of the QPAP between the time Qwest filed the AFOR and the Commission entered Order No. 06. It is simply not true that the QPAP may no longer exist long before the end of the AFOR term, as the QPAP itself provides for continuation of certain measures. As to whether the QPAP may be substantially altered during the term of the AFOR – that could occur with or without the AFOR, and will be dependent on the Commission review that takes place at the five and a half year mark. Indeed, any docket in which Qwest or others propose any changes that impact other carriers will offer the Joint CLECs an opportunity to participate, just as they will in the upcoming PID/PAP issues in Docket No. UT-073034. Again, these dockets would occur in an identical manner even if there were no AFOR – the Joint CLECs are simply using this opportunity to waylay the AFOR proceeding and attempt to extract additional conditions that were not negotiated in the Settlement Agreement.

B. Staff Comments

11 As noted above, Staff concurs with Qwest that its submittal of a carrier to carrier service quality plan meets the requirements of the statute. However, Staff goes on to recommend that "the QPAP not be permitted to expire entirely during the term of the AFOR." Staff notes that this result "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

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QPAP, or through the review and modification process." Staff Comments at ¶ 10.

12 Qwest respectfully suggests that Staff's recommendation should be read as one which is limited to action the Commission might take in a later docket, but not in this docket. There is simply no factual basis upon which to conclude, at this point, what action, if any should be taken in connection with the QPAP, and the Commission should not prejudge the outcome of a proceeding that has not even commenced. Indeed, that is one of the benefits of Qwest's AFOR proposal – it leaves the Commission with all of the authority it has today to open dockets, consider rulemakings, and otherwise regulate carrier to carrier service quality as appropriate to whatever circumstances may be presented in the future.

13 Qwest does not believe it is appropriate to request or require Qwest to include commercial agreements under the QPAP. Staff Comments at ¶¶ 11-14. The QPAP was expressly put into place as an anti-backsliding mechanism to aid the transition to a competitive market. That is why the QPAP covers interconnection and UNEs – those services are seen as ones over which Qwest retains market power, and is required to offer at TELRIC rates. However, once it has been determined that an element is no longer a UNE, that means that carriers have competitive alternatives – in other words, carriers do not need to obtain them from Qwest in order to compete. It then follows that it is no longer necessary for the QPAP to apply to those services. As noted above, the Commission has properly declined to assert jurisdiction over the commercial agreements between Qwest and CLECs.

14 Finally, Qwest agrees with Staff's comments at ¶ 15. 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. And, the Commission retains authority over the QPAP.

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III. CONCLUSION

15 The Commission should accept and approve Qwest's carrier to carrier service quality filing as one which ensures adequate carrier to carrier service quality during the term of the AFOR. The QPAP contains specific provisions regarding termination or modification and those provisions should govern. There is no factual or legal basis in this docket upon which to require Qwest to either "lock in" the QPAP or to extend it to services which the Commission does not otherwise regulate. The Commission should not attempt to override the FCC, or otherwise unlawfully attempt to designate unregulated services as UNEs or bring them under the QPAP.

DATED this 15th day of August, 2007.

QWEST

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