

**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 CORPORATION'S ACCEPTANCE  
OF THE AFOR DESCRIBED IN ORDERS  
06 AND 08

- 1 Qwest Corporation ("Qwest") hereby files its response to Order No. 08, in accordance with the requirements of that order and the provisions of RCW 80.36.135(4). Qwest hereby accepts the alternative form of regulation ("AFOR") with the modifications imposed by the Commission in Orders 06 and 08 in this docket. Qwest has previously accepted the conditions in Order 06, as discussed in previous filings. This filing will address the conditions imposed by Order 08.
- 2 Qwest accepts ¶ 42(a) of Order 08. Qwest agrees that the termination date of the QPAP will not occur until four years after the effective date of the AFOR.
- 3 Qwest accepts ¶ 42(b) of Order 08. Qwest will make the QPAP available in its current form to any requesting CLEC. Qwest agrees that it will continue to be available during the term of the AFOR, unless that requirement, or the terms of the QPAP, are modified by the Commission during the term of the AFOR.

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AFOR AS DESCRIBED IN ORDERS  
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4 Qwest accepts ¶ 42(c) of Order 08. Qwest will modify its intrastate private line catalog such that CLECs can enter into contractual arrangements for UNE substitute services in non-impaired wire-centers, to which the terms of the QPAP will apply. CLECs may elect to purchase those services, to which the QPAP terms apply, or they may elect to purchase services under Qwest's FCC Tariff No. 01, to which QPAP terms do not apply. All current QPP, QLSP and other commercial agreements will remain in effect for the duration of the contracts. Those agreements contain specific provisions that exclude those services from the QPAP. In accordance with the Commission's decision that the parties may agree to exclude services from the QPAP, those agreements are valid under the AFOR. Qwest agrees that QPAP terms will be one of the options available during any future negotiations for QPP/QLSP-type services during the term of the AFOR.

5 Qwest understands ¶ 42(c) to affect those intrastate services that Qwest no longer is required to offer as UNEs, but for which Qwest provides substitute services on an intrastate basis. Qwest had noted in its Reply Comments on August 15, 2007, that intrastate private line is already competitively classified, and has previously argued in this docket that the Commission cannot affect the terms and conditions of that service unless and until it acts under RCW 80.36.330 and conducts an appropriate proceeding to revoke the competitive classification.<sup>1</sup> Qwest understands that the Commission addressed that argument in ¶ 24 of Order 08 when it observed that these jurisdictional issues were not a concern because the AFOR is consensual and Qwest can agree to these conditions.

6 Qwest agrees that it can consent to apply the QPAP terms to intrastate private line-like service, and agrees to do so as set forth in paragraph 4 herein.

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<sup>1</sup> Qwest's Opening Brief, ¶ 7.

7 Qwest does not believe that the terms of the QPAP can be lawfully applied to interstate  
tariffed services, as the CLECs may have requested. Properly, it does not appear that the  
Commission has explicitly or implicitly requested consent to such an unlawful condition.  
Consistent with its prior decisions in this area, the Commission has resolutely limited its  
requirements, even consensual ones, to intrastate services.<sup>2</sup> For example, in the 271  
proceeding, the Commission imposed proportional pricing requirements on private line  
services. The 271 docket merely directed Qwest as to what it had to do in order to win  
the Commission's endorsement of its 271 filing. However, the Commission refused the  
CLECs' request to apply that pricing to interstate services, stating "[w]e agree that this  
Commission may not assert jurisdiction over the pricing of interstate facilities, and cannot  
order Qwest to apply proportional pricing to those facilities. Therefore, we find Qwest's  
proposed SGAT language [limiting this pricing to intrastate services] to be compliant  
with the 26<sup>th</sup> Supplemental Order."<sup>3</sup>

8 Similarly, in the TRRO proceeding, Docket No. UT-053025, the Commission recognized  
its lack of jurisdiction over 271 services.<sup>4</sup> These holdings are consistent with applicable

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<sup>2</sup> Interstate services are a matter within the jurisdiction of the FCC, which has totally occupied the regulatory field. State Commissions may act only where expressly authorized by federal law, as is the case with the offering and pricing of UNEs themselves under Sections 251 and 252 of the Act.

<sup>3</sup> *In the Matter of the Investigation Into U S WEST COMMUNICATIONS, INC. 's Compliance With Section 271 of the Telecommunications Act of 1996 and In the Matter of U S WEST COMMUNICATIONS, INC. 's Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996*, DOCKET Nos. UT-003022 and 003040, 34th Supplemental Order; Order Regarding Qwest's Demonstration of Compliance with Commission Order, ¶ 22.

<sup>4</sup> *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." The Commission's holding is consistent with a large and growing body of federal law on this issue. See, e.g., *Verizon New England, Inc. v. Maine Public Utilities Commission*, No. 06-2151, No. 06-2429, 2007 U.S. App. LEXIS 21349, and *Qwest Corporation v. Arizona Corporation Commission, et al.*, No. CV 06-1030-PHX-ROS, 2007 U.S. Dist. LEXIS 52261

law. Given the Commission's previous, and recent, acknowledgment that it cannot require a change to the pricing of FCC services, Qwest could not agree to apply the QPAP to its interstate services. The QPAP commitments contain payments to be made both to purchasing carriers and to the State of Washington. They clearly affect both the terms of service and the price to be paid for service, and such payments to Qwest's customers would be directly contrary to Section 203(c) of the Communications Act.

9 As set forth herein, Qwest accepts the AFOR with the modifications imposed by the Commission in Orders 06 and 08 in this docket.

DATED this 14th day of September, 2007.

QWEST

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