

**BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION  
COMMISSION**

In the Matter of the Petition of:

QWEST CORPORATATION

To be Regulated Under an Alternative  
Form of Regulation Pursuant to RCW  
80.36.135.

DOCKET NO. UT-061625

PUBLIC COUNSEL'S COMMENTS  
REGARDING QWEST'S REVISED  
BROADBAND PLAN AND  
REQUEST FOR ALTERNATE  
REPORTING

**I. INTRODUCTION**

Public Counsel respectfully submits these comments regarding Qwest's proposed Broadband Deployment Plan in response to Commission Orders 11 and 12 in this docket. Qwest initially filed its proposed Rural Broadband Deployment Plan on October 24, 2007, and subsequently filed a Revised Plan on November 26, 2007. As described in these comments, Public Counsel believes that Qwest's revised plan represents an improvement, but we do have a concern about the inclusion of the Olympia Whitehall wire center. While we do not oppose Qwest's revised plan, we recommend that the proposed upgrade to the Steamboat remote switching module in the Olympia Whitehall wire center should only be funded under this plan after the projects in the other 16 wire centers have been funded. The other 16 wire centers are in more remote areas, with substantially lower DSL penetration levels and less competition.

Qwest has also requested alternate reporting for the annual update to the Supplement to Bench Request 3.<sup>1</sup> Public Counsel strongly opposes this request for alternate reporting, as discussed further below.

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<sup>1</sup> Qwest's Revised Rural Broadband Service Expansion Plan, Docket No. UT-061625, November 26, 2007, pp. 3-4.

**II. PUBLIC COUNSEL DOES NOT OPPOSE QWEST'S REVISED BROADBAND PLAN, BUT RECOMMENDS THE UPGRADE TO STEAMBOAT BE FUNDED ONLY AFTER THE 16 OTHER WIRE CENTERS HAVE BEEN FUNDED**

In its Order 06, the Commission rejected the Qwest/Staff Settlement Agreement's proposed DSL-related provisions as inconsistent with the public interest unless modified.<sup>2</sup> The Commission ordered the following modifications:

We find that a \$4 million commitment level is reasonably necessary to facilitate the broad deployment of advanced services in underserved areas or among underserved customer classes as contemplated by the AFOR statute. ....

Furthermore, we require Qwest to submit within 90 days of final approval of this AFOR an initial plan for Commission approval that specifies where, when, and how these funds would be expended. While we do not direct Qwest to include any specific projects in the proposal, we envision that initial monies would be directed to wire centers with no DSL capability and those with less than 75 percent DSL availability. Finally, Qwest must submit an annual report on each anniversary of the date of final approval of this AFOR describing how these monies have been spent until fully disbursed.<sup>3</sup>

Qwest initially filed its proposed Rural Broadband Deployment Plan on October 24, 2007. Subsequently, Commission Staff and Public Counsel engaged in discussions regarding the Company's proposed plan. Staff and Public Counsel raised concerns that some of the wire centers appeared to exceed the 75 percent DSL penetration level. We also sought an explanation of the criteria Qwest used to select wire centers for inclusion in the plan.

On balance, Qwest's revised broadband deployment plan represents a significant improvement over the Company's initial plan. As shown in Confidential Attachment A to these comments, the wire centers chosen for inclusion in the revised plan are largely clustered at the lowest end of DSL penetration among the Company's 112 wire centers. The exception to this, shown in Confidential Attachment A, is the Olympia Whitehall wire center. As stated in

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<sup>2</sup> Order 06, ¶ 36.

Qwest's revised plan, this wire center is currently at 74 percent DSL penetration.<sup>4</sup> The Steamboat area of Olympia is served by a remote switching module, and Qwest estimates the upgrade to the module will cost approximately \$73,000.

While we expressed concerns to Qwest about Steamboat being included, instead of other more remote areas with less DSL penetration and less competition, as an overall package we do not oppose Qwest's revised plan. However, Public Counsel recommends that the upgrade to the Steamboat remote switching module should only be funded as part of this \$4 million deployment plan if sufficient funds are available after the planned upgrades have been completed at the other 16 wire centers included in this plan. Qwest's Revised Rural Broadband Plan states in part:

If Qwest expends more than \$4 million prior to having introduced Broadband Service in each of the communities on the list, then Qwest will inform the Commission that its obligation has been met. This \$4 million dollar investment is only a portion of what Qwest will invest in broadband service expansion in Washington during the next 30 months. Qwest's Washington broadband service investment beyond this \$ 4 million dollar plan will take place in various communities other than those mentioned in this plan.<sup>5</sup>

We believe that in light of the statement above, waiting to fund the Steamboat Remote upgrade as part of this plan is reasonable. The Olympia area faces more competition than the other areas included in the plan, and the Company is more likely to devote capital resources to attract more DSL customers in areas with stiffer competition. Indeed, Qwest has recently announced a \$300 million initiative to enhance its broadband network across its 14 state service territory.<sup>6</sup> As mentioned above, the Olympia Whitehall wire center is currently at 74 percent DSL penetration (with line rearrangement), and there are several wire centers with much lower

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<sup>3</sup> Order 06, ¶¶ 39-40.

<sup>4</sup> Qwest's Revised Rural Broadband Deployment Plan, November 26, 2007, fn. 2. The 74 percent penetration level identified in Qwest's plan is the level including line rearrangement.

<sup>5</sup> Qwest's Revised Rural Broadband Deployment Plan, November 26, 2007, p. 3.

<sup>6</sup> See Attachment B.

DSL penetration, in more remote parts of the state, that have not been selected for inclusion in this plan.

### **III. QWEST'S REQUEST FOR ALTERNATE REPORTING OF ITS UPDATES TO BENCH REQUEST NO. 3 IS NOT JUSTIFIED AND SHOULD BE REJECTED**

The Qwest/Staff Settlement Agreement also included a commitment that Qwest would file a report at the conclusion of the AFOR regarding progress toward the goal of making DSL available to 83 percent of its Washington customers. The Commission found this reporting requirement to be vague and insufficient, and required Qwest to file annual updates to its Supplement to Bench Request 3. Paragraph 42 of Order 06 reads as follows:

Finally, the Settlement commits Qwest to filing a report at the conclusion of the AFOR regarding its plan to make DSL available to 83 percent of its Washington customers. However, the Agreement contains no requirements as to the content of the report, no standards against which to measure it, and no stated consequences for failing to file. We find that this report would be more useful for our analysis of the effectiveness of the AFOR if Qwest annually updated its Supplement Response to Bench Request 3 with 2007, 2008, 2009 and 2010 data for each state it serves and with data covering wire centers for Washington. We will analyze these annual filings in conjunction with Qwest's current filing to aid us in evaluating Qwest's success in achieving its goal over the term of the AFOR. The annual filings should be filed on the anniversary date of final approval of this AFOR.<sup>7</sup>

We have attached Qwest's Supplement to Bench Request Number 3 as Confidential Attachment C to these comments. This Supplement to the Bench Request includes five columns of data for each state in Qwest's service territory. It provides a breakdown of DSL penetration levels in two different categories: 1) the number of living units that qualify for DSL without line rearrangement, and 2) the number that qualify for DSL with line rearrangement.

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<sup>7</sup> Order 06, ¶ 42.

The distinction between these two numbers was the subject of much discussion at hearing, particularly in cross-examination of Qwest's witness Mr. Reynolds by Public Counsel and during his colloquy with Chairman Sidran. In fact, it was this discussion at hearing that resulted in Qwest supplementing their original response to Bench Request 3.<sup>8</sup> Qwest's original response to this bench request indicated that the number of "living units with a working telephone number that currently qualify for DSL" is 84 percent in Washington.<sup>9</sup> Because it appeared that Qwest had already achieved the 83 percent "goal" outlined in the proposed AFOR, even before the Company began operating under an AFOR, this issue was explored at hearing in cross-examination and colloquy with the Commissioners. As described below, Mr. Reynolds of Qwest explained that the original response to the Bench Request was "a little misleading" because it included both types of data grouped together – that is, it included those customers who could only qualify for DSL with line rearrangement in its calculation, but did not separately identify them.<sup>10</sup>

It is precisely this "misleading" data that Qwest now wants to file with the Commission annually, rather than the clarifying and distinguishing data provided in the Supplement to Bench Request 3. Qwest asserts that its request is "a minor departure from the verbatim language" of Order 06. We disagree with this characterization, and with the substance of the Company's request.

Qwest's revised Rural Broadband Deployment Plan states in part:

Supplemental Response to Bench Request 3 listed a pair of service availability ("penetration") statistics. One statistic was labeled "with rearrangement" and the other statistic was labeled "without rearrangement." At a time in the past, there

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<sup>8</sup> TR 570:21 – 572:2.

<sup>9</sup> March 8, 2007 revised Attachment I, Bench Request 3. While this exhibit was filed as confidential, at hearing Qwest indicated the statewide percentages are not confidential. TR 290:24 – 291:3.

<sup>10</sup> TR 291:8-11.

may have been a service delivery interval difference between fulfillment of a new service request for a customer who lived in a with-rearrangement zone versus a customer who lived in a without-rearrangement zone. This is no longer the case. Both customers are supplied service in the same responsive interval. Because this is the case, Qwest proposes that its future reporting under this plan should involve a single statistic rather than a pair of statistics. A breakdown of with and without rearrangement has no value.<sup>11</sup>

Qwest now offers the vague statement that “at a time in the past” there may have been a difference in the provisioning interval between customers who required line rearrangement and those who did not. The issue of the provisioning interval was never discussed at hearing in this context. Qwest provides no detail or support for this statement. The Company’s assertion now that a breakdown of DSL penetration data “has no value” contradicts statements made by Qwest’s Mr. Reynolds at hearing.

A portion of the colloquy between Chairman Sidran and Mr. Reynolds is provided below:

Chairman Sidran: So where are you now in relationship to this percentage of customers in your service area who have access to DSL? [The 83% goal in the settlement, as discussed in the previous Q & A].

Mr. Reynolds: We are at approximately – And I can’t remember, is this a competitive or confidential?

Ms. Anderl: I think we have provided the document with these percentages on it on a confidential basis. I’m not sure that we would hold the statewide number to be confidential as opposed to wire center by wire center, so go ahead.<sup>12</sup>

Mr. Reynolds: We currently can deploy DSL to customers, and this is I think the subject of numerous discovery responses that the Commission wouldn’t have access to, but I think you do have access to your Bench Request, and I believe that your Bench Request will tell that currently at I believe the year end ’06 I think it reads 83% or 84% if you do the math. That’s a little misleading in that that number is made up of a baseline number that we can serve without having to do any type of network rearrangement to provide service to DSL customers. That number is about it’s between 77% and 79% where the company does not have to do any additional work in its network to provision service. Where we have

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<sup>11</sup> Qwest’s Revised Rural Broadband Deployment Plan, November 26, 2007, p. 3.

<sup>12</sup> We recommend that the Commission’s order direct Qwest to file the statewide percentage penetration levels as non-confidential, in light of the fact that these numbers were designated as such during the hearing.

loaded loops, which means that the loops are encumbered with load coils and/or bridge tap which prohibits us from providing DSL, we can go out and rearrange services out in our loop network to provision additional services. I suppose if all 83% of the customers wanted service at that particular point in time, we probably wouldn't be able to serve them all. But I think what we're saying is that we have the ability through line rearrangement to serve up to 83%, and so the goal that is put in here is a hard goal of 83% if we do line rearrangement.

Chairman Sidran: Okay, I think I understood some of what you just said, but at the end of the four years presumably there would be a report that reports in relationship to the 83% goal, just tell me what the percentage is that we would be comparing the 83% against, is it this 76% or 77% figure you have?

Mr. Reynolds: I think you can compare it to both, because at that point in time hopefully we have the hard – the absolute capacity of providing service to let's say 83%, 85% of our customers, and if we do line rearrangement potentially we can provide service to an additional 5%, let's say up to 90%. So you will have both sets of data to see how the company is progressing. The additional data you will have at that point, and if you take a look at the footnote [Settlement Agreement, footnote 3], is to the extent that the company starts to deploy other types of technology that provide broadband capabilities such as VDSL type of technology or perhaps an IVTV. To the extent that we do that, that will be a part of that report as well.<sup>13</sup>

As this excerpt from the hearing transcript shows, Mr. Reynolds discussed at some length the distinction between what he referred to as the “hard” or “absolute capacity” to provide DSL (those who currently have DSL available), and those who have DSL available but only with line rearrangement. Mr. Reynolds indicated that statewide, the Company can currently provision DSL to between 77 percent and 79 percent, and upwards of 83 percent with line rearrangement.<sup>14</sup> As noted, he indicated it was “a little misleading” to look only at the 83 percent figure, because the number of customers to which Qwest can provide DSL where the Company does not have to do any additional work in its network to provision service is between 77 percent and 79 percent. This admittedly misleading data should not now become the basis of annual reporting.

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<sup>13</sup> TR. 290:18 – 292:22.

<sup>14</sup> TR 291:4 – 292:3

Indeed, when Chairman Sidran specifically asked Mr. Reynolds which percentage the Commission would look to at the conclusion of the AFOR in evaluating Qwest's performance in meeting the settlement's stated goal of making DSL available to 83 percent of its customers, Mr. Reynolds stated that it would be important to look at both numbers – the percentage who currently have DSL available (i.e. the “absolute capacity,” without line rearrangement), and the percentage who could have DSL available but only with line rearrangement. Mr. Reynolds further stated that the 83 percent goal in the settlement referred to the “absolute capacity,” without line rearrangement, and that he would expect that at the end of the four-year term of the AFOR, Qwest should be able to reach “up to 90 percent” of customers with line rearrangement.<sup>15</sup>

Qwest asserts that a breakdown of DSL penetration data according to those qualifying with line rearrangement versus without “has no value.” Public Counsel disagrees. As Qwest's own witness explained, a breakdown of this data will allow the Commission to evaluate Qwest's performance in meeting the goal of providing “the absolute capacity” to 83 percent of its customers (i.e. no line rearrangement required), and up to 90 percent for those requiring line rearrangement.

Qwest also now argues that not providing a breakdown of DSL penetration data is consistent with the information reported by the Company to investors.<sup>16</sup> What Qwest chooses to tell its investors, however, should not be determinative of the data and information the Commission needs to effectively monitor and track the Company's performance.

Qwest has also admitted that technically, if all of the customers requiring line rearrangement wanted DSL, the Company would not be able to serve all of them.<sup>17</sup> This makes

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<sup>15</sup> TR 292:4 – 22.

<sup>16</sup> Qwest's Revised Washington Rural Broadband Service Expansion Plan, November 26, 2007, p. 4.

<sup>17</sup> TR 291:21-23.



sense, because after all, the Company is rearranging a line so that it is clean of any load coils or encumbrances. The load coils and encumbrances will continue to exist on the Company's network, and are therefore likely to exist on another customer's loop. Mr. Reynolds said of Qwest's network: "We still have a significant amount of load coils and bridge tap in our plant, and what is entailed in the type of line rearrangement we do is we find a customer that wants DSL, and if their service is encumbered by these load coils or bridge tap, we do a line rearrangement either at the central office – at the central office and also out at their remote terminal so that they have a clean loop all the way." In some areas, the disparity between lines qualifying for DSL with line rearrangement versus those currently qualifying is quite large. Confidential Attachment A provides an asterisk (\*) by wire centers with 9 percent or greater difference between these two numbers.

Thus technically, the true measure of customers with DSL capability is what Mr. Reynolds refers to as the "absolute capacity" – those who do not require any line rearrangement. It is important for the Commission and stakeholders to be able to review this data on an annual basis, as the Commission clearly ordered. The format should show both sets of data (penetration with and without line rearrangement), as shown in the Supplement to Bench Request 3.<sup>18</sup> Qwest's request for alternate reporting should be denied.

#### **IV. SUMMARY OF PUBLIC COUNSEL RECOMMENDATIONS**

As set forth in these comments, Public Counsel does not oppose Qwest's Revised Rural Broadband Expansion Plan. However, we recommend that the proposed upgrade to the Steamboat remote switching module in the Olympia Whitehall wire center should only be funded

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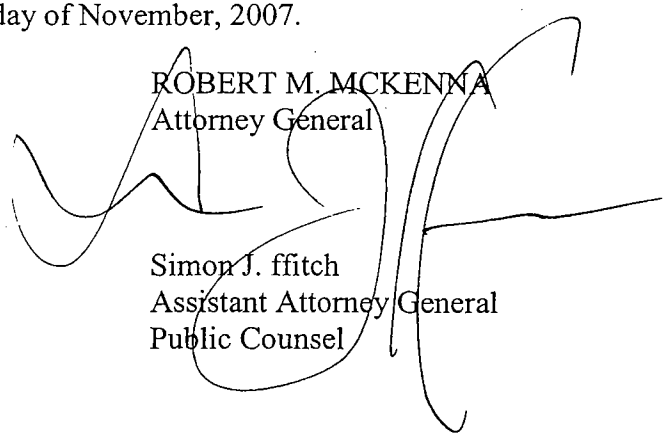
<sup>18</sup> Confidential Attachment C.  
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under this plan after the projects in the other 16 wire centers have been funded. The other 16 wire centers are in more remote areas, with substantially lower DSL penetration levels and less competition.

Public Counsel opposes Qwest's request for alternate reporting of its annual DSL penetration levels, for the reasons described herein. The Commission should uphold the requirement in Paragraph 42 of its Order 06, directing Qwest to file annually an update to its Supplement to Bench Request Number 3 with data for each state it serves and each wire center in Washington.

We also recommend that the Commission's order direct Qwest to file the statewide percentage penetration levels as non-confidential, in light of the fact that these numbers were designated as such during the hearing.

Respectfully submitted this 30<sup>th</sup> day of November, 2007.



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