

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of

QWEST CORPORATION

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

DOCKET UT-061625

PUBLIC COUNSEL COMMENTS  
REGARDING QWEST  
COMPLIANCE FILING

**I. Á LA CARTE FEATURES AND PACKAGE PRICING**

**A. Existing Customers**

It is a violation of Commission Order 06 in this docket for Qwest to offer any packages with a combination of features that are lower than the package price.<sup>1</sup> Public Counsel calculates that, with respect to Qwest's Choice Home local package, currently priced at \$29.99, about 45 percent of the possible combinations that customers could purchase, would be cheaper if purchased á la carte. This is discussed in more detail below.

**1. If a customer chooses one higher priced feature and any two out of seven lower priced features, their selection is likely not to exceed the package price.**

Based on research it has conducted since the compliance filing, Public Counsel concludes that, with respect to Qwest's \$29.99 Choice Home local package (which allows a customer to select three features out of ten), there are several combinations of features which fall below the \$29.99 package price, even with Qwest's recent price increases for many residential features.<sup>2</sup> In fact, if a customer chooses only one of the three most expensive features (Caller ID, \$7.50; Call

<sup>1</sup> Order 06, ¶ 81.

<sup>2</sup> The pricing of a basic home phone line (\$13.50), with various á la carte features can be priced using the following calculator on Qwest's web site: <http://www.qwest.com/residential/products/local/service/basicPhone.html>

Waiting, \$6.00; or Voice Mail, \$7.95), it is highly likely that the combination of that more expensive feature, in combination with two of the seven lower priced features, would nevertheless be below the \$29.99 package price.

For Qwest's Choice Home package, Public Counsel has calculated that there are a total of 720 different combinations a customer may choose.<sup>3</sup> Of those 720 combinations, Public Counsel believes there are a total of 112 different combinations where a customer could choose one expensive feature (voice mail, caller ID, or call waiting), and two of the other seven lower priced features, where the resulting selection would not exceed the package price.<sup>4</sup> Table 1 provides four illustrative examples of combinations of this group of 112 combinations, where it is cheaper to purchase the features á la carte instead of as a package.

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<sup>3</sup> Customer may choose any 3 of 10 residential features. The number of different permutations equals 10 factorial divided by 10 minus 3 factorial:  $10!/(10-3)! = 10!/7! = 10*9*8 = 720$ .

<sup>4</sup> Public Counsel has calculated that there are 112 combinations whereby a customer may select one higher priced feature, and two lower priced features. The numbers of combinations for each of the three most expensive features are as follows: Caller ID (36), Call Waiting (42), Voice Mail (34).  $36+42+34=112$ . The total for Caller ID includes one combination whereby the customer chooses two expensive features (Caller ID, \$7.50 and Call Waiting, \$6.00), and the lowest priced feature, Security Screen (\$2.95).

**Table 1. One of Most Expensive Features and Two Other Features (Package \$29.99)  
Four Illustrative Examples Out of 112 Combinations Priced Lower Á La Carte  
Basic Phone Line (\$13.50) and Three Features**

Combination	Price
Caller ID	\$7.50
Call Forwarding	\$3.00
Three-way calling	\$3.50
<b>Total</b>	<b>\$27.50</b>
Voice Mail	\$7.95
Three-way Calling	\$3.50
Call Forwarding	\$3.00
<b>Total</b>	<b>\$27.95</b>

Combination	Price
Caller Waiting	\$6.00
Last Call Return	\$3.95
Three-way calling	\$3.50
<b>Total</b>	<b>\$26.95</b>
Caller Waiting	\$6.00
Call Rejection	\$4.50
Security Screen	\$2.95
<b>Total</b>	<b>\$26.95</b>

- 2. If a customer chooses any three of the seven lowest priced features, the combination is cheaper á la carte.**

In addition to the 112 combinations described above (involving selection of only one of the most expensive features), there are more combinations where the resulting combination is cheaper á la carte rather than the \$29.99 package. As stated above, Qwest Home Choice allows customers to choose three out of ten features. However, if a customer chooses any three of the seven lowest priced available, the price of those three features is lower than the package price.

There are 210 such combinations for which the three features are cheaper á la carte.<sup>5</sup> Table 2 provides four illustrative examples of this group of 210 such combinations.

**Table 2. Any Three of Seven Lowest Priced Features (Package \$29.99)  
Four Illustrative Examples Out of 210 Combinations Priced Lower Á La Carte  
Basic Phone Line (\$13.50) and Three Features**

Combination	Price
Continuous Redial	\$3.30
Call Forwarding	\$3.00
Security Screen	\$2.95
<b>Total</b>	<b>\$22.95</b>
Continuous Redial	\$3.50
Three-way Calling	\$3.50
Call Forwarding	\$3.00
<b>Total</b>	<b>\$23.50</b>

Combination	Price
Call Rejection	\$4.50
Last Call Return	\$3.95
Three-way calling	\$3.50
<b>Total</b>	<b>\$25.45</b>
Line Backer	\$4.75
Call Forwarding	\$3.00
Security Screen	\$2.95
<b>Total</b>	<b>\$24.20</b>

In total, Public Counsel believes there are 322 possible combinations of the Qwest Choice Home package where the features selected would be cheaper á la carte, out of a total of 720 combinations. Therefore, 45 percent of the combinations available under the Qwest Choice Home package are actually cheaper if purchased á la carte.

<sup>5</sup> If a customer chooses any three of the seven lowest priced features, there are 210 combinations.  $7!/(7-3)! = 7!/4! = 7*6*5 = 210$ .

Qwest's letter accompanying the December 31, 2007 compliance filing does not outline the various combinations of features which can be purchased at a lower price on an á la carte basis, nor does it accurately represent the extent to which such combinations exist. Instead, Qwest suggests that this situation only exists "if the customer selects some of the least expensive features."<sup>6</sup> This does not appear to be the case. Instead, as described above, a customer can choose one of the most expensive features and two out of seven lower priced features, and faces a high likelihood that the resulting combination will be cheaper á la carte.

**3. Qwest provides only a vague "estimate" of customers whose selected features are available at a lower price á la carte.**

Qwest's Letter further states: "The vast majority of customers select features that do exceed the package price."<sup>7</sup> This may well be the case, but Qwest has not provided Staff and Public Counsel with specific data on this issue. Qwest's letter also states: "Of its existing base of package customers (approximately 290,000), Qwest estimates that about 2 percent of the customers (approximately 6,000), purchase their combination of package services for a lower price on an ala [sic] carte basis than the package price."

This is an unclear statement in many respects. Presumably, Qwest intended to state that about 2 percent of the customers could purchase their combination of package services for a lower price on an á la carte basis, but for their subscription to the package. More importantly however, Qwest merely provides what it calls an "estimate." The Company has certainly not provided any analysis of the 290,000 package customers, nor have they provided any kind of explanation or supporting data for how they derived this "estimate."

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<sup>6</sup> Qwest Letter of December 31, 2007, re "Additional Compliance Issues Regarding A La Carte Features and Package Pricing, in accordance with Order Nos. 06 and 15," p. 1. ("Qwest Letter").

<sup>7</sup> *Id.*

#### **4. Notice and remedies for existing customers.**

Beyond the vague “estimate” discussed above, Qwest has not provided a clear picture as to how many customers are currently paying more for a package than the á la carte price. As outlined above, almost half of the potential combinations of services available to customers under the \$29.99 Qwest Choice Home package can be purchased at a lower price á la carte. As a general proposition, consumers make the reasonable assumption that, by definition, when products are offered in a bundle, there is a price saving over the á la carte price. The fact that the Qwest Choice Home package offers such a high percentage of combinations that actually do the opposite is tantamount to deceptive marketing, to the extent that customers do not understand or are not informed they have a cheaper option.

For this reason, as a remedy, Public Counsel recommends that customers in this situation should be automatically switched from package pricing to stand-alone pricing. The draft notice provided with Qwest’s Letter should be rejected as inadequate and misleading. Notice to existing customers should include the following:

- A clear and conspicuous statement that the specific combination of features they have selected in the Qwest Choice Home package can be purchased at a lower price if purchase individually instead of as part of a package.
- Notice that the customer’s bill will be adjusted to reflect the less expensive individual pricing for their selected features, unless they take action (see below).
- The amount the customer will save each month as a result of this change.

- A statement that the only benefit to remaining on the package is to avoid any fees in the event the customer decides to frequently change their combination of features.<sup>8</sup>
- Notice that if the customer prefers to remain on the package price, even though it will cost them more each month, they can contact Qwest within 30 days to indicate their preference.

Qwest may suggest that this approach interferes unduly with customer choice, would be disruptive of service, or would amount to a disfavored “opt-out” approach. These concerns are not persuasive nor apposite in this situation. There is no service disruption because the customer has the same menu of services both before and after the change. The concern about “opting-out” does not apply here because the pricing reduction is required to enforce a Commission order. It makes no sense to say that customers can opt-out of the enforceability of Commission orders, just as Qwest may not. The concern about customer choice is addressed by giving customers full information regarding the effect of choosing the package. They can then calculate whether it is advantageous in their specific circumstances to stay on the package.

Qwest has been in violation of the Commission’s Order 06 because certain combinations of features are available at a lower price on a stand-alone basis. Public Counsel recommends that customers in this situation should be given refunds for any excess amount they paid each month as part of a package, as of November 30, 2007, when the AFOR became effective. Customers should not be subject to any fees (e.g. activation, installation) to switch to purchasing features individually if their package price exceeds the price of their features.

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<sup>8</sup> Qwest asserts that any changes of á la carte features incur fees (e.g. initiation or termination fees). Public Counsel has not verified this assertion. No data has been provided by Qwest regarding the number of customers who actually make multiple frequent changes to the components of their package (Qwest gives the example of a change in features for a weekend trip or a one month vacation). Qwest Letter, p. 3.

Qwest should be required to work with Staff and Public Counsel on a draft notice to be submitted to the Commission for approval. If the parties cannot reach agreement, they should be permitted to submit their own proposed notices. The notice should be sent within 15 days of Commission approval.

**B. New Customers**

**1. Revised website ordering process.**

Qwest's letter states that the Company "has made modifications to its website ordering page such that customers who attempt to order package combinations of features and exchange service that could be purchased at a lower total price on an á la carte basis would be restricted from ordering such a combination."<sup>9</sup> The letter goes on to state that these website customers are given three options:

- change the order by selecting higher value features,
- order basic phone service and features á la carte,
- get help from an online service representative.

The letter does not clearly explain how these three options are actually outlined to customers on the website

Public Counsel recommends that at a minimum, Qwest's website should do the following:

- Clearly inform customers that the three features they have selected can be purchased at a lower price on an á la carte basis,
- All three options described above should be provided on the same page.

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<sup>9</sup> Qwest Letter, p. 2.



In no event should customers be initially steered to select higher priced features – they should be provided with all three options at the same time. The following example depicts how this could be explained to customers:

**Warning: The Features You Have Selected Can Be Purchased at a Lower Price if You Pay an Individual Price for These Features!**

The combination of features you selected is not permitted to be offered in Washington because the package price is higher than the price of the individual features.

You Can Choose Any of the Following:

1. Order a Local Phone Line (\$13.50), and add your chosen calling features separately (link).
2. Change your package order to select higher priced features (link).
3. Get help with your order from an online service representative (link).

**2. Service representative package order process.**

**a. Qwest's Option 1.**

Qwest should be required to confirm and verify that the data base systems that its service representatives use to place an order will not allow representatives to complete an order for a package if the prices of the selected features do not exceed the package price. Qwest should

provide the Commission, Staff and Public Counsel with the training materials and/or written guidance or messages its service representatives are given to prompt them in talking with customers in this situation. If a customer selects features which can be purchased at a lower priced individually, the service representative should very clearly inform the customer of this. Customers should not be initially encouraged to select higher priced features.<sup>10</sup>

**b. Qwest's Option 2.**

Option 2 is not in compliance with the Commission's Order 06. Qwest is clearly prohibited from offering packages with features that do not exceed the package price.

**3. Advertising.**

All Qwest advertising for packages should be required to include a statement that the price for a package or bundle of services may not exceed the price for the á la carte components of the package.

**C. Monitoring and Reporting Regarding Packages**

The Commission retains jurisdiction over this matter. If Qwest is found to continue offering packages to customers in violation of Order 06, or is found to mislead customers, it should be subject to penalties and required to provide refunds to affected customers.

In order to verify compliance with the package pricing requirement, Qwest should be required to file an initial report 180 days after the Commission's compliance order which states the number of customers who were purchasing non-complying packages (where the package price exceeded á la carte pricing), the number of notices sent to customers, the customer behavior in response to the notice, and an accounting of refunds paid to customers.

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<sup>10</sup> Qwest's "Option 1" would apply only to specific existing packages. Qwest should not be allowed to apply this approach to future packages introduced during the term of the AFOR.

## II. BUSINESS LISTINGS

Qwest is inappropriately seeking to detariff its Directory Listing Services and Custom Number Services for Business Customers (Sections 5.7.1 and 5.7.7 of Qwest's tariff) –These services were explicitly not listed as those that would be treated as competitively classified during the AFOR, and thus the treatment Qwest now seeks is in violation of the Commission's Order 06.

Qwest's AFOR petition was brought under RCW 80.36.135, not as a petition for competitive classification of the Company or for individual services under RCW 80.36.320 or 80.36.330. The petition was framed as obtaining regulatory flexibility for enumerated services, and this approach was reiterated at the hearing.<sup>11</sup> In addition, at the hearing, Qwest confirmed that it was not seeking competitive classification of the Company.<sup>12</sup> Within this legal framework, Qwest may not argue that services not mentioned in effect default to competitive classification. The situation is the opposite. Unless specifically afforded different treatment under the AFOR, services remain under tariff.

Qwest can cure this defect in the filing by making a revision in its tariff and catalog compliance filings to retain the services in tariff.

## III. CONCLUSION

For the foregoing reasons, Public Counsel recommends that the Commission find that Qwest's AFOR filing is not in compliance with Order 06 and other applicable orders in this

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<sup>11</sup>See *e.g.* Colloquy between Commission Jones and Mark Reynolds. TR 316. See also Exhibit 70.

<sup>12</sup>Qwest witness Mark Reynolds stated that "it could not reasonably be described as such pursuant to the AFOR." TR. 268:22-23.

proceeding with regard to its package pricing and business listings. Public Counsel respectfully requests that the relief described in these comments be granted.

DATED this 15<sup>th</sup> day of January, 2008.

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