

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

In the Matter of Qwest’s Petition to be)
Regulated Under an Alternative Form)
of Regulation Pursuant to) DOCKET NO. UT-061625
RCW 80.36.135)
)
) PUBLIC COUNSEL RESPONSE TO
) QWEST PETITION TO MODIFY AFOR
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1. Public Counsel files these comments pursuant to the Commission’s Notice of Opportunity To File Response of September 2, 2009. As requested by the Commission, these comments will address: “the appropriate process and procedures for the Commission to follow in considering the petition” by Qwest to modify the AFOR. Public Counsel reserves the right to address the merits of the petition in subsequent proceedings.

2. The Commission’s rules define a petition as a form of pleading which initiates an adjudication. WAC 480-09-305 identifies a petition as the type of pleading that constitutes an application for an adjudicative proceeding, when the action sought requires adjudication. WAC 480-07-305 (3) (b). *See also* WAC 480-07-370(1)(b). Qwest states that it files the petition under RCW 80.36.135(6), which allows for a petition for modification but requires that the Commission act upon the petition only “after notice and hearing,” elements consistent with an adjudicatory proceeding. WAC 480-07-300 defines “adjudicative proceeding” as a proceeding in which an opportunity for hearing is required before the Commission enters an order, as

RCW 80.36.135(6) requires. Further, the original AFOR proceedings and the order here sought to be modified resulted from an adjudication. Qwest's requested relief, which significantly and substantially alters the rights and obligations of parties under that order, is manifestly a matter for adjudication.

3. For the foregoing reasons, procedurally, the proceeding would properly treated as an adjudication, in the event the Commission decides to do go forward with the matter. Public Counsel recommends, however, that the Commission reserve judgment at this time on whether to proceed with the petition. Qwest's petition appears to seek very significant modifications to key elements of the AFOR structure and to substantively modify the balance of interests and policy determinations reflected in the current AFOR plan. A core component of the AFOR is the retention of tariffing requirements and regulatory authority over basic telephone service, balanced with allowing de-facto price deregulation for many of Qwest's services. Qwest voluntarily agreed to and indeed negotiated this arrangement with Commission Staff, including a commitment that basic telephone rates would only increase by \$1.00 during the term of the AFOR. The petition now seeks to open the door to unilateral abrogation by Qwest of that term of the AFOR plan and the underlying agreement, disturbing the balance of interests contained in the plan approved by the Commission.

4. The petition raises a number of questions which are not addressed or which need clarification, including: (1) whether the original settlement, or other matters of record in the original AFOR case, preclude Qwest from seeking to unilaterally abrogate the terms of the AFOR plan; (2) whether the AFOR statute or the plan itself provide for the type of modification requested here; (3) how and when would Qwest propose to modify rates for regulated and for unregulated services under its proposals (for example, with what kind of proceeding, tariff filings,

evidentiary requirements, or legal standard would apply); (4) whether the proposed modification is consistent with the statutory AFOR requirements, including whether it will “protect against the exercise of market power,” RCW 80.36.135(2)(c); “provide for rates and charges that are fair, just, and reasonable, sufficient, and not unduly discriminatory or preferential ,“RCW 80.36.135(2)(e); and, whether the modification will “unduly or unreasonably prejudice or disadvantage any particular customer class,” RCW 80.36.135(2)(f). The Commission’s Notice itself observes, “none of the Commission’s statutes or rules address the situation where certain telecommunications services remain under regulation, are not to be modified during the term of an AFOR, and there is a request to modify regulated services during that term.” Among other issues, this raises a fundamental problem raised by the petition, whether Qwest’s residential customers will now be asked to cross-subsidize Qwest’s competitively-classified services.¹

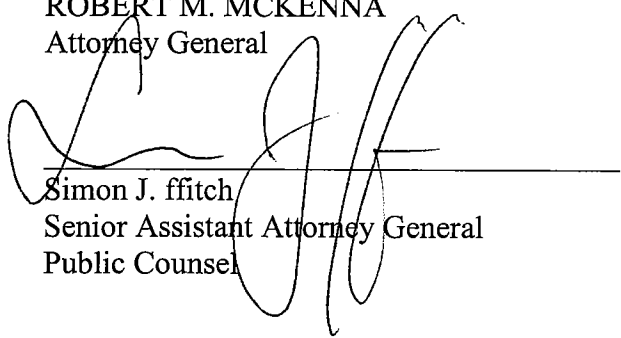
5. Qwest’s petition is so general, speculative and cursory in nature, both factually and legally, that it sheds little if any light on these questions, essentially disregarding them entirely. Public Counsel recommends that, as a threshold matter, the Commission require Qwest to clarify its petition, including stating with specificity the authority it is seeking with respect to the each of the services (tariffed and de facto competitively classified) governed by the AFOR, and the legal and policy analysis supporting those changes, as well as other issues identified above, and including issues which other parties or the Commission may raise. Parties would then be permitted to file legal briefs in response to the Qwest filing, within a reasonable time.

¹ The Commission order adopting the AFOR noted this potential issue. Order 06 , ¶ 67.
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6. WAC 480-07-305(5) provides that the Commission may within 90 days after receipt of a petition or response, decide whether or not to commence an adjudicative proceeding on the matter. After reviewing Qwest's revised filing, and the party responses, the Commission could decide to dismiss the case. Alternatively, if the Commission were to decide to go forward with an adjudication at that point, it would then set a prehearing conference to establish a schedule for further related adjudicative proceedings, including a hearing. WAC 480-07-305(5)(a).

DATED this 16th day of September, 2009.

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