

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 REGARDING
PROCEDURE IN CONNECTION WITH
THE PETITION TO MODIFY THE AFOR**

1 Qwest Corporation (“Qwest”) hereby files its reply to the responses filed by Staff and Public Counsel on September 16, 2009. This reply briefly addresses and clarifies the issues raised by both parties.

I. The Commission Should Set the Matter for Hearing

2 Both Staff and Public Counsel caution the Commission about even proceeding with the petition (Public Counsel at ¶ 3, and Staff at ¶ 2.2). Public Counsel suggests that there may be aspects of the original AFOR that prohibit Qwest from seeking modification (Public Counsel at ¶ 4), while Staff suggests that the parties should brief the issue of whether the Commission should reject the petition as inconsistent with the terms of Order 06 (Staff at ¶ 2.2).

3 RCW 80.36.135(6) provides that “[u]pon petition by the company and after notice and hearing, the commission may rescind or modify an alternative form of regulation in the manner

requested by the company.” Under this provision, Qwest may petition to modify the AFOR, and the Commission may grant such a petition after notice and hearing. The statute does not appear to allow the Commission to prohibit the filing of a petition, or to otherwise foreclose a company that is operating under an AFOR from petitioning to modify or rescind the AFOR. This is true regardless of whether the AFOR was the result of a settlement. Contrary to Public Counsel’s characterization, Qwest is not seeking to “abrogate” the terms of the settlement, but rather is seeking to modify the AFOR, as it is permitted to do under the terms of the AFOR statute. No party to the settlement or to the AFOR proceeding sought to bar Qwest from seeking such modification, and there is no basis to do so now.

4 Thus, Qwest believes that the Commission should set the matter for hearing, or convene a prehearing conference to discuss a procedural schedule.

II. Clarification Regarding Certain Aspects of Qwest’s Petition

5 Both Staff and Public Counsel seek clarification of certain aspects of Qwest’s petition. At the outset, Qwest would like to clarify that its petition was not intended to preemptorily address every issue that might arise in connection with the relief requested – Qwest anticipated that those issues would be further developed in whatever type of proceeding the Commission determines to conduct. However, Qwest’s petition was not purposefully vague either – Qwest’s petition was broadly written to convey that Qwest was seeking relief only in terms of obtaining a procedure through which future substantive relief might be obtained. As such, the issues that might arise in the as-yet-unfiled request for relocation cost recovery are not and cannot be addressed in this petition.

6 One such issue that cannot be addressed in detail in this proceeding is one of the issues on which Public Counsel seeks clarification – “how and when would Qwest propose to modify rates for regulated and for unregulated services under its proposals”. While Qwest believes it

has been clear that it will file a tariff to propose a rate for relocation cost recovery, Qwest cannot at this time predict when it might make such a filing. Qwest can clarify that if it seeks cost recovery for relocation cost recovery, it will impose the relocation cost recovery rate element on customers of both tariffed and non-tariffed services. Qwest does not seek to impose this cost recovery solely on tariffed customers.

7 Staff also seeks clarification regarding whether Qwest is seeking authorization to raise rates for the 1FR and 1MR, or if it is seeking authorization to adopt new tariff rates for services that are currently treated as competitively classified under the AFOR (Staff at ¶ 2.1). Qwest clarifies that it is seeking authorization to file tariffs that would impose a line item relocation cost recovery rate element on the 1FR and the 1MR. Qwest is not seeking to have those tariffs apply to competitively classified services – under the AFOR Qwest does not need to file tariffs to impose a line item relocation cost recovery rate element on those services, and would do so by modifying its service catalog and providing customer notice, but would not file a tariff.

8 Staff seeks further clarification regarding how the rates would apply at paragraph 8. Staff suggests that Qwest’s language is vague, and that Qwest should be required to clarify the relief it is seeking. However, Qwest was merely trying to communicate that in the final result it would be the Commission’s decision as to how that cost recovery would be accomplished. By asking Qwest to clarify, Staff is in essence asking Qwest to foreclose certain decisions of the Commission by narrowing its petition. Qwest does not believe it is appropriate to take that approach, and wishes to leave open for further discussion the cost recovery options that the Commission might approve. Again, though, with regard to paragraph 9 of Staff’s comments, Qwest does clarify that it is absolutely not seeking a tariffed surcharge on competitively classified services.

9 Finally, Qwest would like to clarify its position on one point raised by Public Counsel. Public

Counsel seems to believe that the AFOR plan imposed a rate freeze on tariffed rates for the duration of the AFOR. For example, Public Counsel states that Qwest committed that basic telephone rates “would only increase by \$1.00 during the term of the AFOR” (¶ 3) and cites the Notice issued by the Administrative Law Judge which states that certain services “are not to be modified during the term of the AFOR” (¶ 4). Qwest disagrees with these propositions. The \$1.00 increase was granted as a part of the AFOR, and was allowed to be implemented as a tariff filing without the need to file a general rate case, but it was not a rate freeze for the term of the AFOR. Staff correctly recognizes that the result of keeping certain rates tariffed during the AFOR still means that Qwest can file tariff changes impacting those rates during the term of the AFOR (Staff at ¶ 10).

10 Qwest is willing to file additional pleadings if necessary, and is willing to provide additional information in the form of testimony if the Commission calls for testimony, on any of the issues that the Commission deems relevant to its consideration of this petition. However, as Qwest stated in its original filing - this proposal does not presuppose that any particular costs may actually be recovered – that issue is to be decided during the proceeding associated with the actual tariff filing, when and if one is actually made.

11 Qwest therefore respectfully requests the Commission to convene a prehearing conference to discuss further proceedings in this matter.

DATED this 23rd day of September, 2009.

QWEST

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