BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

| In the Matter of<br><br>Rulemaking Concerning Line Extension<br>Tariffs, Draft WAC 480-120-071 | )<br>)<br>)<br>)<br>) | DOCKET NO. UT-991737 |
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# COMMENTS OF QWEST CORPORATION

## INTRODUCTION

Pursuant to the Commission Staff's invitation to submit informal comments, Qwest Corporation ("Qwest") files these comments regarding the proposed rules. Qwest appreciates this opportunity to comment and further appreciates the efforts of Commission Staff to work with the industry on this issue.

## SUBSTANTIVE COMMENTS

The proposed rules contemplate retroactive ratemaking, as in the previous version.

Qwest previously commented on the retroactive aspect of the proposed rules in that prospective rate reductions were to be made to redress prior overcollections of extension cost under tariffs that were based on estimates. The current version continues to display this aspect.

2. The proposed rules continue to single out ILECs to bear the burden of service to unprofitable customers.

Qwest previously commented on the fact that the proposed rules single out telecommunications companies that are required to file tariffs under RCW 80.36.100 to have on file extension of service tariffs and to extend service consistent with such tariffs



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and the proposed rule. The current version continues this unfair approach. It is also difficult to understand why the Commission would want to limit the universe of companies that would be required to extend service to provide service to premises that require it, to include only ILECs. From a practical standpoint in today's environment the ILEC may in some areas be the only company that could provide service. This is no reason to exclude other providers from the scope of the rule because there may well in the future be competing providers who are in any given area better able to extend service than the ILEC. It is also possible that the existence of a competing provider who is better able to serve in a given area would produce the conclusion under RCW 80.36.090 that the customer is not "reasonably entitled" to service from the ILEC and hence extension by the ILEC could not be compelled under the statute. The rule appears to recognize that such competing providers including different modes of service are available, and it allows a company that is subject to mandatory line extensions to contract with one of these providers in order to satisfy the obligation imposed by the rule. But the rule does not acknowledge that it is fundamentally unfair to impose this burden only on the ILEC when competing modes of service at comparable prices, are available in the same area.

3. The proposed rules correctly recognize that the obligation of ILECs to extend service is fact based.

The proposed rules contain a laudable change from prior versions, namely the recognition in proposed subsection (3)(d) that the Commission retains the authority under RCW 80.36.090 to determine whether any applicant for service is not reasonably entitled to service and whether the local exchange company is not obligated to provide service to



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any applicant. However the change calls into question other language in the proposed rules which is much more absolute in tone. For example, proposed subsection (2)(b) provides that extension of service is required to occupied premises or to new construction unless the need for service is temporary. The placement of the subsection that invokes RCW 80.36.090 in proposed subsection (3), which deals with cost recovery, rather than in proposed subsection (2), which deals with the issue of extension of service, creates uncertainty about the impact of this subsection on the rather absolute requirement to extend to non temporary users in subsection (2)(b). It would solve this problem to qualify the requirement in proposed subsection (2)(b) with language such as "except where the Commission determines pursuant to RCW 80.36.090 that an applicant is not reasonably entitled to service," or words of similar meaning.

An additional issue is that the term "temporary" in proposed Section 2(b) is not defined, and in the context of the rule it is ambiguous. If occupancy of a premises is ongoing at the time of application for service but it is known that such occupancy will terminate after a period of time, that is one meaning of "temporary," which would likely have a very limited impact in excluding areas from mandatory subsidized line extension. On the other hand, if "temporary" is deemed to mean the same thing as "intermittent," that would likely exclude more premises from the scope of mandatory line extensions at subsidized rates, for such dwellings as vacation homes or cabins. Qwest suggests that the term "temporary" be replaced with the term "intermittent."

4. The proposed rules continue to present the issue of the Commission's authority to adopt rules in this area without prior Legislative approval.



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Qwest has previously commented on the problem that the proposed rules appear to exceed the Commission's authority to adopt rules on universal service without prior legislative approval pursuant to RCW 80.36.600 and RCW 80.36.610. The proposed rule is clearly a universal service measure. An additional issue in this connection is that RCW 80.36.620 provides that any rules regarding universal service adopted by the Commission shall comply with the purpose, as stated in RCW 80.36.600, of establishing a program for the preservation and advancement of universal service. And as Qwest previously pointed out, RCW 80.36.600 requires the Commission to obtain legislative blessing for its program before actually adopting rules to implement that program. RCW 80.36.620 restricts the Commission from adopting rules that relate to universal service and seeking to avoid the prior legislative approval requirement under RCW 80.36.600 by maintaining that the rules are not part of a program that requires legislative approval.

5. The proposed rules continue to unfairly deny cost recovery for necessary reinforcement.

Qwest has previously commented that ~~T~~the proposed rules specifically exclude any recovery for a significant element of the cost of line extensions that the rule requires in the name of universal service. That element is the cost of reinforcing cable facilities in existing routes where capacity no longer exists, in order to provide a working telecommunications circuit that runs from the extremities of the network back to the

central office.[1] Qwest submits that this facet of the proposed rule unfairly places the burden of cost for reinforcement nominally on the ILEC's ratepayers. The proposed rules recognize that there are circumstances when it would be unreasonable for ratepayers to pay the direct cost of line extensions. In the proposed rule one of those instances is extensions to various forms of developments and commercial or industrial sites. Other instances are to be determined on an ad hoc basis by the Commission. If it is recognized that sometimes even the direct costs of line extension should not be paid by the general body of ratepayers, it is difficult to see why the general body of ratepayers should be saddled with all of the line extension costs that are not included in the classification of direct costs. In fact, however, it becomes less possible as time goes on for ILECs to actually collect from ratepayers, the costs of reinforcing the network to enable mandatory line extensions to actually provide service. Competition increasingly prevents ILECs from charging one group of customers for costs that are caused by another group. This means that the true source of payment of these costs is the ILEC's shareholders. Qwest suggests that this problem can be resolved by recognizing that there is a difference between reinforcement that is necessitated by a line extension, and network upgrades that serve other functions. Qwest proposes that subsection (1) include a definition of reinforcement in terms of "work that is necessary to expand capacity of existing

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[1] The proposed rule somewhat pejoratively lumps "network upgrade" costs with reinforcement costs in excluding both from cost recovery. The term "network upgrade" is not defined in the rule, but whatever it means, it would not include the actually necessary costs of reinforcing cables to provide working circuits back to the central office. Qwest understands the Commission's concern that ILECs not be allowed to upgrade networks at the cost of long distance customers, but such upgrades are not the issue that Qwest believes should be addressed in allowing recovery of reinforcement costs.



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distribution and/or feeder cable that would not otherwise be incurred, absent the line extension," and that the word "reinforcement" be deleted from paragraph (1)(h). Qwest submits that having this specificity in the definition of reinforcement will insure that the companies apply the concept

6. The proposed rule would, if applied to prevent ILECs from charging filed tariff rates for line extensions, violate RCW 80.36.140.

Qwest has previously commented that the proposed rules would prevent ILECs from charging their filed and effective line extension tariffed rates. No hearing into the justness and reasonableness of the existing rates has been held. The current version of the proposed rules continues to place ILECs in the dilemma that they cannot comply with both the proposed rule and their duty under RCW 80.36.130 and 80.36.150 to charge only tariffed or approved contract rates. The rules could be modified to provide that tariffs that become effective after the effective date of the proposed rules would be governed by the rules, and this would eliminate the dilemma.

7. The proposed rule is inconsistent with tariff based rates as prescribed by law.

Qwest has previously commented that the proposed rule is inconsistent with the requirements in RCW 80.36.130 and 80.36.150 that only rates that are contained in an effective tariff or approved contract, may be charged by a company that is required to file tariffs or contracts. The current version of the proposed rules continues to provide in subsection (3)(c) that the Commission may waive the portion of the rule that requires the filing of tariffed charges to end users based on twenty times the basic monthly service rates under certain circumstances and allow the company involved to charge end users

amounts that are not contained in any filed tariff, consisting of the "direct cost." If the Commission waives its rule that requires filed tariffs that contain specific charges, that waiver will not affect the tariff that will be in effect and which will state the only lawful rates for the service. The Commission could address this issue by modifying the rule to provide that tariffs may provide for extensions that exceed certain criteria such as a number of customers, a direct cost, or other objective measurements, to be on an individual case basis with the end users responsible for paying the full construction cost.

8. The revised draft has addressed Qwest's concerns about rate discrimination.

Qwest appreciates that the new draft has addressed the concerns that Qwest previously expressed about potential rate discrimination. The proposed rules make the maximum initial charge to end users equal to twenty times the basic monthly service rate, and define the latter as the rate for non measured service for the lowest priced class of service ordered by the applicant.

9. The proposed definition of premises is unnecessarily broad and the exclusions from the rule should be expanded to include marinas and mobile home parks.

Proposed paragraph (1)(d) defines "premises" to which facilities must be extended under the rule, as meaning any structure that is used as a residence, or a commercial or industrial building. This definition specifically includes facilities that are then excluded from the scope of the rule by proposed paragraph (6)(l). It would make more sense to delete everything after the word "residence" from proposed paragraph (1)(d). That would make it unnecessary to exclude commercial and industrial units in paragraph (6)(l). Qwest submits that the same philosophy that is expressed in proposed subsection (6)



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requires that marinas and mobile home parks, which are commercial ventures even though people live at such locations, be excluded from the coverage of the rule. This could be done by replacing commercial and industrial units in paragraph (6)(l) with "marinas and mobile home parks."

10. The proposed definition of drop wire should be applied only prospectively.

Qwest is concerned that proposed subsection (1)(g) appears to be regulatory in tone, as opposed to being strictly a definition, and that the impact of this rule may not be what the Commission intended. The rule prescribes a specific configuration for drop wire of a minimum of three copper pairs. The Commission has not previously sought to regulate the ways that ILECs built their facilities in such detail, and because the network has been constructed over a century in Washington, there are many drop wires that contain fewer than three copper pairs. It would be tremendously costly to require that all existing drop wires be modified where necessary to consist of at least three copper pairs. The rule could, if the Commission determines to keep some constraint of this type in the rule, be amended to provide that it applies to drop wires placed after the effective date of the rule. More fundamentally, however, the definition of drop wire constrains ILECs to copper pairs, when in the near future drop wires may actually use a different technology altogether, such as coaxial cable, fixed wireless or fiber. Qwest questions whether it is necessary to embed a requirement of this type in rules, in the face of rapidly changing technology, and requests the Commission not to specify technology in its rule. The Commission could achieve the objective of ensuring a minimum number of paths



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available through drop wire by wording the rule to require that the drop wire be sufficient in capacity to allow the provisioning of three individual POTS lines.

11. The rules should require end users to pay the extension charge, even if they disconnect service before the expiration of twenty months from the time service is first provided.

Proposed subparagraph (3)(a)(i) provides for tariffs to impose initial charges and subsequent monthly charges for twenty months on end users who request extensions that are subject to the rule. As Qwest previously commented, there is nothing that requires a customer to remain a customer of the ILEC, once the extension has been completed. For example, should Local Multichannel Multipoint Distribution, other fixed wireless, or coaxial cable based telephony be selected by the customer in preference to the ILEC's service before the end of the twenty month payment period, unless the tariff requires full payment at the time of disconnection, the ILEC will not have been permitted to recover even that portion of the cost specified in the rule. The Commission should modify this section by adding the phrase "and must pay the entire remaining amount at the time of disconnecting service, if that time occurs prior to twenty months after service is first provided" to the end of the concluding sentence of subparagraph (3)(a)(i).

12. Required completion intervals under the proposed rules should be harmonized.

Qwest is also concerned about a potential conflict between proposed subsection (2)(a) which requires completion of extensions within eighteen months unless the Commission extends the time on a showing of good cause, and the requirement of proposed subsection (4)(b)(i) which requires completion within twelve months where



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tariffs based on estimates are used for cost recovery. This potential conflict could be resolved by qualifying the second sentence of proposed subsection (2)(a) by inserting "Except as otherwise provided in subsection (4)(b)(i)," or words of similar meaning.

13. The proposed rules should be clarified on the circumstances under which a tariff based on estimated costs will be permitted to remain in effect without completion of construction.

Proposed subparagraph (4)(b)(i) confusingly provides that a tariff based on estimates is null and void at the end of twelve months if construction has not been completed and a new tariff must be filed to offset amounts collected, but the Commission may permit "the tariff" to remain in effect after twelve months for good cause shown. This provision is ambiguous because it is not clear whether it is the "null and void" original tariff or the replacement "offset" tariff that the Commission may permit to remain in effect after twelve months. It is also unclear how a "null and void" tariff may be permitted to remain in effect. Qwest has previously commented on the retroactive aspect of this provision and it continues to believe the provision is improperly retroactive, but the ambiguity should be resolved nonetheless.

14. The new version of the proposed rules contains a new hurdle for recovery of cost in the form of a public interest test for the terminating access tariff, that is unexplained and could make cost recovery illusory.

Proposed paragraph (4)(c) provides that the Commission will review the cost justification for the terminating access tariffs that are authorized by the subsection and will approve them if they are consistent with the section of the rule and "in the public interest." Qwest is confused by this new requirement, because in previous discussions the



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cost recovery through terminating access was advanced as meeting the needs of carriers to avoid confiscation. If there is to be a new "public interest" determination before any terminating access tariffs are to be approved, this casts great uncertainty on the effectiveness of this means to avoid confiscation. The statutory standard for rates is "fair, just, reasonable and sufficient," RCW 80.36.080, and there is no "in the public interest" test included in that statute. Qwest suggests that this language is vague and adds nothing positive to the proposed rules, and Qwest accordingly recommends that the phrase "and in the public interest" be deleted.

<u>15. There should be no difference in the reporting requirements of Class A and Class B companies which collect terminating access charges under tariffs based on estimates.</u>

Proposed paragraph (4)(b) and subparagraph (4)(b)(i) establish a dual standard for reporting of construction expenditures and collections for Class A and Class B companies. This dual standard serves no proper purpose and the rule should be modified to make the reporting uniform. The proposed rule requires Class A companies to report quarterly, without qualification. The objective of the Commission under its proposed rule should be to ensure that long distance companies pay only terminating access "USF" charges that are based on actual line extension costs. There is no way to be certain that such is the effect of actual charges, without reports. The clear implication in proposed paragraph (4)(b) is that a Class B company may, at the open public meeting in which the Commission approves the tariff, successfully argue against any reporting requirements. This implication is reinforced by the wording of proposed subparagraph (4)(b)(i) which only requires Class B companies to report every six months if the Commission so orders.



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This dual standard does not serve the Commission's objective under the proposed rule and it should be eliminated. The second sentence of proposed paragraph (4)(b) should be stricken, as should the phrase "Class A" in the first sentence of the second paragraph of proposed subparagraph (4)(b)(i) and the entirety of the second sentence of the same paragraph.

16. Qwest questions whether the proposed rules follow the Legislative mandate.

Qwest remains concerned that the proposed rule appears to move counter to the directive of the Legislature in RCW 80.36.600 to provide for methods of universal service support that are specific, sufficient and minimize implicit sources of support. The terminating access charge, while explicit to interexchange carriers, continues to be implicit as a source of support as far as the consumer is concerned because there is no indication on the bill for long distance services, that a portion of the cost paid by the long distance carrier was a terminating access charge for universal service support.

17. Qwest is concerned about the proposed rules' treatment of cross boundary extensions.

Qwest is concerned that proposed subsection (5)(a) appears to attempt to delegate the Commission's authority to determine just and reasonable rates for a company that is "willing to serve" by means of a cross boundary extension, to companies that are "obligated to serve a neighboring exchange." Under the proposed rule, the company that is willing to make a cross boundary extension may recover its costs under proposed section (4), only if the companies "obligated to serve" agree that the cost of the cross boundary extension is less than the cost of one of the "obligated" companies extending

within the exchange, and the "obligated" companies agree to the cross boundary extension. This appears to place the authority for the "willing" company's use of the section (4) terminating access cost recovery mechanism, in the hands of a private party, namely the "obligated" company or companies.[2] This problem could be addressed by removing the phrases "companies obligated to serve the neighboring exchange agree that" and "and agree to the cross-boundary extension," from subsection (5)(a) and amending the subsection (1)(a) definition of "extension of service" by inserting "or any other company" after the phrase "extending company." As Qwest previously commented, the consent of the "obligated" companies is not necessary for the "willing" company to be allowed to extend service across the exchange boundary. The purpose of the rule should not be to allow the subsidization through terminating access charges of duplicative extensions by competing companies. Also, whether the cost of a cross boundary exchange extension is less than that of an in exchange extension is something the Commission can determine. The proposed change would clarify that the rule only applies where there is no distribution plant of any ILEC in place, and rely on the requirement that a cross boundary extension be lower in cost than an in exchange extension in order for a cross boundary extension to use the subsection (4) cost recovery mechanism.

Qwest is also concerned that the proposed paragraph (5)(c) which provides that the exchange boundaries in a cross boundary extension will remain unchanged, is too restrictive. There may be occasions when the companies involved determine that the

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[2] There is also no definition of what it means to be "obligated to serve," the neighboring exchange.

boundaries should be changed, and there is no good reason for the rule to prohibit such a change. The word "will" should be changed to "may."

<u>18. The proposed rules correctly refrain from disturbing the existing development tariffs.</u>

Qwest supports the Commission's desire as manifested in proposed section (6) of the revised draft, to avoid changing arrangements that currently exist under Qwest's filed PAHD tariffs that apply to developments. There is a minor drafting issue with the first sentence of this subsection, in that it refers to "with the exceptions below," but the succeeding portions of the subsection do not define or list any exceptions. Qwest suggests that this phrase could be changed to "as provided below."

**Conclusion**

Qwest continues to believe that no new rule is required, and the available tools are ample to address individual cases in which tariffed line extension rates cause problems. Notwithstanding this general belief, the above comments generally address specific problems with the proposed rules (except where they note that problems have been resolved) and Qwest recommends that the proposed rules be modified to address those concerns.

Respectfully submitted,

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