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- QWEST CORPORATION'S PETITION FOR APPROVAL OF AN ALTERNATIVE FORM OF REGULATION IN ACCORDANCE WITH RCW 80.36.135

I. INTRODUCTION

1 Qwest Corporation ("Qwest") hereby petitions the Washington Utilities and Transportation Commission ("Commission") for relief from traditional rate of return rate base regulation pursuant to RCW 80.36.135. Qwest's proposed plan for an alternative form of regulation ("AFOR") is attached hereto as Exhibit A. In this petition, Qwest will briefly describe the nature of the proposed AFOR, and how it complies with the statutory requirements. In addition, Qwest's AFOR plan is supported by the testimony of Mark S. Reynolds and David L. Teitzel, also filed with this Petition.

2 Qwest asks the Commission to schedule a prehearing conference as soon as possible in order to establish a schedule for the consideration and approval of Qwest's AFOR plan.

II. SUMMARY OF THE AFOR PLAN

3 Qwest will be subject to the same regulation as those companies who are competitively

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

classified pursuant to RCW 80.36.320, subject to certain exceptions and certain transition period requirements.[1] WAC 480-120-439(1) service quality reporting requirements are waived for Qwest, although it will be subject to WAC 480-120-439(2) service quality requirements. Also, the reporting requirements in the Seventeenth Supplemental Order in Docket UT-991358 are waived for Qwest. These provisions are subject to transition period requirements. The terms of the AFOR will be effective upon approval by the Commission and will remain in effect for at least four (4) years. Six months prior to the four-year anniversary of the AFOR, Qwest and the Commission will conduct a review of the provisions of this AFOR to determine if changing market conditions warrant modifications to the plan and at that time either the Commission or Qwest may reopen the AFOR proceeding to propose modifications to the plan. The transition period requirements, as well as the exceptions, are described in the attached Exhibit A.

III. DISCUSSION

4 Alternative regulation of telecommunications companies is authorized and endorsed by the legislature as set forth in RCW 80.36.135(1):

> The legislature declares that:
>
> (a) Changes in technology and the structure of the telecommunications industry may produce conditions under which traditional rate of return, rate base regulation of telecommunications companies may not in all cases provide the most efficient and effective means of achieving the public policy goals of this state as declared in RCW 80.04.330, this section, and RCW 80.36.145. The commission should be authorized to employ an alternative form of regulation if that alternative is better suited to achieving those policy goals.

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[1] The following statutes (and any associated rules and regulations) are waived for competitive telecommunications companies pursuant to RCW 80.36.320: RCW 80.04.300 (Budgets to be filed by companies -- Supplementary budgets); RCW 80.04.310 (Commission's control over expenditures); RCW 80.04.320 (Budget rules); RCW 80.04.330 (Effect of unauthorized expenditure -- Emergencies); RCW 80.04.360 (Earnings in excess of reasonable rate -- Consideration in fixing rates); RCW 80.04.460 (Investigation of accidents); RCW 80.04.520 (Approval of lease of utility facilities); RCW 80.36.100 (Tariff schedules to be filed and open to public); RCW 80.36.110 (Tariff changes -- Statutory notice -- Exception); Chapter 80.08 RCW (Securities) (except RCW 80.08.140, State not obligated); Chapter 80.12 RCW (Transfers of property); Chapter 80.16 RCW (Affiliated interests).

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

> (b) Because of the great diversity in the scope and type of services provided by telecommunications companies, alternative regulatory arrangements that meet the varying circumstances of different companies and their ratepayers may be desirable.

5 Thus, the Commission is authorized by the legislature to regulate different telecommunications companies in different ways, depending upon the circumstances of the company and how the AFOR meets the public policy goals of the state.

A. Requirements for the Petition Contained in RCW 80.36.135(3)

6 Under RCW 80.36.135(3) "A telecommunications company or companies subject to traditional rate of return, rate base regulation may petition the commission to establish an alternative form of regulation. The company or companies shall submit with the petition a plan for an alternative form of regulation." This Petition is a petition under that subsection of the statute, and Qwest has submitted a plan for an AFOR in accordance with the statutory requirements. Subsection (3) goes on to require that "[t]he plan shall contain a proposal for transition to the alternative form of regulation and the proposed duration of the plan." Qwest's plan proposes that it be permitted to implement certain aspects of the AFOR immediately upon approval of the plan, but also contains a transition period of four (4) years as set forth in Exhibit A and Mr. Reynolds' testimony. The proposed initial duration of the plan is four years, also as described in those documents.

7 Subsection (3) requires that "[t]he plan must also contain a proposal for ensuring adequate carrier-to-carrier service quality, including service quality standards or performance measures for interconnection, and appropriate enforcement or remedial provisions in the event the company fails to meet service quality standards or performance measures." As described in Qwest's plan and testimony, this particular AFOR would make no changes at all to Qwest's current carrier-to-carrier obligations under either state or federal law. Nor would it change any

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

of Qwest's interconnection agreements with other carriers under Section 252 of the Telecommunications Act of 1996. Most, if not all, of these agreements contain a set of Performance Indicators, coupled with the Commission-approved Qwest Performance Assurance Plan ("QPAP"), that together operate as service quality standards and performance measures, and provide appropriate enforcement and remedial provisions within their terms. Because Qwest is proposing no change to the status quo in this area, and because the status quo provides adequate protection for carrier-to-carrier service quality, no new or additional provisions are proposed in Qwest's AFOR.

8 Although the Commission also may initiate consideration of alternative forms of regulation for a company or companies on its own motion, that is not the case with this Petition. Subsection (3) of RCW 80.36.135 goes on to require that the Commission, after notice and hearing, shall issue an order accepting, modifying, or rejecting the plan within nine months after the petition or motion is filed, unless extended by the Commission for good cause. This Petition is filed on October 20, 2006. Nine months from the filing date is July 20, 2007. However, Qwest respectfully requests that the Commission establish a schedule that would allow issuance of an order earlier than that deadline.

9 In terms of the standards for consideration of the AFOR, RCW 80.36.135(3) directs the Commission to "order implementation of the alternative plan of regulation unless it finds that, on balance, an alternative plan as proposed or modified fails to meet the considerations stated in subsection (2) of this section." Thus, Qwest will next explain how its proposed AFOR meets the considerations stated in RCW 80.36.135(2).

B. Considerations Stated in RCW 80.36.135(2)

10 RCW 80.36.135(2) provides that, subject to certain conditions, "the commission may regulate telecommunications companies subject to traditional rate of return, rate base regulation by

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

authorizing an alternative form of regulation. The commission may determine the manner and extent of any alternative forms of regulation as may in the public interest be appropriate." Thus, the Commission has broad discretion to consider the extent and manner of an appropriate AFOR, so long as the Commission addresses the state's general policy considerations, as well as the specific considerations set forth in this statute. RCW 80.36.135(2) specifically directs the Commission to consider both the public policy goals declared in RCW 80.36.300, as well as the six specific factors in subsection (2).

1. The Goals of RCW 80.36.300

11 The stated public policy goals of the State of Washington, as set forth in RCW 80.36.300, are as follows: (1) Preserve affordable universal telecommunications service; (2) Maintain and advance the efficiency and availability of telecommunications service; (3) Ensure that customers pay only reasonable charges for telecommunications service; (4) Ensure that rates for noncompetitive telecommunications services do not subsidize the competitive ventures of regulated telecommunications companies; (5) Promote diversity in the supply of telecommunications services and products in telecommunications markets throughout the state; and (6) Permit flexible regulation of competitive telecommunications companies and services.

12 Qwest believes that its AFOR plan is consistent with each of these goals. Qwest's plan includes a provision that continues to treat the recurring and non-recurring charges for basic stand-alone residential flat-rated local exchange service (1FR) and measured local exchange service (1MR) as tariffed services. Price increases for these services are limited to $0.50 per year for each of four years, which means that the price could not go up more than $2.00 over that time, and would not necessarily even increase by that much, as the increases are not mandatory. The 1FR is currently priced at $12.50 per month and would not increase to more

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

than $14.50 after four years. Qwest believes that this proposal preserves affordable universal telecommunications service, consistent with policy goal (1).

13 Policy goal (2) is to maintain and advance the efficiency and availability of telecommunications service, and policy goal (3) is to ensure that customers pay only reasonable charges for telecommunications service. These goals parallel goals set forth in RCW 80.36.135(2) and are discussed below.

14 Policy goal (4) is to ensure that rates for noncompetitive telecommunications services do not subsidize the competitive ventures of regulated telecommunications companies. Qwest's rates for its noncompetitively classified (i.e., tariffed) services were set by the Commission in the most recent rate case, or are offered under tariffs that have been submitted to and reviewed by the Commission. The Commission has either affirmatively approved those rates, or has determined that it will take no action on them, thereby allowing them to become effective. This stated policy goal has been in place since 1985 and Qwest believes that the Commission is mindful of these goals as it goes about its daily business. No allegations of cross-subsidization are currently pending with regard to Qwest's competitive and tariffed services, and Qwest believes that it is reasonable to conclude that its rates to date have been set with this goal in mind. There is nothing in the AFOR plan that would allow Qwest to begin extracting profits from its tariffed services to support its competitive service offerings. Further, one only need look at the underlying costs of service (generally reflected by Qwest's wholesale TELRIC costs) to conclude that Qwest's non-competitively classified services do not carry sufficient margin to support any allegation that a cross-subsidy exists. Finally, Qwest has committed to retain tariffs for certain services as set forth in Mr. Reynolds' testimony, which should fully address this issue.

15 Policy goal (5) is to promote diversity in the supply of telecommunications services and

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

products in telecommunications markets throughout the state. Qwest's AFOR is not inconsistent with this goal – it gives Qwest a small additional amount of regulatory flexibility that will enable it to compete more effectively in the markets in Washington. It is competition that promotes diversity in supply of services, by spurring carriers to develop and deploy new products and services to capture or retain market share. To the extent that this AFOR will allow Qwest to be more competitive (albeit without all of the flexibility enjoyed by a competitively classified company), Qwest believes that this goal will be furthered.

16 Policy goal (6) is to permit the flexible regulation of competitive telecommunications companies and services. Qwest's AFOR is not inconsistent with that goal, as it does not change the way the Commission regulates competitive companies and services.

2. The Specific Factors under Subsection (2) of RCW 80.36.135

17 Under RCW 80.36.135(2), the Commission is further directed to consider whether the AFOR will: (a) Facilitate the broad deployment of technological improvements and advanced telecommunications services to underserved areas or underserved customer classes; (b) Improve the efficiency of the regulatory process; (c) Preserve or enhance the development of effective competition and protect against the exercise of market power during its development; (d) Preserve or enhance service quality and protect against the degradation of the quality or availability of efficient telecommunications services; (e) Provide for rates and charges that are fair, just, reasonable, sufficient, and not unduly discriminatory or preferential; and (f) Not unduly or unreasonably prejudice or disadvantage any particular customer class.

18 It is important to note that the statute does not require that the Commission make an affirmative finding that the AFOR will meet or enhance each of these considerations. Rather, the Commission is merely directed to consider whether the AFOR will further the considerations. This suggests that the Commission may still approve an AFOR that is neutral

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

with regard to one or more of the considerations. Notwithstanding that, Qwest believes that its AFOR plan is consistent with each of these considerations and that there is no impediment to the Commission approving the plan under RCW 80.36.135(3).

19 The first consideration is whether the plan will "facilitate the broad deployment of technological improvements and advanced telecommunications services to underserved areas or underserved customer classes. . . ." Nothing in the AFOR affects Qwest's ongoing commitment to deploy quality and technologically current products to its customers throughout its operating territory. In fact, Qwest's AFOR includes a provision that it will not geographically de-average its rates for the services that will be treated as competitively classified services if the AFOR is approved. This means that rural customers will receive the benefit of any price changes for those services made by the company to compete in the competitive urban markets.

20 The second consideration is whether the AFOR will improve the efficiency of the regulatory process. Qwest believes that it will. The AFOR streamlines many reporting processes for Qwest, while continuing to provide the Commission information it needs to discharge its regulatory duties. This is explained further in Mr. Reynolds' testimony.

21 The third consideration is whether the AFOR will preserve or enhance the development of effective competition and protect against the exercise of market power during its development. Qwest respectfully suggests that competition is so effective at this point, that there is certainly no need to seek to "enhance" it with an AFOR. However, this provision is obviously a very general one, and was written at a time when the state of effective competition and its rate of development was uncertain. Thus, this is certainly a legitimate consideration for the legislature to have mandated. Qwest's position on this consideration is that it is the competitive market itself that has driven Qwest's need to seek an AFOR, to enable it to more

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

effectively compete against a host of strong competitors, regulated and unregulated. Qwest submits that it is not currently able to exercise market power for the services that would be affected by the AFOR, and that the AFOR therefore does not harm, and at least preserves, the development of competition. The issue of competition is discussed in detail in Mr. Teitzel's testimony.

22 The fourth consideration is whether the AFOR will preserve or enhance service quality and protect against the degradation of the quality or availability of efficient telecommunications services. Qwest believes that service quality will not be negatively impacted by the AFOR. The AFOR plan continues to hold Qwest to the service quality requirements that are in place by rule for all companies. This aspect of the plan is detailed in Mr. Reynolds' testimony. Qwest's incentives to preserve service quality exists independent of any AFOR plan, and indeed independent of any Commission requirements – the competitive market in Washington as described by Mr. Teitzel allows carriers little to no latitude with regard to service quality, as customers who are dissatisfied with a provider have a number of competitive options.

23 The fifth consideration is whether the AFOR will provide for rates and charges that are fair, just, reasonable, sufficient, and not unduly discriminatory or preferential. Qwest submits that its commitment with regard to pricing the 1FR and the 1MR, as well as its deaveraging commitment, coupled with the price-constraining competitive market described in Mr. Teitzel's testimony, will assure that prices remain fair, just and reasonable.

24 The final consideration is whether the AFOR will not unduly or unreasonably prejudice or disadvantage any particular customer class. Under the AFOR, all of Qwest's residential customers are treated the same with regard to pricing and availability of the stand-alone residential services. Thus, there is no prejudice or disadvantage to that customer class. In addition, all of Qwest's business customers who are currently subscribed to business services

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

in non-competitively classified wire centers will continue to be treated at parity with how those services are treated in competitively classified wire centers. This offers assurances that no customer classes will be unduly or unreasonably prejudiced or disadvantaged.

C. Waiver of Requirements Pursuant to RCW 80.36.135(5)

25 Qwest has asked the Commission to waive certain regulatory requirements under the AFOR. The Commission has authority to do so under RCW 80.36.135(5), which provides that the "commission may waive such regulatory requirements under Title 80 RCW for a telecommunications company subject to an alternative form of regulation as may be appropriate to facilitate the implementation of this section. However, the commission may not waive any grant of legal rights to any person contained in this chapter and chapter 80.04 RCW. The commission may waive different regulatory requirements for different companies or services if such different treatment is in the public interest."

26 The regulatory requirements that Qwest has requested be waived are generally the same as those that are waived for competitively classified companies, with some very specific exceptions, as described by Mr. Reynolds.

IV. CONCLUSION

27 For the reasons set forth herein, Qwest asks the Commission to commence a proceeding under RCW 80.36.135(3) and approve Qwest's AFOR plan, attached hereto as Exhibit A.

DATED this 20th day of October, 2006.

QWEST

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Lisa A. Anderl, WSBA #13236
Adam L. Sherr, WSBA #25291
1600 7th Avenue, Room 3206
Seattle, WA 98191

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

Phone: (206) 398-2500

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040