



DEPARTMENT OF THE ARMY
UNITED STATES ARMY LEGAL SERVICES AGENCY
901 NORTH STUART STREET
ARLINGTON, VIRGINIA 22203-1837

August 18, 2008

REPLY TO
ATTENTION OF

Regulatory Law Office
U 4183

VIA ELECTRONIC & OVERNIGHT MAIL

Commission Secretary
Washington Utilities & Transportation Commission
P.O. Box 47250
1300 S. Evergreen Park Drive, S.W.
Olympia, WA 98504-7250

Subject: **DoD/FEA's Comments**

In Re: **Docket UT-081501** – In the Matter of the Application of QWEST
CORPORATION Regarding the Sale and Transfer of Property.

To The Honorable Commission Secretary:

The Secretary of Defense, through duly authorized counsel, on behalf of the consumer interests of the United States Department of Defense and all other Federal Executive Agencies (collectively referred to herein as "DoD/FEA"), hereby files comments on Qwest Corporation's ("Qwest") Application Regarding Transfer and Sale of the Building Located at 1600 – 7th Avenue, Seattle to INGCAL 7th AVENUE LLC (hereafter, "the Application"). Qwest filed the Application with the Washington Utilities and Transportation Commission ("the Commission") on August 13, 2008.

Qwest previously filed an application for transfer and sale of the 7th Avenue building on May 27, 2008. That filing was assigned Docket No. UT-080923. Upon receipt of that filing, DoD/FEA, the Office of Public Counsel and the Commission's staff began a series of discussions with Qwest as to provisions for measuring and distributing to Washington ratepayers the proceeds from the sale. DoD/FEA participated in these discussions in its capacity as a major end-user customer of Qwest's telecommunications services throughout Washington.¹ DoD/FEA sought to participate because it has been the policy in Washington and other jurisdictions that when a regulated company sells an asset or operations at a profit, some part of the proceeds are returned in some manner to ratepayers who bore the risk of the asset appreciation or depreciation.² Qwest withdrew its application on June 26, 2008, but Qwest and the other parties continued their earlier discussions.

¹ DoD/FEA obtains a broad variety of services, and has a wide range of sizes of customer (both military and Federal civilian) serving sites and number and kind of urban/rural locations throughout the state.

² DoD/FEA disagrees with the implication in Note 2 of the Application that sharing would not be necessary under the circumstances of the sale. The Commission need not address that position, however, in light of Qwest's proposed commitments herein.

On August 13, 2008, Qwest filed the Application now under consideration. DoD/FEA takes this opportunity to express its support for Commission grant of the Application pursuant to the commitments set forth therein.³ The terms represent an equitable sharing of the proceeds, based on procedures that are consistent with Commission policy and precedent, and implementation of the Application terms will bring significant benefits to ratepayers throughout the state.⁴ Set forth below are references to commitments upon which DoD/FEA's support relies.

First, DoD/FEA notes that the Application commitments focus on the implementation of broadband deployment and improvement throughout the state, including communities where DoD installations and other federal offices and facilities are located. Affected communities are both large and small. Qwest has selected (with participation by the parties) certain locations where it will deploy fiber-to-the-node to facilitate higher speed Internet capability, and will also expand DSL capacity to certain currently unserved rural communities. Qwest's commitment to build or improve broadband service within three years brings this important service to areas that were not encompassed in the Alternate Form of Regulation ("AFOR") plan now being implemented.

Second, Qwest has made the commitment to fund the broadband development projects up to the total sharing dollar amount of \$12.97 million, as calculated on Attachment B. Thus, if the deployment costs are less than those set forth in the Application for each category, Qwest will expand its list in that category so that the entire category amount is spent (see Attachment C, pp. 2 and 4). Moreover, Qwest commits to a progress reporting that will allow the Commission and parties to monitor the pace at which the commitments are met (Attachment C, p. 4).

Third, Qwest's proposal for broadband deployment contains sufficient flexibility to deal with unexpected implementation events. Attachment C., p. 4, contains provisions for consultation with parties should the deployment commitments be placed in jeopardy during the three-year implementation period. Accordingly, we do not question Qwest's representation that it is committed to fulfill the objectives that it has reached with the parties. It is important to DoD/FEA that it be included in any discussions whereby the list of projects in the event that Attachment C must be altered.

A grant of the Application under the terms set forth therein (including Attachment C) will be in the public interest. DoD/FEA is eager to support the expansion of broadband capacity in the manner that Qwest proposes, in part because the plan will bring higher speed Internet capability to several military locations, including the Navy facilities and their communities in the Bremerton and Silverdale areas and at Fort Lewis. The Application terms expand on

³ DoD/FEA's support herein is based solely on the Application terms as filed. Those terms were agreed to only after considerable discussion and compromise, and do not necessarily represent the terms that DoD/FEA would recommend in a different context. Should the Commission modify those terms or set the Application for adjudicative hearing, DoD/FEA reserves its right to argue for terms other than those stated therein.

⁴ DoD/FEA has no reason to question the sale terms and benefits that Qwest states in paragraphs 7 through 9 of the Application, but we have no independent knowledge to confirm those representations.

commitments that Qwest undertook pursuant to the AFOR, and ensure that a broad base of its customers receives the benefits of broadband capability that are presently unavailable.

Based on the specific investment commitments made by Qwest, DoD/FEA supports the approval of Qwest Corporation's Application Regarding Transfer and Sale of the Building Located at 1600 – 7th Avenue. DoD/FEA believes that the implementation of Qwest's specific investment commitments would be appropriate and sufficient to provide the requisite Public Interest benefits for the approval of the Application.⁵

Copies of this letter are being sent as indicated below. The electronic versions of this letter are being provided separately by email. Inquiries to this office regarding this proceeding should be directed to the undersigned at (703) 696-1643.

Thank you for your cooperation and assistance in this matter.

Sincerely,



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⁵ Other than the Public Interest benefits from the specific investment commitments, DoD/FEA presently takes no position on the remaining matters associated with the Application, such as the accounting entries and the lease-back arrangement.