BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
Marshall Johnson	Commissioner
Ken Nickolai	Commissioner
Tomas Pugh	Commissioner
Phyllis A. Reha	Commissioner

AUG 5

In the Matter of Qwest Corporation's Alternative Form of Regulation (AFOR) Plan

ISSUE DATE: August 4, 2005

DOCKET NO. P-421/AR-97-1544

ORDER AMENDING PLAN

PROCEDURAL HISTORY

On June 6, 2005, Qwest Corporation (Qwest) proposed beginning the process of disbursing the Telecommunications Fund created by its Alternative Form of Regulation (AFOR) plan, even though the terms triggering those disbursements have not been fulfilled. The Fund finances telecommunications projects benefitting education, health care and libraries.

On June 20, 2005, the Minnesota Department of Commerce (the Department) filed comments opposing Qwest's proposal.

The matter came before the Commission on July 14, 2005.

FINDINGS AND CONCLUSIONS

I. Background

Minnesota Statutes §§ 237.76 - 237.772 permit a telephone company to replace some regulatory obligations with obligations of its own choosing, provided that the new regulatory plan meets certain statutory requirements and is approved by the Commission. This alternative form of regulation (AFOR) "provide[s], where appropriate, a regulatory environment with greater flexibility than is available under traditional rate-of-return regulation as reflected in other provisions of this chapter [of Minnesota Statutes]." Minn. Stat. § 237.76.

On January 1, 1999, U S WEST Communications, Inc. (U S WEST), began operating under an AFOR plan.[1] In accepting the plan, US WEST agreed to make stipulated payments when it failed to meet specified service quality standards. Shortcomings in specific local exchange areas would result in credits to customers served by those exchanges. Statewide shortcomings would result in payments into a Telecommunications Fund to finance telecommunications projects benefitting education, health care or libraries within US WEST's local service area. The plan states that the Minnesota Department of Public Service would solicit proposals to use the funds whenever the fund balance reached $500,000. The plan was due to expire in 2003.

US WEST subsequently became Qwest Corporation,[2] and the Department of Public Service became the Department of Commerce (the Department), but the AFOR plan's terms remained in force.

In 2003, the Commission extended the plan's terms until at least June 30, 2004, pending consideration of a replacement plan.[3] In 2004 the Legislature extended the plan's terms until December 31, 2005.[4]

On June 6, 2005, in anticipation of the plan's expiration, Qwest proposed beginning the process of disbursing the roughly $134,000 remaining in the Telecommunications Fund even though this balance is less than the $500,000 trigger provided in the AFOR Plan. This filing initiated the current dispute.

II. Qwest's Petition

Qwest proposes to amend its AFOR Plan to omit the $500,000 threshold requirement, thereby initiating the process for disbursing the balance of the Telecommunications Fund. According to Qwest, the $500,000 trigger was created to promote economies of scale. Qwest might make

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[1] See *In the Matter of the Petition of U S WEST Communications, Inc. for Approval of its Alternative Form of Regulation Plan*, Modified Alternative Form of Regulation Plan for the State of Minnesota (January 11, 1999).

[2] *In the Matter of the Merger of the Parent Corporations of Qwest Communications Corporation, LCI, International Telecom Corp., USLD Communications, Inc., Phoenix Network, Inc., and U S WEST Communications, Inc.*, Docket No. P-3009, 2052, 5096, 421, 3017/PA-99-1192 ORDER ACCEPTING SETTLEMENT AGREEMENTS AND APPROVING MERGER SUBJECT TO CONDITIONS (June 28, 2000).

[3] *In the Matter of the Petition of Qwest Corporation for Approval of its Revised Alternative Form of Regulation (AFOR) Plan*, Docket No. P-421/AR-03-1688 ORDER ADOPTING PROCEDURES FOR AFOR RENEWAL PROPOSAL AND SETTLEMENT CONFERENCE (November 26, 2003).

[4] Laws of Minnesota 2004, Chapter 214, § 4.

payments into the fund every year, and the parties that negotiated the AFOR Plan did not intend the Department to incur the administrative burden of soliciting requests for proposal annually. Nor did the parties intend to preclude consideration of proposals that would require more funds than a single year's contributions would support.

Now that the Plan is ending, Qwest argues, these considerations are less salient. When Qwest stops making contributions to the Fund, delay will no longer promote economies of scale or reduce the administrative burden of disbursing the funds. Given the time required by the grant process, Qwest anticipates making any final contributions to the fund in time for a final distribution. Consequently Qwest proposes to begin the process of disbursing the funds without further delay.

III. Department Comments

The Department questions whether it retains the legal authority to disburse the funds as proposed. After the AFOR Plan's adoption, the Minnesota Legislature adopted Minnesota Statutes § 16A.151, which states in relevant part as follows:

> Subdivision 1(c). Money recovered by a state official in litigation or in settlement of a matter that could have resulted in litigation is state money and must be deposited in the general fund.
>
> Subd. 2(a). If a state official litigates or settles a matter on behalf of specific injured persons or entities, this section does not prohibit distribution of money to the specific injured persons or entities on whose behalf the litigation or settlement efforts were initiated. If money recovered on behalf of injured persons or entities cannot reasonably be distributed to those persons or entities because they cannot readily be located or identified or because the cost of distributing the money would outweigh the benefit to the persons or entities, the money must be paid into the general fund.

Where the Plan provides for compensating customers that live in areas with substandard service, the Department concludes that the Plan compensates "specific injured persons or entities" as permitted by subdivision 2(a). But the practice of funding telecommunications projects does not conform to statute, according to the Department, and those funds should instead be directed to Minnesota's General Fund. But the Department acknowledges that this is a difficult question of legal interpretation, and agrees to defer to the Commission's judgment in this matter.

Also, as a practical matter the Department questions whether the benefit of disbursing roughly $134,000 is worth the cost of administering the grant-making process.

IV. Commission Action

The Commission is not persuaded that Minnesota Statutes § 16A.151 governs the current case. As noted above, § 16A.151 applies to "[m]oney recovered by a state official in litigation or in settlement of a matter that could have resulted in litigation...." The funds in question were not recovered from litigation or settlement, but are the result of a plan arising from statutorily-defined regulatory process of negotiation that involved US West, the Department and various other parties, under the Commission's supervision. By its terms, the statute does not apply to the current facts.

Regarding the cost of disbursing the fund, the Commission acknowledges the role the Department plays in the AFOR Plan's administration and appreciates the Department's concern for administrative efficiency. Where the Department can establish appropriate parameters to ease the administrative process within the bounds of fairness, the Commission authorizes the Department to do so. Certainly the Department should design the process to disburse all the funds that are now in the fund or will accrue to the fund as a result of Qwest's service quality performance through the end of 2005, so there will be no need for additional disbursements. But concern for administrative efficiency does not justify ignoring the purposes for which Qwest's and the Department's predecessors proposed the Fund. While the AFOR Plan did not expressly address how to deal with the current situation, the Commission finds that Qwest's proposal to disburse the funds most closely fulfills the Fund's purposes.

For the foregoing reasons, the Commission finds Qwest's proposal reasonable and will accept it.

ORDER

1. Qwest's Modified Alternative Form of Regulation Plan for the State of Minnesota (January 11, 1999), Appendix B, part IV ("Penalties"), is amended to remove the requirement that the Telecommunications Fund balance reach $500,000 before the Department solicits proposals for using the funds.

2. The Department is asked to begin the process to disburse all the funds that will accumulate in the fund pursuant to the AFOR Plan, and to prepare a request for proposals with appropriate parameters.

3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mark E. Oberlander for

Burl W. Haar
Executive Secretary

(S E A L)

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