

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF THE DEVELOPMENT )  
OF AN ALTERNATIVE FORM OF )  
REGULATION PLAN FOR QWEST )  
CORPORATION )**

**Case No. 05-00466-UT**

**ORDER ESTABLISHING INTERIM AFOR**

This matter comes before the New Mexico Public Regulation Commission ("Commission") as a follow-up to the Commission's Interim Order Extending AFOR, issued on March 7, 2006.

**THE COMMISSION FINDS AND CONCLUDES:**

1. By order dated March 8, 2001, this Commission approved an Alternative Form of Regulation Plan ("AFOR I") for Qwest Corporation ("Qwest"). The AFOR states that it shall be effective for a term of five years, expiring on March 8, 2006.

2. In May of 2005, negotiations among interested persons were held on a weekly basis to attempt to reach a stipulation on an AFOR for Qwest to replace AFOR I. William Herrmann facilitated those negotiations. In August 2005, Mr. Herrmann informed the Commission that, to accommodate ongoing negotiations, the participants had agreed to ask the Commission to extend the date of AFOR I past March 7, 2006, but the extension should not impact the requirements of existing Commission orders referring to AFOR I or compromise the positions of the participants in any litigation related to those orders.

3. The negotiations did not result in a stipulation and on November 29, 2005, this Commission commenced Case No. 05-00466-UT for the purpose of developing an



AFOR for Qwest to replace AFOR I. A hearing in Case No. 05-00466-UT is scheduled for April 17, 2006.

4. The participants in the negotiations did not move the Commission to extend AFOR I as Mr. Herrmann indicated they had agreed to do. Rather, on February 27, 2006, Staff filed its Motion for Interim AFOR. Staff's Motion asks the Commission to establish an Interim AFOR, incorporating all of the provisions of AFOR I except for the annual investment requirement, to be in place at least through June 30, 2006, with the proviso that March 8, 2006 remain the date certain for determining any investment shortfall, to be resolved in Case No. 05-00094-UT. Staff further requests that, in an order establishing an Interim AFOR, the Commission state that the Interim AFOR is only for the purpose of permitting the Commission to complete work on a new AFOR in an orderly manner and may not be cited by any party as precedent with respect to AFOR I or its replacement in this case or otherwise. Staff explains that it requests an Interim AFOR as opposed to an extension of the current AFOR because the Commission lacks jurisdiction to enter an order altering the provisions of AFOR I while Case No. 04-00237-UT is on appeal. Staff's Motion at 4.

5. Staff's Motion states that the New Mexico General Services Department ("GSD") joins in Staff's Motion, that the New Mexico Attorney General ("AG") takes no position on Staff's Motion, that the City of Albuquerque supports Staff's Motion, that the AARP did not respond as of the time of the filing of Staff's Motion, and that Citizens for Integrity and Transparency in Utility Matters ("CITUM") does not oppose Staff's Motion. Staff's Motion states that Qwest had questions as to the word "Interim" as opposed to an extension of AFOR I, but that Staff does not believe that Qwest is opposed



to the necessity for prompt Commission action in this area. *Id.* At the Commission's March 2, 2006 Work Session, Qwest explained that it is opposed to an Interim AFOR but does not oppose extending AFOR I, in its entirety, through June 30, 2006 and quarterly thereafter if necessary.

6. Following the March 2 Work Session discussion of Staff's Motion, the Commission issued its Interim Order Extending AFOR, in which it extended Qwest's AFOR on an interim basis past March 7, 2006, and scheduled oral argument on Staff's Motion for March 14, 2006.

7. The following persons were represented at the March 14 oral argument: Staff; CITUM; the AG; AARP; GSD; the City of Albuquerque; and Qwest. At the oral argument, Qwest reiterated that it is opposed to an Interim AFOR but does not oppose extending AFOR I, in its entirety. AARP, GSD, and the City of Albuquerque supported establishment of an Interim AFOR. The AG also supported an Interim AFOR, but advocated including an investment requirement in an Interim AFOR. CITUM and Qwest argued that the Commission cannot establish an Interim AFOR without holding an evidentiary hearing. In response, Staff, the AG, and GSD argued that the Commission can take notice of the record in other pending AFOR-related cases.

8. This Commission takes notice of the record in Commission Case Nos. 04-00237-UT, 05-00094-UT, and 05-00466-UT. *See Beller v. United States*, 277 F.Supp.2d 1164, 1165 n.1 (D. N.M. 2003) (court, in civil action arising out of automobile accident, took judicial notice of criminal case against defendant driver, including the factual basis in support of the defendant's guilty plea).



9. To maintain the status quo while the Commission considers a successor AFOR to AFOR I, an Interim AFOR should be established. An Interim AFOR should be established as opposed to an extension of AFOR I to provide finality to AFOR I. Among other things, allowing AFOR I to terminate on schedule will provide a cleaner record in proceedings to enforce AFOR I. For this reason, the Commission's Interim Order Extending AFOR, issued on March 7, 2006, should be vacated. Accordingly, no AFOR for Qwest will be in place between March 9, 2006 and March 13, 2006.

10. The Interim AFOR should include all terms of AFOR I except for the investment requirements. The Interim AFOR should not serve as precedent for a successor AFOR or for enforcement of AFOR I. The Interim AFOR should not impact the requirements of existing Commission orders referring to the AFOR or compromise the positions of the participants in any litigation related to those orders or in pending litigation relating to AFOR I or a successor AFOR.

11. Commission Rule 17.11.16.31 NMAC prohibits trouble isolation charges. It states that, if a customer reports trouble on a line, a local exchange carrier ("LEC") shall, without charge to the customer and by use of whatever means necessary, determine whether the trouble is on the LEC or customer side of the network interface. The effective date of 17.11.16.31 NMAC is February 1, 2006; however, the Section states that, for a LEC subject to an alternative form of regulation plan on January 1, 2006, the Section shall not become effective until the expiration of its alternative form of regulation plan. Qwest should be granted a variance from this Section of 17.11.16 NMAC so that the Section does not become effective as to Qwest until a new non-interim AFOR for Qwest becomes effective.



**IT IS THEREFORE ORDERED:**

A. An Interim AFOR is established to be in effect beginning March 14, 2006 and until a successor non-interim AFOR becomes effective. The Interim AFOR shall include all terms of AFOR I except for the investment requirements. The Interim AFOR shall not serve as precedent for a successor AFOR or for enforcement of AFOR I. The Interim AFOR shall not impact the requirements of existing Commission orders referring to the AFOR or compromise the positions of the participants in any litigation related to those orders or in pending litigation relating to AFOR I or a successor AFOR.

B. The Commission's Interim Order Extending AFOR, issued on March 7, 2006, is vacated.

C. Qwest is granted a variance from 17.11.16.31 NMAC so that this Section does not become effective as to Qwest until a new non-interim AFOR for Qwest becomes effective.

D. This Order is effective immediately.

E. This Order shall be served on all persons on the attached Certificate of Service.



ISSUED under the Seal of the Commission at Santa Fe, New Mexico, on  
March 14, 2006.

NEW MEXICO PUBLIC REGULATION COMMISSION

  
BEN R. LUJAN, CHAIRMAN

  
JASON MARKS, VICE CHAIRMAN

  
DAVID W. KING, COMMISSIONER

**TELEPHONICALLY APPROVED**  
LYNDA M. LOVEJOY, COMMISSIONER

  
E. SHIRLEY BACA, COMMISSIONER.





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Case No. 05-00466-UT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Order Establishing Interim  
AFOR, issued March 14, 2006, was mailed first-class postage prepaid to each of the  
following on March 22, 2006:

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Legal Division Director  
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Santa Fe, NM 87501

Dated this 22nd day of March, 2006.

NEW MEXICO PUBLIC REGULATION COMMISSIO



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Cecilia Rios, Paralegal