



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

April 12, 2007

REPLY TO
ATTENTION OF

Regulatory Law Office
U 4170

VIA ELECTRONIC (April 13, 2007) & OVERNIGHT MAIL

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

Subject: **DoD/FEA's Opening Brief**

In Re: **Docket UT-061625** – Petition of Qwest Corporation to be Regulated Under an
Alternative Form of Regulation Pursuant to RCW 80.36.135.

To The Honorable Commission Executive Secretary:

Pursuant to the schedule set forth by the presiding Administrative Law Judge in the Prehearing Conference Order (Order No. 02, November 16, 2006) and orally modified at the Hearing (March 15, 2007) in the above-referenced proceeding, enclosed for filing are the original and twelve (12) copies of the Opening Brief of the United States Department of Defense and All Other Federal Executive Agencies (collectively referred to herein as "DoD/FEA").

In accordance with the Commission's Rules, a Certificate of Service is appended. Copies of this filing are being sent to all parties of record in accord with the Certificate of Service. 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,

A handwritten signature in black ink, appearing to read "Stephen S. Melnikoff".

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Enclosure: Twelve (12) Copies
CF: See Certificate of Service
Honorable Patricia Clark (Email on 4/13/07)

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of)
) DOCKET UT-061625
)
QWEST CORPORATION)
)
To be Regulated Under an Alternative Form) THE UNITED STATES
of Regulation Pursuant to RCW 80.36.135.) DEPARTMENT OF DEFENSE
) AND ALL OTHER FEDERAL
) EXECUTIVE AGENCIES'
)
)
)
)
) CERTIFICATE OF SERVICE
_____)

CERTIFICATE OF SERVICE

I certify that I have caused a copy of the foregoing document, together with this Certificate of Service, in Docket UT-061625 to be sent this day by electronic service (email) and postage prepaid, properly addressed, first class U.S. Mail (or private courier) to the counsel and parties named below, as indicated:

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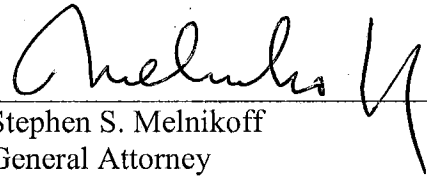
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Dated this 12th day of April 2007
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(12/1/06)

**BEFORE THE WASHINGTON STATE
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)	OPENING BRIEF

OPENING BRIEF

OF

THE UNITED STATES DEPARTMENT OF DEFENSE
AND
ALL OTHER FEDERAL EXECUTIVE AGENCIES

TERRANCE A. SPANN
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by

STEPHEN S. MELNIKOFF
General Attorney

Due: April 13, 2007

Dated: April 12, 2007

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of)	
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OPENING BRIEF

I. INTRODUCTION

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 submits its Opening Brief in the above-captioned proceeding. For the reasons stated below, DoD/FEA does not oppose the approval by the Washington Utilities and Transportation Commission ("the Commission") of the Alternative Form of Regulation ("the Revised AFOR") for Qwest Corporation ("Qwest" or "the Company"). The Revised AFOR is the product of a settlement among most parties, and has been introduced in this proceeding as an 11-page attachment to Exhibit 4.

DoD/FEA sought intervention in this proceeding, and participated in the negotiations prior to the hearing, as a major end-user customer of business telecommunications services in Washington. DoD/FEA noted in its December 4, 2006 Petition to Intervene the extent of the services that it obtains throughout the state, and explained also that it has an interest in the ability of Qwest's competitors to obtain

services from Qwest that they need to make available competitive offerings to customers. DoD/FEA uses competitive bidding to obtain telecommunications services in Washington, and only if a fully competitive market exists will DoD/FEA (and other customers) be able to obtain the benefits associated with competition. Thus, DoD/FEA's participation has focused on whether the AFOR sought by Qwest will further competition for the affected business services, and whether the AFOR ensures that DoD/FEA will be able to obtain directly from Qwest and other providers the services that it requires at just and reasonable rates. DoD/FEA generally supports regulatory changes that comport with an evolving competitive market to ensure that the legacy carrier is not unduly burdened by the costs and constraints of asymmetric regulation.¹

DoD/FEA's participation in this proceeding includes becoming a signatory to the "Stipulation and Settlement Agreement" that has been received in the record as Exhibit 4. The Settlement Narrative of Integra Telecom of Washington, Inc., Time Warner Telecom of Washington, LLC, Covad Communications Company, and XO Communications Services, Inc. (collectively "Joint CLECs"), WeBTEC, and DoD/FEA (all collectively "Selected Intervenors") appears as Exhibit 7 in the record. In that document, the Selected Intervenors indicated that they do not take a position on the resolution of issues other than those raised by them and that they do not oppose the Revised AFOR.² Thus, for the reasons discussed below, DoD/FEA supports the provisions of the Revised AFOR that address issues affecting it and does not oppose Commission approval of the Revised AFOR.

¹ DoD/FEA Petition to Intervene, pp. 3-4.

² Ex. 4, p. 2; Ex. 7, pp. 1-2.

II. THE REVISED AFOR

The Revised AFOR now before the Commission differs in certain respects from that in Qwest's initial filing.³ It is, by its terms, a compromise in parties' positions.⁴ DoD/FEA views the Revised AFOR, as it affects DoD/FEA, to be a successful attempt to conform the regulatory oversight of Qwest to the reality of the competitive market for telecommunications services in Washington. Although the Revised AFOR contains numerous provisions, DoD/FEA will mention only several whose inclusion has been key to our decision not to oppose its approval by the Commission. By omitting the other provisions, however, we do not imply an absence of relevance.⁵ We recognize that the Revised AFOR is set forth as a document in its entirety, with certain constituents more interested in some provisions than others.

First, we note that the Revised AFOR does not preclude the Commission from examining the regulatory status and rates for Qwest's DS1 and DS3 private line services should the Commission choose to do so in a separate proceeding. This option is preserved by Provision 3 of the Revised AFOR, which states in pertinent part that if the Commission revokes the previously-granted competitive classification for these services, "Qwest will not contend that the provisions of this AFOR nonetheless require those services to be treated as competitively classified."⁶ DoD/FEA, as a major business end-user customer seeking a fully competitive market, views this provision as an important option. The provision ensures that the Revised AFOR would not undermine the ability of

³ Ex. 69.

⁴ Ex. 4, p. 3.

⁵ For example, we do not address the impact on residential exchange rates or the reporting requirements that remain in place, albeit in some cases less frequent or detailed.

⁶ Ex. 4, Exhibit 1, p. 1.

interested parties to address Qwest pricing for its high capacity intrastate private line services in an appropriate future proceeding. Thus, the Commission would be afforded an opportunity, if needed, to ensure the continued presence of a competitive telecommunications market for business services and facilities in Washington.

Another important provision in the Revised AFOR is the limited exception to Qwest's commitment not to geographically deaverage the non-recurring and monthly recurring rates for the services that are treated as competitively classified in the Revised AFOR. Section 2 of the Transition Period Requirements provides in pertinent part "This provision does not modify or restrict Qwest's ability to enter into individual contracts for service that specify rates other than state-wide average rates."⁷ DoD/FEA views this limited exception (consistent with current policy) to be an important part of the Commission's regulatory requirements applicable to Qwest. The Company must retain the ability to act quickly in competitive bidding situations, and to tailor its proposals to meet the needs of business customers with large and complex telecommunications systems. The ability to so act may be deterred if not defeated by mandatory state-wide averaging. Although the Commission may find that a commitment not to geographically deaverage rates is needed to protect some customers in high-cost areas, such a limitation should not exist in situations where Qwest must have the ability to prepare competitive bids that will offer a fair, viable option to those of other carriers who are not so constrained.⁸

⁷ *Id.*, p. 4.

⁸ As Commissioner Oshie queried, however, state-wide average pricing may not encourage competitive entry in rural and/or high cost areas. Maintaining rates below cost discourages competitive carriers, who are not under an obligation to provide state-wide service, from serving those locations. Tr. 299, l. 18 – 302, l. 15.

A third important provision is that the Revised AFOR will not necessarily extend beyond its four-year term. After three and a half years of its implementation, the Commission, staff and all parties will be able to review the experience under the Revised AFOR, and propose modifications (including termination) as necessary to ensure that the public interest benefits still exist.⁹

The final provision that DoD/FEA calls to the Commission's attention in assessing the Revised AFOR is the commitment that Qwest will assume as to deployment of broadband capability in its Washington service area. Provision 4 of the Revised AFOR mandates that Qwest initiate DSL service in those wire centers where DSL capability is currently not available, with a goal of ensuring that wireline high speed access is available to more than 83% of its Washington customers.¹⁰ The original proposed AFOR contained no such commitment as to high speed access – or to investment generally – and the new provision provides assurances to customers in underserved areas that they will share in the advances in technology. Such customers are not necessarily residential only – as DoD/FEA noted in its Petition to Intervene, even large business customers may have offices in remote areas that will benefit from an expansion of high speed access.

III. CONCLUSION

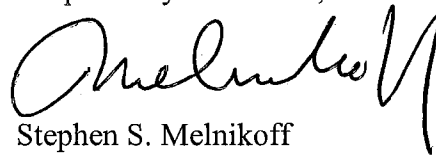
As a party to the settlement agreement, DoD/FEA has undertaken a prolonged and serious effort to ensure that its consumer interests are protected, while Qwest is freed from regulatory provisions that may not be needed to ensure that its business services and

⁹ Ex. 4, Exhibit 1, p. 1.

¹⁰ *Id.*, pp. 1-2.

facilities are provided in a just, reasonable and non-discriminatory manner. Importantly, as noted above, the Revised AFOR might not continue beyond its four-year term should its implementation and changing market conditions indicate that it must be amended or discontinued. Given these protections and the regulatory certainty that the Revised AFOR will bring about, DoD/FEA supports the provisions of the Revised AFOR that address issues affecting it and does not oppose Commission approval of the Revised AFOR.

Respectfully Submitted,



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