

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of

QWEST CORPORATION

To be Regulated Under an Alternative
Form of Regulation Pursuant to RCW
80.36.135.

DOCKET NO. UT-061625

OPENING BRIEF OF PUBLIC COUNSEL

APRIL 13, 2007

NON-CONFIDENTIAL

I. INTRODUCTION

1. This is a docket of major significance for Washington. Qwest's request for an alternative form of regulation (AFOR) has implications for over one million customers, both in terms of financial impact and in the availability and quality of services that are essential to life in modern society. This request affects the status of Qwest as the largest telecommunications carrier in Washington, the state of competition, and the health of Washington's telecommunications infrastructure.
2. Washington law gives the Commission broad discretion in reviewing the request. The Commission is not required to approve this or any request to depart from current regulation, unless the proposed plan is in the public interest, is consistent with statutory requirements, and on balance will be superior to the existing framework.
3. The settlement proposal¹ fails this test. While Public Counsel agrees with a few provisions, overall the Qwest/Staff AFOR has numerous serious defects:
 - While claiming to maintain protections for basic customers, it allows an increase of \$1 per month in the basic rate with no evidence that the new rate is fair, just, and reasonable.
 - It does not preserve customers' ability to purchase features on an à la carte basis if they prefer not to buy bundles.
 - The plan allows unlimited price increases for residential features, as well as for any bundled service.
 - It does not require any notice to customers about the availability of stand-alone and à la carte services, or about the change to AFOR regulation.
 - It does not require continued provision of DSL on a stand-alone basis.

¹ Exh. No. 4, Qwest's Modified Proposal for an AFOR (Qwest/Staff AFOR).
NON-CONFIDENTIAL OPENING BRIEF 1
OF PUBLIC COUNSEL
DOCKET NO. UT-061625

- The plan unfairly gives DS-1 and DS-3 services special treatment in the event their competitive classification is revoked.
- The broadband infrastructure plan contains a commitment to benefit only a minimal number of customers and a questionable aspirational target of a statewide average which the company is already close to meeting. It does nothing to address underserved classes of customers.
- The plan does not include a service quality plan to preserve or enhance quality by creating incentives for maintaining investment and providing good service quality.
- It adopts minor improvements to the Customer Service Guarantee program which affect few people and cost Qwest little to provide.
- With exceptions for mergers and sales of exchanges, the plan exempts Qwest from reporting transfers of property worth up to \$78 million, exposing ratepayers to significant risk of loss.
- It eliminates the current allowance of one free directory assistance call per month.
- The plan purports to limit geographic deaveraging, but creates a loophole which allows deaveraging for any services sold under contract, including residential services.
- The procedures for reviewing the performance at the end of the term are vague and incomplete. Neither the process to be used, the Commission's options, or the parties rights are clear.

4. The Qwest/Staff proposal provides the Company with many benefits, financial and regulatory, while providing virtually nothing of value for customers. The Washington AFOR plan offers dramatically fewer benefits and customer protections than Qwest provides in other comparable states in important areas such as protection of basic residential rates, service quality, investment incentives, and notice to customers. The plan should be rejected.

5. Public Counsel has presented an alternative AFOR proposal for the Commission to consider which meets the state's policy goals, allowing the Company new flexibility while still

protecting customers' legitimate interests.² The Commission has the discretion to adopt an alternative to the settlement in this docket.

II. THE CONTEXT FOR REVIEW OF THE AFOR PROPOSALS

A. Applicable Law.

6. This proceeding was filed by Qwest Corporation as a petition “for relief from traditional rate base rate of return regulation pursuant to RCW 80.36.135.”³ Washington’s AFOR statute incorporates a legislative declaration that changes in the telecommunications industry may produce changed conditions under which traditional regulation may not provide the most efficient and effective means of meeting the state’s telecommunications policy goals.
7. The statute provides that the Commission “is authorized to employ an alternative form of regulation if that alternative is better suited to achieving those policy goals.” RCW 80.36.135(1)(a). This language thus requires a determination by the Commission that the proposed alternative is “better suited” than current regulation to achieve the goals. The goals in question are those set out in RCW 80.36.300 and 80.36.135.
8. In reviewing the appropriateness of an AFOR plan, the Commission is required to consider whether the proposed plan 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;

² Exh. No. 103. A copy is attached for reference as Appendix A.

³ Qwest Corporation’s Petition for Approval of an Alternative Form of Regulation In Accordance With RCW 80.36.135 (Petition), October 20, 2006.

- (d) Preserve or enhance service quality and protect 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.

RCW 80.36.135(2).

9. The Commission shall order implementation of an AFOR unless it finds that “on balance, an alternative plan as proposed or modified fails to meet the considerations stated in [RCW 80.36.135(2)(a)-(f) above].” RCW 80.36.135(3). The Commission may waive regulatory requirements of Title 80 for a telecommunications company operating under an AFOR. However, “the Commission may not waive any grant of legal rights to any person contained in this chapter and chapter 80.04 RCW.”

B. Competition In Qwest’s Washington Residential Market.

1. This case is focused on the residential market.

10. It should be clear that the focus of this case is on the market for residential telecommunications services in Qwest’s service territory in Washington. Qwest has already received competitive classification for the great majority of its business services, including basic business service (1FB).⁴ The large business customers represented by WeBTEC and the Federal Executive Agencies have not played an active part in the case, presumably reflecting their perception that this case will have limited impact on business services that they receive.

⁴ Exh. No. 70, p.1 (M. Reynolds); Exh. Nos. 104-107.
NON-CONFIDENTIAL OPENING BRIEF 4
OF PUBLIC COUNSEL
DOCKET NO. UT-061625

Likewise, wholesale customers like the CLECs and the payphone industry have played only a limited role and asserted narrow interests.⁵

11. Although the record contains much general information and argument about the telecommunications market in Qwest's service territory, in Public Counsel's view, the competitive analysis need not be particularly complicated.

12. Public Counsel does not dispute in this case that the market for bundled services is the most competitive part of the residential market and that pricing flexibility is permissible for that market segment. Notwithstanding this, the vast majority of Qwest's evidence and argument in this case addresses the competitive nature of intermodal offerings in the bundles market. Receiving much less attention is the portion of the residential market not involving competition for the sale of bundled services. The record strongly supports the conclusion that this part of the market is far less competitive, with Qwest still exercising market power. The structure and content of the Qwest/Staff AFOR effectively concedes this point, attempting to retain some regulatory protections for the basic residential market. For these reasons, Public Counsel believes the most important focus in this case is on the lack of competition in the stand-alone residential market, including customers who purchase à la carte features, and on the remaining need of these customers for regulatory protection.

2. Qwest is the dominant carrier in its residential market.

13. Dr. Robert Loube's analysis of the Washington market shows that Qwest's share of the non-lifeline residential primary line market in Washington is 75 percent.⁶ The wireless share of

⁵ Exh. No. 7 (Joint CLEC Narrative); Exh. No.8 (Northwest Payphone Narrative).

⁶ Exh. No. 90C, p. 43, Table 1 (Loube).

the market is estimated to be 8 percent. Qwest's largest *category* of competitors for wireline services, cable telephony providers, has only 3.5 percent.⁷

14. As one method of measuring effective competition in Qwest's territory, Dr. Loube applied the Herfindahl-Hirschman Index (HHI) relied on by U.S. Department of Justice and the Federal Trade Commission's Horizontal Merger Guidelines (HMG).⁸ Dr. Loube's calculation indicates the HHI equal 5693. He also demonstrates that the HHI would lie within a range of 5658 – 6272, even if the cable industry's market share was higher. This calculation supports the conclusion that the primary line residential market is highly concentrated, since even the lowest possible measure of the HHI, 5658, is over three times the 1800 level, the threshold for determining high concentration. The rest of the market consists of a competitive fringe, with no single carrier having a substantial impact on the HHI calculation.⁹

15. The HHI analysis shows a strong likelihood that Qwest continues to exercise monopoly power in the residential market.¹⁰ Monopoly power, also known as economic power, is the ability to increase a price above cost and to maintain the price at that level. Dr. Loube demonstrates, using the Horizontal Merger Guidelines and elasticity analysis, that Qwest has the ability to profitably impose a significant non-transitory increase in price in the primary line market.¹¹

16. That Qwest believes it has monopoly power is verified by Qwest's initial proposal for permission to increase the basic residential rate by 16 percent over a four year period. To

⁷ *Id.*, See also, Exh. No. 93, pp.4-8 (reviewing cable, VoIP, wireless).

⁸ Exh. No. 90C, pp. 39-44 (Loube); Exh. No. 93 (Loube).

⁹ Exh. No. 90C, p. 44:14-21 (Loube).

¹⁰ Exh. No. 90C , pp 45-49 (Loube).

¹¹ *Id.*, p. 48:16-49:2.

sustain such an increase, Qwest must have economic power. If the market were effectively competitive, as Qwest witnesses suggest, such an increase would cost Qwest customers and revenue. Such an increase would simply make no sense in a competitive market. Qwest's historic pricing behavior with respect to the Subscriber Line Charge (SLC) also reflects the existence of monopoly power. Even though not required to do so, Qwest increased its SLC by over two dollars following the FCC decision in the CALLS proceeding in 2000, the practical equivalent of a local rate increase (a flat recurring charge the customer cannot avoid).¹²

17. The most recent FCC Local Competition Report provides some interesting context for the Qwest-specific analysis.¹³ Table 8 of the report shows that overall, Washington, at 14 percent, is below the national average of 17 percent in terms of CLEC share of end-user lines. Moreover, Washington is below many other Qwest states such as Arizona (30%), Colorado (19%), Minnesota (23%), Utah (24%), North Dakota (20%), South Dakota (33%), and Oregon (16%). Washington is even with Wyoming at 14 percent and has remained level since 2004. These data, which include cable telephony, provide an additional perspective when evaluating Qwest's general assertions about competition.¹⁴

3. The residential market has three segments.

18. Public Counsel and Qwest agree on two key aspects of the data which describe the residential market. The first key point is that the residential market consists of three parts: (1) stand-alone residential service; (2) stand-alone residential service with one or more à la carte

¹² *Id.*, p. 49:15-50:8.

¹³ Exh. No. 18, Table 8, p.12

¹⁴ Tr. 333:20-337:18. There is some dispute about the extent to which newer VoIP forms of cable telephony are reported in these data. Tr. 341:25-345:22.

4. The market for bundled services is the most competitive part of the residential market.

21. The bundled or packaged services segment of the residential market is the most competitive of the three segments, as Dr. Loube points out in his testimony.¹⁷ He describes and compares the prices charged by Qwest for triple-play packages with those offered by Comcast and Vonage. While Qwest does face competition from intermodal bundle providers, Qwest is able to price its services competitively including offering discounts, under current regulation. Public Counsel's AFOR proposal recommends that Qwest be allowed pricing flexibility for service bundles, with some conditions. (See discussion below in detailed review of Public Counsel proposal).

5. The market for stand-alone residential telephone service and for à la carte features is not effectively competitive.

22. The market for stand-alone residential telephone service is not effectively competitive in Washington.¹⁸ The information in the record about pricing of Qwest's stand-alone voice service compared to the alternatives starkly illustrates this reality. The Comcast price for stand-alone service is \$54.95, to the extent it is available. This provides no pricing discipline for a Qwest price for stand-alone service of \$18.34 (current) or \$19.34 (with settlement increase).¹⁹ Alternative means of obtaining local residential voice service are not close to being economically comparable to basic wireline service. It is also important to note, as the Bench Request 8 shows, that the stand-alone residential part of the market is **[Begin Confidential] xxxxxxxxxxxxxxxxxxxxxxx**

¹⁷ Exh. No. 90C, p. 19:20-21 (Loube).

¹⁸ *Id.*, Exh. No 90C, pp.12:20-13:5 (Loube).

¹⁹ Exh. No. 90C, p. 28:1-29:4 (Loube). These prices include the SLC.

XXXXXXXXXXXXXXXXXXXXXXXXXXXX [End Confidential] residential accounts. This is important because much of the rhetoric seeks to create the impression that the market consists solely of bundles and broadband. In fact, the stand-alone market is close in size to the bundled services segment. Qwest's response to Bench Request No. 8²⁰ also confirms testimony in the record that the segment of the market that only purchases stand-alone residential and one or more à la carte features is actually the [Begin Confidential] XXXXXX [End Confidential] part of the market.

Mr. Teitzel's testimony for Qwest describes a representative customer in this group, as follows:

...customers don't purchase features only as a package, they often purchase features on an à la carte basis. For example, a residential subscriber may have a need for only Call Waiting and does not wish to purchase a multi-feature package or bundle to obtain that single feature.²¹

He agreed at the hearing that these customers are making this decision on the basis of price as well as need and "would likely find it less expensive to buy simply that feature and the access line rather than a package."²² These customers, while paying more than the basic rate, are paying less than the price of competitive bundles (they narrow the margin, but do not eliminate it).²³

23. This [Begin Confidential] XXXXX [End Confidential] segment of the residential market has decided that the most economical choice for them is Qwest stand-alone service plus limited à la carte services. Mr. Teitzel argues that competitive options begin to look more appealing to this group as they spend more than the basic rate, but his examples are for customers who have broadband or wireless.²⁴ There is no evidence that Qwest competitors offer unlimited stand-

²⁰ Exh. No. 169C.
²¹ Exh. No. 16C, p. 27:2-5 (Teitzel); Tr. 350:22-351:4.
²² Teitzel, Tr. 351:9-13.
²³ Teitzel, Tr. 351:14-18.
²⁴ Tr. 352:1-15.

incremental cost to purchase stand-alone DSL service to reach a VoIP provider is \$36.99 per month and \$49.99 for subsequent years.²⁹ What this means is that much of the evidence that Qwest has cited in support of its need for regulatory relief simply does not apply. When this fact is overlaid on the data above regarding the **[Begin Confidential] xxxxxxxx [End Confidential]** of the market that does not purchase bundled services, it provides further support for a conclusion that large parts of the residential market are not effectively competitive. While there has been no correlation between the 50 percent broadband penetration and the three market segments, it seems reasonable to assume that broadband penetration is higher in the bundles market since a Qwest DSL is an important component in Qwest bundles. However, even if we assume equal penetration in all categories, that means that at current levels, over **[Begin Confidential] xxxxxxxx [End Confidential]** Qwest residential accounts in Washington do not have broadband and over **[Begin Confidential] xxxxxxxx [End Confidential]** of those accounts do not subscribe to bundled services. Any AFOR adopted for Qwest needs to take this into account, rather than assuming that broadband and bundles are everywhere.

C. Alternative Regulation In Other Qwest States.

26. While Public Counsel does not argue in this case that the Washington Commission is bound by regulatory decisions in other states, the experience of Qwest with AFORs in its other jurisdictions is relevant and important. Where this state is asked to embark on the first AFOR in well over a decade, there are useful examples from states that have had AFORs in place for a number of years. Looking at other Qwest AFORs is also relevant in evaluating Qwest's claims of what is reasonable or what is practical. In this respect, it is particularly instructive to note

²⁹ Exh. No. 92 (Loube).
NON-CONFIDENTIAL OPENING BRIEF
OF PUBLIC COUNSEL
DOCKET NO. UT-061625

what sorts of provisions Qwest has agreed to in settlement in other states. At the hearing, in response to Commissioner Jones' question, Qwest witness Mr. Williams identified Arizona and Colorado as the most comparable states to Washington in terms of competition and number of access lines.³⁰ A matrix with a side by side comparison and summary of these and other Qwest state AFOR plans by issue area is attached to this brief as Appendix B.

1. Colorado.

27. Prior to the AFOR plan which was established for Qwest Colorado in 2005, Qwest operated under an alternative form of regulation, which had been established in 1999.³¹ Unlike the recent New Mexico case, discussed below, where the alternative regulation portion of the AFOR was established by Commission decision, following a fully litigated proceeding,³² the entire 2005 Colorado AFOR for Qwest resulted from a settlement agreement.³³ The Colorado plan does not have a defined term. With regard to the classification and price treatment of basic residential service, Colorado statute contains a rate cap.³⁴ The Colorado AFOR, however, established a new regulatory structure for services other than basic residential service. Two service classifications are created as a result of this plan—Market Regulated and Modified

³⁰ Tr. 438:25-439:4.

³¹ Qwest Response to Bench No. 2, Exh. No. 2, Order Approving Stipulation with Modifications. *In the Matter of the Application of U.S. West Communications, Inc. For Specific Forms of Price Regulation*, Docket No. 97A-540T; *The Application of the Mountain States Telephone and Telegraph Company Doing Business as U.S. West Communications, Inc., for Approval of a Five-Year Plan for Rate and Service Regulation and for a Shared Earnings Program*, Docket No. 90A-665T. Decision No. C99-222, February 2, 1999.

³² The infrastructure component in New Mexico was established through a separate settlement agreement.

³³ Exh. No. 2, Order Approving Settlement Agreement with Modifications, *In the Matter of the Combined Application of Qwest Corporation for Reclassification and Deregulation of Certain Part 2 Products and Services and Deregulation of Certain Part 3 Products and Services*. Docket No. 04A-411T; and *Staff of the Colorado Public Utilities Commission's Petition for a Declaratory Order Concerning the Reclassification and Deregulation of Telecommunications Services Under Parts 2 and 3, Title 40, Article 15 of the Colorado Revised Statutes*. Docket No. 04D-440T. June 6, 2005. (Hereinafter, *Colorado 2005 AFOR Order*.)

³⁴ C.R.S. §40-15-502(3).

Existing Regulation.

28. The Market Regulation component of the Colorado AFOR is based on service classifications and geographic zones. The geographic element of the plan introduces the possibility of rate deaveraging,³⁵ with the geographic “Zones of Competition,” being defined in the plan.³⁶ Residential services other than primary lines, additional lines outside of “Zones of Competition,” and “public interest features,”³⁷ are subject to Market Regulation.³⁸ Under Market Regulation, no tariffs are filed for services, rates may be deaveraged, and rate changes may go into effect without Commission review.³⁹ For bundles and packages, which are generally under the Market Regulation provisions of the plan, price changes are restricted to the sum of the à la carte components.⁴⁰ Small business services, those with fewer than six (6) lines, are subject to a CPI-based price cap index.⁴¹
29. The plan includes self-executing service quality metrics, as discussed in more detail below in Section IV of the brief.

³⁵ *Id.*, *Colorado 2005 AFOR Order*, pp. 31-32.

³⁶ *Id.*, Third Corrected Stip. and Settlement Agreement, Attach. A, *Colorado 2005 AFOR Order*, p. 17.

³⁷ *Id.*, Public Interest Features are defined as Caller ID Per Call and Per Line Blocking, Call Trace, Busy Line Verification, Busy Line Interrupt, and Non-listed and Non-published Directory Services. Settlement Agreement, attached to *Colorado 2005 AFOR Order*, p. 17.

³⁸ *Id.*

³⁹ *Id.*, *Colorado 2005 AFOR Order*, p. 27.

⁴⁰ *Id.*, Third Corrected Stip. and Settlement Agreement, Attach. A to *Colorado 2005 AFOR Order*, p. 17.

⁴¹ The Settlement Agreement specified small business accounts up to three lines. The Colorado Commission modified this provision to cover small business accounts up to five lines. *Colorado 2005 AFOR Order*, p. 39.

2. Arizona.

30. Qwest filed for a revised alternative regulation plan in July of 2003, to replace their then-existing price cap plan, which was approved in 2001.⁴² The price cap plan under which Qwest had been operating included three service baskets. Basket 1 included basic non-competitive services, which included basic residential flat-rate service, as well custom calling services. This basket was subject to a productivity offset of 4.2 percent.⁴³ Other baskets included wholesale services, which were not subject to an index (and which had no upward pricing flexibility allowed), and flexibly priced competitive services, which were allowed upward pricing flexibility, subject to an upper revenue limit of \$42.7 million.⁴⁴

31. The Arizona Commission approved a new AFOR for Qwest Arizona in March of 2006 based on a settlement with Qwest.⁴⁵ The plan has a three-year term and revises the structure of the service baskets contained in the initial price cap plan.⁴⁶ Basket 1 services under the new plan are placed under a hard cap. Basket 1 services consist of flat rate local exchange service, and numerous recurring and non-recurring charges related to basic local exchange service.⁴⁷ Overall, Qwest may increase rates for services in Baskets 2 and 3 by up to \$31.8 million.⁴⁸ Qwest is

⁴² Exh. No. 2, *In the Matter of the Application of U.S. West Communications, Inc. A Colorado Corporation, for a Hearing to Determine the Earnings of the Company, the Fair Value of the Company for Ratemaking Purposes, To Fix a Just and Reasonable Rate of Return Thereon and to Approve Rate Schedules Designed to Develop Such a Return*, Docket No. T-01051B-99-0105, Notice of Compliance Filing, April 19th, 2001.

⁴³ *Id.*, p. 4 and Exhibit C.

⁴⁴ *Id.*, p. 5.

⁴⁵ Exh. No. 2, *In the Matter of Qwest Corporation's Filing of Renewed Price Regulation Plan*. Docket No. T-01051B-03-0454, and *In the Matter of Qwest Corporation's Filing of Renewed Price Regulation Plan, In the Matter of the Investigation of the Cost of Telecommunications Access*, Docket No. T-00000D-00-0672. Order and Opinion, March 23, 2006. (Arizona 2006 AFOR)

⁴⁶ *Id.*, p. 10.

⁴⁷ *Id.*, p. 8. In addition to flat-rate service, Basket 1 includes standard non-recurring charges, such as blocking services and returned check charges. See Arizona 2006 AFOR, *Settlement Agreement, Appendix A-1*.

⁴⁸ *Id.*, p. 8. The revenue increase reflects the flow-through of \$12 million in productivity adjustments from the previous price cap plan.

permitted to increase revenues from discretionary services, which are contained in Basket 2, however, individual services contained in Basket 2 cannot increase in price by more than 25 percent in any 12 month period. The overall revenue increase associated with services in Basket 2 cannot exceed \$13.8 million for the term of the plan.⁴⁹ Basket 3 under the plan are “flexibly priced competitive services.” These services may be associated with price increases which can increase Qwest revenues up to \$30 million per year.⁵⁰

32. The new Qwest AFOR plan allows promotional offerings on one-day’s notice, and flexible pricing for packages of services, as long as each of the package elements continues to be offered on an à la carte basis, and also subject to the provision that the price of the package does not exceed the sum of the à la carte offerings.⁵¹

33. While basic service rates are subject to a hard cap under the plan, certain residential charges are subject to reduction as a result of the plan. Zone charges are reduced as a provision of the plan, with the Zone 1 charge dropping from \$1.00 to \$0.50 per month, and the Zone 2 charge dropping from \$3.00 to \$1.50 per month. In addition, rates for residential non-published and non-listed telephone numbers will drop by \$0.50 per month. Directory assistance rates are capped at \$1.15 per call, with one free call per month, up to two (2) inquiries per DA call, and call completion included in the charge.⁵² Furthermore, line extension credits are increased from \$3,000 to \$5,000.⁵³

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*, p. 11.

⁵² *Id.*, p. 9.

⁵³ *Id.*, p. 10.

34. As a provision of the new AFOR, Qwest also agreed to withdraw a request for \$64 million from the Arizona Universal Service Fund,⁵⁴ and agreed to increase its contribution to the Telephone Assistance Plan for the Medically Needy by \$1.0 million, to a total of \$2.0 million per year.⁵⁵
35. The Arizona plan includes self-executing service quality metrics, as discussed in more detail below in Section IV of the brief.

3. New Mexico.

36. Qwest began operations under its initial AFOR plan in March of 2001. During the initial AFOR period, the New Mexico Commission Staff expressed concern regarding whether Qwest was investing sufficient amounts in its infrastructure.⁵⁶ Subsequent Commission investigation determined that new incentives were needed to encourage Qwest compliance with the initial AFOR investment obligations, as Qwest investment levels fell below benchmark levels by approximately \$220 million.⁵⁷ The Commission also concluded that it would consider customer credits or refunds if Qwest failed to satisfy its investment obligations, a decision which was challenged by Qwest, with the Commission's action ultimately upheld by the New Mexico Supreme Court.⁵⁸ The Qwest AFOR II proceeding was initiated in November of 2005, with the final Commission Order being issued in November of 2006.

⁵⁴ *Id.*, p. 10.

⁵⁵ *Id.*, p. 9.

⁵⁶ Exh. No. 2, Final Order on Pricing and Quality of Service, *In the Matter of the Development of an Alternative Form of Regulation Plan for Qwest Corporation*. Case No. 05-0046-UT, November 2006, p. 10. (New Mexico 2006 Final Order)

⁵⁷ *Id.* p. 11.

⁵⁸ *Id.*

37. During the three-year term of the revised New Mexico AFOR,⁵⁹ the plan classifies services into separate baskets for residential and small business. With regard to residential basic service, prices are capped for all residential lines (primary and additional). The Commission also extended a price cap to a set of “public interest features,” such as Caller ID blocking on a Per Line and Per Call basis, Call Trace, Busy Line Verification, Busy Line Interrupt, and Nonlisted and Unpublished numbers.⁶⁰
38. The new AFOR plan in New Mexico also establishes an indexed cap for services other than the residential lines and the public interest features. For these residential services, the New Mexico Commission approved an inflation-based cap, based on the GDP-PI.⁶¹ For services sold in bundles or packages, the price of the bundle or package is capped at the sum of the à la carte prices.⁶²
39. The newly established New Mexico AFOR results in investment commitments from Qwest, through a separate settlement agreement.⁶³ These commitments require that Qwest increase its then-current DSL availability rate of 69 percent to achieve 83 percent system-wide DSL deployment, among working living units. This includes a commitment to achieve 50 percent availability in rural areas.⁶⁴ A separate Settlement Agreement which addressed prior

⁵⁹ *Id.*, p. 58.

⁶⁰ *Id.*, pp. 24-26.

⁶¹ *Id.*, p. 29.

⁶² *Id.*, p. 36.

⁶³ Exh. No. 2, *See*, Order for Contingent Approval of Amended Settlement Agreement, *In the Matter of the Proposed Settlement of Certain Issues Pertaining to Qwest Corporation’s New Mexico Telecommunications Investment Requirement Under its Amended Alternative Form of Regulation Plan, New Mexico Attorney General, New Mexico General Services Department, and Qwest Corporation, Applicants*. Case No. 06-00325-UT; and *In the Matter of the Implementation and Enforcement of Qwest Corporation’s Amended Alternative Form of Regulation Plan*, Case No. 05-00094-UT. December 28th, 2006.

⁶⁴ *Id.*, Settlement Agreement (Attachment) p. 6. Rural wire centers are defined as having 5,000 or fewer lines.

Qwest investment failures also provides for customer credits of \$10 million, and a \$5 million Qwest donation to a state-associated education project.⁶⁵ Finally, service quality is addressed through the incorporation of service quality standards which had been recently decided in a separate docket, with and self-executing performance metrics and added supplemental provisions addressing held orders.⁶⁶

4. Minnesota.

40. In June of 2005, Qwest petitioned the Minnesota Commission to modify its existing AFOR plan, under which Qwest had been operating since 1999. The Commission approved a modified version of the Qwest AFOR proposal, effective for a three-year period (with the possibility of a one-year extension), in December of 2005.⁶⁷
41. The revised Qwest AFOR plan includes separate categories for price-regulated, flexibly priced, and non-regulated services. One-party basic local residential service, including installation and service restoration charges, are capped for the first three years of the plan. Likewise, basic one-party business service also has its price capped for the first three years of the plan.⁶⁸ If Qwest elects to abide by the plan for a fourth year, one-party residential and business rates may be increased by up to \$1 per month during the fourth year of the plan.

⁶⁵ *Id.*, p. 15 & pp. 9-10.

⁶⁶ New Mexico 2006 Final Order, pp. 50-52.

⁶⁷ Revised Alternative Form of Retail Regulation Plan for the State of Minnesota, *In the Matter of a Petition by Qwest Corporation for Approval of its Alternative Form of Regulation Plan*, Docket No. P-421/AR-05-1081. December 29, 2005, p. 6. (Minnesota 2005 AFOR)

⁶⁸ *Id.*, p. 6.

42. With regard to service quality, while not adopting self-executing metrics, the Minnesota AFOR plan provides a detailed set of standards which Qwest must satisfy in six of seven areas in each year of the plan.⁶⁹

43. The Minnesota AFOR statute requires an infrastructure improvement plan, and Appendix C of the plan discusses Qwest investment activity, and indicates that reports will be provided to the Department of Commerce regarding investment activity for each year the plan is in effect.

III. A PROPOSED ALTERNATIVE FORM OF REGULATION FOR QWEST IN WASHINGTON

44. In this section of the brief, Public Counsel will describe and support its proposed alternative form of regulation, a copy of which is attached as Appendix A. This section also comments on the Qwest/Staff AFOR as appropriate in each section.

A. Term and Effective Date.

45. Public Counsel recommends that the AFOR have a defined term of four years, unless extended or modified by Commission order.⁷⁰ While the language of the settlement is not clear on this point, Staff and Qwest stated at the hearing that they agree that the AFOR is intended to expire after four years unless extended or modified.⁷¹ Any plan adopted should be clear on this issue.

⁶⁹ Minnesota 2005 AFOR, Appendix B, p. 2.

⁷⁰ Exh. No. 103, p. 1, Sec. A.1. There is no dispute that the plan would be effective upon approval by the Commission and acceptance by Qwest. *Id.*, Sec. A.2.

⁷¹ Saunders and Reynolds, Tr. 282:2-12.

B. Pricing Flexibility.

1. Public Counsel AFOR.

46. While only [Begin Confidential] xxxxxxxxxx [End Confidential] of Qwest residential accounts purchase bundles, this is the most competitive part of its market, as Dr. Loube indicates in his testimony.⁷² It is almost exclusively this part of the market that Qwest and Staff discuss when describing the levels of competition in Washington. Public Counsel’s AFOR proposal permits Qwest to have pricing flexibility for bundled services, with some exceptions designed to protect consumers.⁷³

47. Although this part of the residential market is the most competitive segment in relative terms, there are still reasons for caution in designing an alternative regulation plan. To the extent the market is a duopoly, with competition for bundles primarily coming from Comcast, competitive pressures may be dulled.⁷⁴ In addition, having pricing flexibility for bundles may create incentives for Qwest to try to migrate customers to bundles. There may also be incentives to use price increases for less competitive or non-competitive services to cross-subsidize price reductions for other services.⁷⁵ Finally, this segment of the market is not homogeneously competitive. Not all customers in this segment have broadband services. Some customers may simply purchase voice service and a set of features in a bundle. These customers do not have the “triple play” options available from other providers. For these reasons, Public Counsel attaches some conditions to the flexibility allowed under the plan.

⁷² Exh. No. 90C, p. 9 (Loube) .

⁷³ Exh. No. 103, p. 1, Sec. B.1.

⁷⁴ Loube, Tr. 544:3 – 545:1.

⁷⁵ Teitzel, Tr. 358:18-359:16.

2. Public Counsel conditions.

48. First, both residential exchange service *and* residential exchange service features should continue to be offered on an à la carte basis as they are now.⁷⁶ Qwest does not agree to do this under the Qwest/Staff AFOR. As already discussed, Qwest's **[Begin Confidential] xxxxxxxx [End Confidential]** customer segment consists of those who purchase stand-alone voice and a single feature or limited number of features. These customers have determined that this best meets their needs in the most economical fashion.⁷⁷ Qwest should not be allowed, as cable TV companies do, to force customers to buy expensive bundles that include services they do not want. For the stand-alone requirement to be meaningful, it is also extremely important that customers be given clear and conspicuous notice that à la carte services are available.

49. The second condition is that prices for residential features other than Caller ID should have an adjustable cap, which allows prices for these services to increase, but at no more than the change in the CPI less 2 percent.⁷⁸ This cap is intended to prevent pricing of features in such a way as to pressure customers to move to bundled services. The cap also is intended to provide some limits on price increases because this part of the market is not effectively competitive for many consumers, especially those significant numbers without broadband. Allowing unlimited price increases for features would also offset or nullify any benefit from a cap on the basic rate, since Qwest could simply recover a \$1 or \$2 increase on the recurring rate from a feature, instead

⁷⁶ Exh. No. 103, p. 1, Sec. B.1.a.

⁷⁷ Exh. No. 16C, p. 27:2-5 (Teitzel).

⁷⁸ Exh. No. 103, p. 1, Sec. B.1.c.

of from the basic rate. As noted above, the **[Begin Confidential] xxxxxxxxxxxxxxxx [End Confidential]** of Qwest customers have currently chosen to purchase either pure stand-alone or stand-alone with à la carte features.

50. As part of the features cap framework, Public Counsel also proposes that the rate for Caller ID be capped at its current level for the life of the AFOR. Caller ID is a “public interest” vertical feature that is particularly valued by consumers. Caller ID is particularly useful to customers because of its privacy and security functions.⁷⁹ Other Qwest state AFORs have placed a hard cap on additional public interest features.⁸⁰ Public Counsel’s proposal is a compromise in that Caller ID is the only such feature for which we recommend a hard cap.

51. The third important condition is a limitation on deaveraging.⁸¹ Public Counsel’s chief concern with the Qwest/Staff AFOR is that while it purports to preclude deaveraging for residential features and packages, as well as two categories of business service, the restriction does not apply if Qwest enters into individual contracts for those services.⁸² What the AFOR grants with one hand (preclusion of deaveraging) could be taken away with the other hand, if Qwest decides to use individual contracting with its residential features and bundles customers. Public Counsel’s proposed provision addresses this by limiting the “contracting” exception to multi-line business, the market segment where contracting is currently standard practice. Public Counsel also would extend the prohibition on deaveraging to all services covered by the AFOR which have not been competitively classified.⁸³

⁷⁹ Loubé, Tr. 528:7 – 531:3 (questions of Commissioner Oshie).

⁸⁰ Colorado and New Mexico cap prices of “public interest” features. Section II.C.

⁸¹ Exh. No. 103, p. 1, Section. B.1.e.

⁸² Exh. No. 4, p. 4, Section.2; Exh. No. 166.

⁸³ These services are listed in Exh. No. 70, pp. 2-4.

52. Finally, Public Counsel recommends that bundled prices be limited to a level that does not exceed the sum of the prices of stand-alone à la carte services.⁸⁴ This is included to avoid possible manipulative advertising which migrates customers to bundles when à la carte services would actually be less expensive for them. Qwest’s alternative regulation plans in Arizona, Colorado, and New Mexico have provisions of this type.

C. Protection of Basic Residential Service.

1. Services remaining under tariff.

53. Public Counsel’s proposed AFOR provides a list of services that will remain under tariff.⁸⁵ Pre-eminent among these is stand-alone residential exchange service. This list is the same as that contained in the Qwest/Staff AFOR with one difference. Public Counsel would retain the current free call allowance for Directory Assistance (see discussion below).

2. Hard rate cap.

54. One of the factors the Commission is required to consider in determining the appropriateness of an AFOR is whether the plan will “[p]rovide for rates and charges that are fair, just, reasonable, sufficient, and not unduly discriminatory or preferential.” RCW 80.36.135(2)(e). The AFOR statute also references state telecommunications policy goals, which include ensuring “that customers pay only reasonable charges for telecommunications service.” RCW 80.36.300.

55. On this central issue, Public Counsel’s proposal differs significantly from the Qwest/Staff AFOR, which authorizes Qwest to increase the basic rate by \$1.00 anytime during the AFOR.

⁸⁴ Exh. No. 103, p.1, Section. B.1.d.

⁸⁵ Exh. No. 103, p. 2, Section. C.1.

The Public Counsel AFOR proposes that the stand-alone residential exchange service recurring rate would be capped at the current level of \$12.50 for the four year term of the AFOR.⁸⁶

Allowing a rate increase in the basic rate is not consistent with Washington law or with the facts in this case. Because there is no legal or factual basis for allowing a rate increase, it should be frozen at the current level for the life of the plan.

a. The record is not adequate to support a determination that a rate of \$13.50 would be fair, just, and reasonable and sufficient.

56. An issue presented when regulators are adopting incentive regulation or AFOR plans is how to best determine the proper level of rates as the starting point for the new regulatory framework. Typically, commissions have “reset” rates using traditional ratemaking at the outset of implementing an alternative plan to ensure that rates start at a reasonable baseline level, before being allowed to change under some type of alternative mechanism. As the Goodman treatise explains:

Several states expressly authorize their respective regulatory agencies to participate in “alternative forms of regulation,” particularly for LECs. Most commissions, however, even when authorized to depart from traditional cost-of-service, rate-of-return regulation, do not do so. The base rates with which incentive mechanisms begin are established on traditional cost and return findings.⁸⁷

57. Staff appears to adhere to this view, stating that it “believes it is important to determine, at the onset of this AFOR, whether Qwest’s rates are fair, just, reasonable, and sufficient.”⁸⁸

⁸⁶ Exh. No. 103, p. 3, Section. C.2 .

⁸⁷ Leonard S. Goodman, *The Process of Ratemaking* (1998), p. 1131.

⁸⁸ Exh. No. 127C, p. 3:2-4 (Strain)

58. A leading example of this approach cited in the Goodman treatise is this Commission's decision in the 1989 case in which GTE Northwest, Inc., petitioned for an AFOR.⁸⁹ The petition was brought under the original version of the statute which required the Commission to find that a proposed AFOR would "produce fair, just and reasonable rates[.]" At the time of the petition, GTE Northwest's rates had not been examined since 1983. The company argued that its current rates and revenue levels could be used as the starting point and that an examination of its revenue requirement was unnecessary. The Commission disagreed and rejected the proposed AFOR largely on the basis of the rate issue, holding:

The Commission finds that GTE-NW's currently authorized rates should not serve as the basis for initial prices in an incentive plan. A thorough examination of the company's overall revenue requirements has not been made for a number of years. Such a review is an essential feature of an alternative form of regulation plan. *It should include a review of the company's authorized rate of return, as the present authorization dates from the early 1980s and is, at the very least, stale.*⁹⁰

The Commission went on to note that it had examined U S West's revenue requirement thoroughly before approving that company's AFOR proposal.⁹¹

59. The GTE AFOR decision remains relevant to this case. Although the requirement of a finding is no longer in the statute, the current version of the statute still requires the Commission to consider whether the proposed AFOR will provide for rates and charges that are "fair, just, reasonable, sufficient." RCW 80.36.135(2)(e). RCW 80.36.135(2) also makes the Commission's authority to authorize an AFOR subject to the conditions of RCW 80.04.130. RCW 80.04.130(1) empowers the Commission to investigate the justness and reasonableness of a public service company rate. RCW 80.04.130(2) places the burden of proof on the public service

⁸⁹ *In the Matter of the Petition of GTE Northwest, Incorporated To Adopt An Alternative Regulatory Framework*, Docket U-89-3031-P, Second Supplemental Order (GTE AFOR Order).

⁹⁰ *Id.*, p. 9 (emphasis added).

⁹¹ *Id.*, p. 9.

company, here Qwest, to show that a proposed increase in any rate “is just and reasonable.” The Qwest/Staff AFOR expressly provides that residential exchange service will remain under tariff. As such, it remains subject to the requirement of RCW 80.36.080, that rates for the service “shall be fair, just, reasonable, and sufficient [.]”

60. There is simply not an adequate record in this case for the Commission to conclude that a rate increase of \$1.00 sometime during the next four years will produce a fair, just, reasonable, and sufficient rate. No party can reasonably contend that there has been a full review of Qwest’s revenues and expenses, rate base, revenue requirement, and rate of return comparable to the level of analysis that occurs in a general rate case. As Chairman Sidran observed at the hearing in colloquy with Dr. Loube, the record in this case permits, at best, reasonable minds to conclude that “we don’t know” if the rate increase is reasonable or not, and educated guesses could be made on either side.⁹² Rates may not be established on the basis of educated guesses however.

61. The dramatic difference in the depth of analysis is evident from Ms. Paula Strain’s testimony in Verizon’s 2004 general rate case. In her testimony in the Verizon case, Ms. Strain reviews the nine other Staff witnesses and the issues they address, which included overall policy, service quality, salary, wages, and pensions, other employee benefits, uncollectibles, other operating expenses, telephone plant in service, income tax issues, deferred taxes, pro forma debt, affiliated interest transactions, line sharing revenues, investor supplied working capital, cost of capital, and directory publishing transactional issues. Her own seventy two page testimony addressed ten different accounting adjustments and included seven detailed accounting

exhibits.⁹³ Staff issued over 400 data requests in the case, including the interim relief phase.⁹⁴ Here, by contrast, Staff devotes five pages of testimony in its direct case to Qwest's current financial condition.⁹⁵

b. Qwest's authorized rate of return is stale.

62. Qwest, in its current corporate form, has never had a general rate case in Washington. Its predecessor, U S West Communications, last had a rate case in 1997. That case was a so-called "make whole" case, however, which simply accepted major findings from U S West's prior rate case decision in 1996, including the rate of return.⁹⁶ That prior case, Docket UT-950200, was US West's last full general rate case in Washington.⁹⁷ It established an authorized rate of return of 9.367 percent, based on a return on equity of 11.3 percent.⁹⁸ This eleven year old rate of return, several years more stale than the rate of return in the GTE AFOR case, is the authorized rate of return referenced by witnesses in this case.

63. This absence of a current determination of rate of return is a critical flaw in the Qwest/Staff justification for the \$1.00 increase. Qwest and Staff argue that an increase in the basic rate is permissible because even with the increase, Qwest will still allegedly be underearning relative to its last authorized level. This argument presumes that the Commission knows that the authorized return is the same today as it was eleven years ago. But there has been no such finding in this case. Without such a determination, there is no valid reference point for

⁹³ Exh. No. 155, p.9:1-13 (p. 4 of testimony) (Strain) .

⁹⁴ *Id.*, p. 63:18 (p. 58 of testimony) referencing Staff Data Request No. 524.

⁹⁵ Exh. No. 127C, p. 11-16 (Strain) .

⁹⁶ *WUTC v. U S West Communications, Inc.*, UT-970766, Tenth Supplemental Order 1997 (Make Whole Rate Case).

⁹⁷ *WUTC v. U S West Communications, Inc.*, UT-950200, Fifteenth Supplemental Order (1995 US West Rate Case).

⁹⁸ *Id.*, p. 76.

saying that a \$1.00 increase will not cause overearning or will be a lawful rate under the fair, just, reasonable, and sufficient standard. As Dr. Loube said at the hearing, a \$1.00 increase per month in the rate is beyond the zone of reasonableness.⁹⁹

64. Public Counsel witness Dr. Loube estimated from the limited data in this record that Qwest is earning a rate of return in the range of **[Begin Confidential] xxxxxxxxxxxx [End Confidential]**. Paula Strain for Staff estimated a somewhat lower level of **[Begin Confidential] xxxxxxxxxxxx [End Confidential]**.¹⁰⁰ While there is no dispute that both are somewhat below the level authorized in the last rate case, the question is what significance to attach to that fact, given that has been no determination that the last authorized rate of return is any longer the correct level.

65. The most recent telecommunications rate case order in Washington involved Verizon Northwest.¹⁰¹ After extensive litigation, ultimately the case was resolved through a settlement and did not formally set a rate of return. However, the settlement agreement approved by the Commission specifically provided that until the Commission next prescribed a rate of return, Verizon Northwest would use a rate of return of 8.68 percent in its reports to the Commission, costs studies supporting filings or reports filed with the Commission, and similar filings.¹⁰²

⁹⁹ Tr. 523:17-20.

¹⁰⁰ On cross-rebuttal Ms. Strain did not contest Dr. Loube's calculation.

¹⁰¹ Exh. No. 109.

¹⁰² *Id.*, Settlement Agreement, ¶ 52. Although there are real differences between energy and telecommunications companies, it is interesting to note that recent ROE determinations by this Commission have set return on equity approximately 100 basis points below the US West UT-950200 rate case level of 11.3%. *See, e.g., WUTC v. PSE*, Docket Nos. UE-060266, UG-060267, Order No. 8, Table 6 (10.4%); *WUTC v. PacifiCorp*, Docket No. UE-050684, Order No. 4, ¶ 264 (10.2%), ¶ 263 (referencing decisions in other cases of 10.5, 10.3 and 10.4%).

c. Qwest's lack of recent rate history does not justify an increase.

66. It is relevant also that Qwest has not sought a rate increase in Washington since 1997. In fact, as part of the US West/Qwest merger settlement entered into in 2000, Qwest agreed to a rate case moratorium through 2003. It has not sought a rate increase in the intervening years, even though it claims to have been underearning during that period.¹⁰³

67. At least one Qwest witness has suggested in this case that a rate increase is permissible simply because the company's basic rate has not changed in a long time.¹⁰⁴ This "seat of the pants" approach to ratemaking has no basis in reality, economics, or Washington law. The Commission cannot infer from the length of time since the last rate request that a company has need for additional revenue. The Commission may equally reasonably infer that a company's failure to seek rate relief is an indication that the regulated company is earning sufficient or more than sufficient revenues.

d. Qwest understates its current actual rate of return.

68. Qwest argues that its proposal for a basic rate increase is reasonable because its actual rate of return is only **[Begin Confidential] xxxxxxxxxxxx [End Confidential]**.¹⁰⁵ Both Paula Strain for Staff and Dr. Loube for Public Counsel estimate that Qwest's current rate of return is substantially higher than the level asserted by the Company. This is because Qwest has improperly assigned special access and DSL facilities to the interstate jurisdiction, with the result that excessive and unwarranted amounts of plant and expenses are recorded as intrastate. This

¹⁰³ M. Reynolds, Tr. 561:21-24.

¹⁰⁴ Teitzel, Tr. 372:3-15

¹⁰⁵ Exh. No. 32C, p. 3, 31 (Grate). This is a 2005 figure.

creates the appearance of an extremely low rate of return for the intrastate jurisdiction.¹⁰⁶ The Commission should not accept this misleading calculation as a basis for approving the proposed higher basic rate level.

e. The residential rate is not below cost.

69. Qwest and Staff both also appear to defend their allowed \$1.00 increase with the argument that the basic rate is below cost in any event, so that the increase is simply helping to mitigate a subsidy and bring the rate closer to cost.¹⁰⁷ Dr. Loube demonstrates that this is incorrect. His direct testimony shows that the incremental cost of residential service is significantly lower than the monthly recurring charge of \$12.50.¹⁰⁸ An effectively competitive market drives price towards incremental cost, not the other direction.¹⁰⁹

70. Dr. Loube's cross-answering testimony details the inaccuracies in Staff witness Tom Wilson's analysis which argues that local service is not compensatory. Mr. Wilson erroneously uses a Total *Element* Long Run Incremental Cost (TELRIC) analysis rather than determining the incremental cost of the *service*. He did not make any comparison or determination of the cost of stand-alone service as compared to the incremental cost of the service, the standard test for subsidy. Even if, *arguendo*, TELRIC were to be used, Mr. Wilson failed to correct for the Subscriber Line Charge, which would have eliminated the apparent subsidy under his method.¹¹⁰

71. Qwest witness Dr. Taylor asserts that the existing rate is below the rate that would be set

¹⁰⁶ Exh. No. 90C, p.50:13-18 (Loube). *See generally*, Exh. No. 90C , pp. 50-65; Exh. No. 127C, pp. 14-16 (Strain).

¹⁰⁷ Exh. No. 142C, pp.57-58 (Wilson); Exh. No. 66, pp.17-18 (Taylor).

¹⁰⁸ Exh. No. 90C , p. 47:19 (Loube).

¹⁰⁹ *Id.*, p. 15:18-19.

¹¹⁰ Exh. No. 101, pp. 1-7 (Loube).

in a competitive market. However, his assertion is mere speculation. Dr. Taylor's argument that the local rate is below a competitive rate¹¹¹ relies on resurrecting an old industry mantra about the subsidized local rate that was addressed and effectively put to rest by this Commission in the US West 1995 rate case, a seminal finding reaffirmed more recently.¹¹² The Commission should reject the invitation to now turn back the clock on this key determination. Dr. Taylor also relies on Mr. Wilson's statement that the local rate is below incremental cost. The defects in Mr. Wilson's analysis are described above.

f. Risk to DEX benefits.

72. Another problem which arises from the flawed comparison by Qwest and Staff to the last authorized rate of return is that there is no way to determine whether the rate credit Qwest agreed in the DEX settlement is protected. Allowing a basic rate increase without a full review creates a risk that ratepayers DEX benefits will be lost or diluted, as Dr. Loube discusses.¹¹³

g. Other states adopting alternative regulatory frameworks for Qwest have capped the basic rate to protect residential customers.

73. As is detailed in Appendix B and in Section II. C above, other Qwest states have capped the basic residential phone rate at current levels as part of their alternative regulatory plans. Specifically, Arizona, Colorado, New Mexico, and Minnesota all have price caps in place for basic residential service, as well as limitations on prices for other services.¹¹⁴ Qwest's refusal to incorporate any such cap in Washington is arbitrary and unreasonable. In Washington, Qwest

¹¹¹ Exh. No. 66, p.23.

¹¹² Exh. No. 108, p. 11:11-12:16 (Loube)(discussing Commission orders on incremental cost).

¹¹³ Exh. No. 90C, pp. 66 – 68:17 (Loube).

¹¹⁴ See Appendix B.

and Staff ask regulators and the public to settle for less, to accept a substandard plan which offers less protection for the least competitive parts of the market. There is no reason why Washington ratepayers should accept this unreasonable disparity.

3. Installation/Connection fees.

74. Public Counsel proposes that, as part of the framework to protect customers in the non-competitive part of the market, that the AFOR also cap installation/connection charges at current levels.¹¹⁵ The purpose of this cap is to avoid a situation where the recurring rate is capped, but customers see increases elsewhere in other fees and charges, undercutting or offsetting any benefit from the basic rate cap. Arizona has also capped non-recurring rates related to basic service (Section C.2 above). The Qwest/Staff AFOR does not offer this protection. It simply leaves these charges in tariff, where Qwest is not precluded from seeking increases if it chooses to.

4. The directory assistance free call allowance should be retained.

75. Public Counsel proposes that customers continue to have one free directory assistance call per month, continuing the service as an adjunct to basic telephone service, included in the basic price of residential phone service. The free call allowance originated in part as a recognition that some directory assistance calls are not successful and acts as a surrogate for waiver of the charges for those calls.¹¹⁶ The free call also is beneficial for customers who for various reasons, including for example, vision impairment, are not capable of using or do not have access to a printed or on-line directory. The exception contained in the Qwest/Staff AFOR

¹¹⁵ Exh. No. 103, p. 3, Section. C.3.

¹¹⁶ US West Make Whole Rate Case Order, pp. 28-29.

only covers a subset of these customers, those who call from hospitals or who obtain a certification for use of another service on a continuing basis.

D. Retail Service Quality.

76. Public Counsel recommends that the AFOR include a retail service quality plan as proposed in the testimony of Mary Kimball. This is a key component that is missing from the Qwest/Staff AFOR. This area is discussed in detail in Section IV below.

E. Deployment of Technological Improvements and Advanced Services.

1. Public Counsel AFOR.

77. The AFOR statute requires the Commission to consider whether the plan will “[f]acilitate the broad deployment of technological improvement and advanced telecommunications services to underserved areas or underserved customer classes.” RCW 80.36.135(2)(a). Public Counsel’s AFOR proposal addresses this requirement in two ways.

78. To ensure that advanced services are brought to underserved areas, Public Counsel proposes a detailed plan that would phase in expanded deployment of DSL throughout Qwest’s service territory. Qwest’s service territory can be divided into wire centers where DSL service is available to 75 percent or more of customers, and those where it is available to 75 percent or less. The **[Begin Confidential] xx [End Confidential]**wire centers under 75 percent represent **[Begin Confidential] xxxxxxxxx [End Confidential]** of Qwest’s total lines. In these wire centers, DSL is only available to **[Begin Confidential] xxxxxxxxxxxxxxxxxxxxxxxxx End Confidential]** These are the wire centers targeted by Public Counsel’s recommendation. In order to bring the coverage up to 75 percent in these wire centers, Qwest would need to make DSL available to an

additional **[Begin Confidential]** xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx**[End Confidential]**. Public Counsel's recommends obtaining a commitment from Qwest to achieve this, as part of the AFOR.¹¹⁷

79. Under Public Counsel's proposal, the first step is that within two years, all wire centers would have DSL service available. This achieves the same goal as the Qwest/Staff AFOR but in less time. There does not appear to be any reason why Qwest cannot achieve this modest goal in a shorter time frame than the settlement provides.¹¹⁸ Next, within three years, 70 percent of lines in all wire centers would be broadband capable. This would improve to 75 percent by the end of four years.

80. In addition, to address underserved customer groups, the Public Counsel plan would allow Qwest to choose between developing a "broadband lifeline" plan, or contributing funds to support an existing community technology program. Community technology centers provide locations where people without their own computers can have internet access.

81. Under Public Counsel's AFOR, Qwest would also continue to offer stand-alone DSL. The Company currently offers stand-alone DSL. The Qwest/Staff AFOR, however, makes no commitment to continue this, and Mr. Reynolds declined to make a commitment at the hearing when asked by Chairman Sidran.¹¹⁹ It is important that stand-alone DSL continue to be offered in order to maintain access to competitive alternatives for customers. If customers can only purchase DSL bundled with other services, then Qwest can make it cost-prohibitive for its customers to choose alternative ISP or a VoIP provider. This is anti-competitive.

¹¹⁷ Exh. No. 90C, p. 5:1-6:3 (Loube).

¹¹⁸ M. Reynolds, Tr. 566:12-24.

¹¹⁹ Tr. 588:3-18.

2. Qwest/Staff AFOR.

82. The Qwest/Staff AFOR addresses deployment of advanced services in a far more limited fashion. The only specific commitment Qwest makes is to deploy DSL in the seven wire centers where it is not currently available. Qwest estimates that this will bring DSL to 50 percent of the customers in these wire centers, for a total of approximately **[Begin Confidential]** xxxx **[End Confidential]** customers who did not previously have DSL. This small scale plan is not even required to be complete until 2010.

83. The only other commitment by Qwest is to file a report four years from now regarding its progress toward a goal of ensuring that wire-line high speed internet service is available to 83 percent of its Washington customers. Qwest does not actually commit to reaching that goal, only to filing a report at the end of the AFOR. The company is not required to file a plan with the Commission indicating how it would achieve this goal. Although it is difficult to believe for a major telecommunications company, Qwest claims to have no plans for DSL deployment, and to not know how much it would cost to increase DSL deployment in its service territory.¹²⁰

84. Qwest's responses to Bench Request 3 in this case raise serious questions about how much of a commitment even this minimal end-of-term report constitutes. Already today, more than 83 percent of living units in Qwest service territory qualify for DSL if line rearrangement is performed. Of these, **[Begin Confidential]** xxxxxxxxxxxx **[End Confidential]** qualify for DSL today with no further line rearrangement. The remainder requires that some line rearrangement happen in central offices and remote terminals to deal with line encumbrances such a load coils

¹²⁰ Exh. Nos. 75, 76, 77.

or bridged tap. Qwest does not commit to undertake any line rearrangement in the AFOR settlement.

85. Even if Qwest were to make an actual commitment to achieve a statewide average of 83 percent, it is not at all clear that this is an appropriate goal. Obviously average goals can be met by providing inconsistent levels of service in different parts of the state, with more competitive urban areas getting above average levels, and other areas getting below average service. This is hardly consistent with the goal of “broad deployment” or ensuring that underserved areas get service.

86. Finally, the foregoing only relates to deployment of DSL to underserved areas. The AFOR statute also addresses deployment to underserved groups. Staff says it hopes the agreement will improve matters in that area, but concedes that there is nothing in the agreement that addresses underserved populations and that nothing is specifically mandated.¹²¹ Staff does not provide a convincing explanation of how the Qwest/Staff AFOR will in any way address this issue.

F. Accounting and Reporting – Transfer of Property.

87. Public Counsel does not object to the accounting and reporting provisions of the Qwest/Staff AFOR, except in the areas discussed below.

88. Staff’s original position in this case was that transfers of property should continue to be reported for transactions with a value exceeding 1 percent of rate base, or \$15.6 million.¹²²

Though professing concern over regulating *de minimis* transactions,¹²³ the Qwest/Staff AFOR

¹²¹ Saunders, Tr. 229:13-24.

¹²² Exh. No. 152C, p.11:11- 12:2 (D. Reynolds).

¹²³ Tr. 313:1-14 (\$465 computer).

significantly expands the waiver to eliminate the filing requirement for any transaction under \$78 million (five percent of rate base). Public Counsel recommends that the waiver remain at the one percent level. \$78 million represents a significant amount of money. Many company assets were acquired with ratepayers funds and ratepayers are entitled to all or part of the proceeds when these assets are sold.¹²⁴ Public Counsel proposes special accounting treatment and reporting for discounts associated with bundles to ensure it is allocated to the interstate or non-regulated sector. Dr. Loube explains this is necessary to ensure that basic services bear no more than a reasonable share of joint and common costs as required by Section 254(k) the Telecommunications Act of 1996.

G. Wholesale Provisions.

89. This provision of the Public Counsel AFOR is adopted verbatim from the Staff's original proposal in Tom Wilson's Exhibit No. TLW-3.¹²⁵ Staff has agreed to remove the final sentence regarding forbearance. Public Counsel does not have a position on this change.

H. Extension, Modification or Termination of the AFOR.

1. Public Counsel AFOR.

90. Public Counsel recommends that if Qwest wishes to extend or modify the AFOR, that nine months prior to the end of the four year term, the Company should be required to file a petition initiating an adjudication proceeding for review of its request.¹²⁶ Setting the matter for adjudication will ensure that interested parties receive notice of the case, that they have an ability

¹²⁴ See, e.g., *In the Matter of the Application of Avista, PacifiCorp, and PSE for Authority to Sell Interests in The Centralia Power Plant*, Docket No. UE-991255, et al. Second Supplemental Order, ¶ 86.

¹²⁵ Exh. No. 144, p. 2.

¹²⁶ Exh. No. 103, p. 6, Section H.2.

to intervene if desired, and that discovery will be available to aid in the AFOR review. It will also ensure that the decision is made on a full record, with an opportunity for evidence, hearing, and cross-examination of witnesses. The process and the timeline parallel the process provided for at the time of initial application. This approach allows time for adequate discovery and review of information about the AFOR performance, and for informal dispute resolution.

2. Qwest/Staff AFOR.

91. The Qwest/Staff AFOR plan for end-of-term review is vague, inadequate, and unduly narrow. It establishes an informal review process that begins only six months prior to the four year anniversary of the AFOR. Public Counsel shares the concern expressed by Commission Jones at the hearing that this may be an unrealistic time-frame.¹²⁷ There are other problems as well.
92. The process proposed by Qwest and Staff by its terms limits participation, does not provide for open discovery, does not require any hearings or adjudicative process, does not allow adequate time for adjudication prior to the end of the term, appears to channel all information and recommendations through Staff, and does not contemplate anything other than modifications to the plan. The Qwest/Staff AFOR states that at the conclusion of the review the Commission will “hold a proceeding” at which parties may advocate for “modifications.” The plan does not specify whether this is to be an adjudicatory proceeding, or some other process, and who would bear the burden of proof in the proceeding. Adoption of this proposal will lead to uncertainty, dispute, and delay at the time of the four-year review.

¹²⁷ Tr. 309:15-18.

I. Notice to Customers.

93. Public Counsel proposes that Qwest provide notice to its customers of the adoption of the AFOR by means of bill inserts sent 60 days and 120 days after the acceptance of the AFOR plan. The notice should clearly, conspicuously and accurately state the adoption of the plan, its terms and impact. The Qwest/Staff AFOR makes no provision for notice to the public that the AFOR has been adopted, or how it will impact the customer, unlike plans in other states, as shown in Appendix B.

J. Public Counsel's AFOR Avoids the Uncertainty Created By The Settlement Plan.

94. The structure of the Qwest/Staff AFOR tracks closely the original Qwest AFOR proposal filed in October.¹²⁸ While there have been some modifications, the Qwest/Staff AFOR still adheres to this basic outline. The framework remains a confusing mixture of provisions, exceptions, and transition period requirements, with some requirements in footnotes and appendices, and allusions to statutes that may or may not be applicable.

95. The structure of the Qwest/Staff AFOR also creates some legal uncertainty. The opening provision contains the statement that “the parties agree that Qwest should be treated *as if* it were competitively classified.”¹²⁹ The Company has not actually petitioned, however, for classification as a competitive company under RCW 80.36.320. Qwest stated at the hearing “it could not reasonably be described as such pursuant to the AFOR.”¹³⁰ Similarly, there is no

¹²⁸ Exh. No. , p. 69 (M. Reynolds).

¹²⁹ Exh. No. 4, ¶ 1. (emphasis added).

¹³⁰ M. Reynolds, Tr. 268:22-23. Provision 1) goes on to say, however, that “Qwest is *also* subject” to provisions in Appendix A which are “*similar*” to those companies who are competitively classified pursuant to RCW 80.36.320. It’s not clear how “similar” treatment differs from treatment “as if” competitively classification had

petition for competitive classification of services under RCW 80.36.330 though a large number of services are listed in Qwest testimony as “services which would be treated as competitively classified services under the AFOR.”¹³¹ The structure of the Qwest/Staff AFOR, therefore, creates confusion in which it is not clear what rules or statutes, if any, apply to different situations, as reflected in answers from the settlement panel at the hearing.¹³² Public Counsel recommends that any AFOR adopted should simply state in plain terms the provisions of the plan that are in effect for the four year period.

IV. A SERVICE QUALITY INCENTIVE PLAN AS PROPOSED BY PUBLIC COUNSEL IS ESSENTIAL TO ENHANCE AND PROTECT SERVICE QUALITY

96. The AFOR statute states that among the factors which the Commission shall consider in determining the appropriateness of any AFOR, is whether it will “[p]reserve or enhance service quality and protect against the degradation of the quality or availability of efficient telecommunications services.”¹³³ In US West’s 1995 general rate case, the Commission identified protecting against any degradation of service quality as “one of the most important conditions for approving an AFOR.”¹³⁴ In the 1997 US West “make whole” rate case, the Commission, while concluding that it was not the proper proceeding to implement Public Counsel/AARP’s recommendation for a service quality index, nevertheless observed:

A service performance index may well be an appropriate tool in the future. In particular, if discussions aimed at instituting another AFOR take place, it is essential that mechanisms be developed that will provide appropriate and effective incentives for the Company to maintain adequate levels of service

occurred. This language notwithstanding, Qwest will not be competitively classified if this AFOR is approved, and the provisions of RCW 80.36.320 will not be applicable.

¹³¹ Exh. No. 70, pp. 2-3.

¹³² Tr. 261:7-269:7.

¹³³ RCW 80.36.135 (2)(d).

¹³⁴ 1995 Rate Case Order, p. 11.

among customers who have few realistic competitive alternatives. The index may be one element among others that might offer effective incentives for quality consumer service.¹³⁵

97. Public Counsel has proposed a Service Quality Incentive Plan (SQIP), composed of nine performance measures, to help ensure the Company's retail service quality does not experience any degradation as a result of the AFOR.¹³⁶ The SQIP would place a maximum of \$16 million at risk annually, and thus is scaled back from the merger's Service Quality Performance Plan (SQPP) which placed \$20 million at risk annually. For eight of the nine measures in the SQIP, the performance standards and payment calculations are identical to the standards and payment calculations recommended by Qwest in early 2004 as part of the SQPP modification proceeding in the merger docket.¹³⁷ This is a policy approach – service quality standards with self-executing, automatic payments for sub-par performance – that has been adopted in other Qwest states as part of an alternative form of regulation.

A. Rationale – Why Do We Need a SQIP?

1. SQIP focuses on results to encourage investment.

98. Public Counsel's SQIP focuses on performance results, rather than requiring a specific investment level, in order to ensure that Qwest will meet service quality standards. Self-executing service quality programs have been recognized by the Company and the Commission

¹³⁵ US West Make Whole Rate Case, p.27.

¹³⁶ Exh. No. 118C, pp. 14-26 (Kimball Direct); Exh. No. 121.

¹³⁷ The ninth measure, related to trunk blocking, is a new measure recommended by Public Counsel in this proceeding. Exh. No. 121.

as providing an effective incentive for the company to make necessary investments to provide good service quality. During the US West-Qwest merger settlement hearing, US West witness Ms. Theresa Jensen testified that the SQPP would provide an incentive for the company “to look not only at its investment but its practices, its forecasts, its planning [...]”¹³⁸ After reviewing Qwest’s performance after the merger’s SQPP had been in place for over three years, the Commission found that “the SQPP credit requirements have provided, and should continue to provide, important incentives in fostering good service quality.”¹³⁹

99. Concern about Qwest investment levels in Washington is not merely theoretical. As shown in Exh. No. 120C, Qwest’s capital investment in Washington has **[Begin Confidential] xxxxxxxxxxxxxxxxxxxxxx [End Confidential]** since the company’s level of \$133 per access line prior to the US West – Qwest merger. Capital investment in Washington has **[Begin Confidential] xxxxxxxxxxxxxxxxxxxxxx [End Confidential]** each year since 2002. In 2005, Qwest’s capital investment was **[Begin Confidential] xxx [End Confidential]** per access line, which represents a **[Begin Confidential] xxxxxxxxxxxxxxxxxxxxxx [End Confidential]** from pre-merger levels, and a **[Begin Confidential] xxxxxxxxxxxxxxxxxxxxxx [End Confidential]** from the Company’s peak investment level of **[Begin Confidential] xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx [End Confidential]**

100. Investment is also essential to maintaining critical infrastructure. Telecommunications is an essential service. Qwest’s wireline network plays a central public service role in providing reliable communications service for business and personal use. The network is particularly

¹³⁸ Exh. No. 118C, p. 15: 4-15.

¹³⁹ Docket No. UT-991358, Sixteenth Supplemental Order, at ¶ 38. Cited in Exh. No. 118C, p. 16:22-24.

important in helping the state deal with major emergencies. This was recently highlighted by the experience in the major regional storm of December 14-15, 2006. While cable telephony and wireless services were seriously disrupted, Qwest's system performed very well and provided an important communications link for citizens, business, and government emergency workers and decision makers.¹⁴⁰ Any AFOR plan adopted should ensure that service quality, reliability, and adequate investment in the network are continued.

101. New Mexico's experience with Qwest's investment levels provides further evidence that this is a legitimate area of concern when an AFOR is put in place. Qwest initially began operating under its initial AFOR plan in New Mexico in March of 2001. During the initial AFOR period (AFOR I), the New Mexico Commission Staff expressed concern regarding whether Qwest was investing sufficient amounts in its infrastructure.¹⁴¹ Subsequent Commission investigation determined that Qwest's investment levels would fall below benchmark levels by approximately \$220 million, and that new incentives were needed to enforce investment obligations, as well as possible customer credits.¹⁴² This decision was challenged by Qwest, with the Commission's findings ultimately upheld in their entirety by the New Mexico Supreme Court.¹⁴³ Ultimately, the New Mexico Commission approved an amended settlement of \$270 million to resolve investment and service quality issues related to the AFOR I term. The settlement provided for \$10 million in direct customer credits, \$5 million for an education

¹⁴⁰ Exh. No. 90C, p. 31:17-33:2 (Loube); *See also* Exh. No. 16C, p. 28:11-14 (Teitzel)

¹⁴¹ Exh. No. 2, Attachment P, Final Order on Pricing and Quality of Service, *In the Matter of the Development of an Alternative Form of Regulation Plan for Qwest Corporation*. Case No. 05-0046-UT, November 2006, p. 10.

¹⁴² *Id.* p. 11.

¹⁴³ *Id.*

project aimed at seventh and eighth graders, and \$255 million toward a range of different “Settlement Projects.”¹⁴⁴

2. The SQIP is an anti-backsliding measure, not a response to recent performance.

102. Public Counsel’s SQIP is designed as an anti-backsliding plan, consistent with the statutory requirement that an AFOR should preserve or enhance service quality, and protect against any degradation to service quality.¹⁴⁵ The SQIP is not a punishment for recent performance, nor is it a reward for improved performance. The adoption of the SQIP does not turn on a Commission determination of current performance levels. However, having said this, it is worth responding to Mr. Williams’ assertion that after the expiration of the SQPP at the end of 2005, Qwest’s performance was sustained or improved in 2006.¹⁴⁶ In some areas, in fact, it is unclear whether this is the case.

103. With respect to telephone answer time at the Company’s repair centers, it appears performance has worsened. The current standard – average answer time of 60 seconds or less – took effect in July 2004. During the final 18 months of the SQPP, Qwest never failed this standard.¹⁴⁷ However, in 2006, Qwest’s performance was below this standard for two months of the year, in July and December. While Mr. Williams stated at hearing that call volumes were higher during the months that failed the standard, Exhibit No. 58C shows that call volumes were

¹⁴⁴ Exh. No. 2, Supplement to Original Bench Request No. 2, Attachment F, Second Amended Settlement Agreement. The “Settlement Projects” totaling \$255 million are related to high-speed internet access, redundant and diverse routes, cable improvement, advanced telecommunications technologies, and network improvement and capacity augmentation. See pp. 6-13.

¹⁴⁵ Exh. No. 118C, p. 14 and p. 21.

¹⁴⁶ Exh. No. 47, p. 3-6 (Williams Rebuttal).

¹⁴⁷ Exh. No. 52, p.8 and p.10. Qwest also never failed the previous repair answer time standard of answering 80 percent of calls within 30 seconds, from 2001 through June 2003. Exh. No. 52, pp. 2, 4, 6.

[Begin Confidential] xxxxxxxx [End Confidential] xxxxxxxxxxxxxx [Begin Confidential] xxx
xxxxxxx [End Confidential] in December. Moreover, the overall trend shows [Begin
Confidential] xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx [End Confidential] at the repair centers, but
[Begin Confidential] xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx[End Confidential] . Call volumes [Begin
Confidential] xxxxxxxxxxxxxxxxxxxxxx [End Confidential] from 2005 to 2006, but average wait
time [Begin Confidential] xxxxxxxxxxxxxxxxxxxxxx [End Confidential].¹⁴⁸

104. Restoring out-of-service conditions is another area where it appears that Qwest's performance has worsened. During the first three years of the SQPP, from 2001 to 2003, Qwest was able to restore 99.50 percent or more out of service conditions within the Commission's standard in 14 of 36 months. But from 2004 to 2006, Qwest was able to meet or exceed that 99.50 percent threshold in only 2 months out of 36.¹⁴⁹ In the last several years, there has been a general trend of an increase in the aggregate number of out-of-service conditions not restored within the Commission's standard. From 2001 to 2003, Qwest failed to restore an average of 1,525 out-of-service conditions within the standard on an annual basis. For 2004 and 2005, Qwest failed to restore an average of 2,604 out-of-service conditions annually.¹⁵⁰ This worsening performance trend is over period where the company has experienced decline in its number of access lines.¹⁵¹

¹⁴⁸ At hearing, Mr. Williams stated he was not aware of the location of any repair call centers, but confirmed they are located throughout the 14-state territory. Tr. 411:13-23.

¹⁴⁹ Exh. No. 125C, p. 2 and Exh No. 48. The first page exhibit 125C provides a graphic illustration of this point. Monthly percentages are posted on the WUTC web site and were provided in Exh No. 48 (Williams).

¹⁵⁰ These averages are calculated using data provided in Exh No. 52. This data also appears in Exh No. 125C at p. 2. Data for 2006 was not included due to the unusual weather, which resulted in greater outages.

¹⁵¹ Qwest began reporting its out-of-service performance under a 48-hour standard, versus the prior two working day standard, in July 2004. We do not know whether any of the changes in performance can be explained by the new standard.

105. Trunk blocking is an additional area where confusion exists about whether performance has improved. As became apparent during this proceeding, the company's trunk blocking reports filed with the Commission have been inaccurate, making it difficult to determine the extent of Qwest's failures in the Commission's E-911 and toll trunk blocking standards.¹⁵²

3. The statutory complaint and penalty mechanism is not as effective.

106. This Commission has recently concluded that self-executing service quality programs provide a better incentive for performance than enforcement action under the Commission's rules. During the termination/modification proceeding in early 2004 regarding the merger's SQPP, the Commission found: "This record does make it clear that the enforcement mechanism associated with the SQPP provides a better incentive for performance than that of the rules."¹⁵³ This is because, as the Commission expressly noted in its Sixteenth Supplemental Order cited above, enforcement action requires the Commission or another party to gather data, file a formal complaint and prosecute an adjudicative case, potentially through hearing, for a discrete, limited set of violations.¹⁵⁴

4. The SQIP advances different goals than the Customer Service Guarantee Plan.

107. Public Counsel's recommended SQIP complements but serves a different purpose than

¹⁵² Exh. No. 47, pp.18-19; Exh. No. 163C, p. 39. Mr. Williams testified that reports for 2005, which show failures in the E-911 standard in every month, and toll standard in 8 months, were also inaccurate, Tr 417:9 – 418:15; Exh. No. 163C, pp. 14-25. The restated 2006 reports show failures in the E-911 and toll standards in 4 months. Exh. No. 163C, pp. 39-49.

¹⁵³ Docket No. UT-991358, Sixteenth Supplemental Order, at ¶37. *See also* Exh. No. 118C, pp. 15-16 (Kimball Direct).

¹⁵⁴ *Id.* ¶ 38. *See also*, Exh. No. 2, Supplement to Original Bench Request No. 2, Attachment E, New Mexico Public Regulation Commission, Order for Contingent Approval of Amended Settlement Agreement, p. 7, n. 4.

the CSGP. The SQIP is an incentive program designed to provide Qwest with an additional economic motivation to provide satisfactory service quality to all its customers.¹⁵⁵ The CSGP, by contrast, is a compensation program designed to provide remedies to individual customers who experience inferior service.¹⁵⁶ This is why both programs were in place under the Qwest Merger Order.

108. The \$43,833 that Qwest provided in out-of-service pro-rata credits in 2006, for example, cannot reasonably be characterized as any kind of meaningful financial incentive to the company to improve performance.¹⁵⁷ The lack of a financial incentive from service guarantee programs (remedies) may be one reason why Arizona, Colorado and New Mexico have continued to include an out-of-service measure in the self-executing service quality plans as part of Qwest's AFOR plans in those states, in addition to providing customer remedy programs for out-of-service conditions.¹⁵⁸

109. There are also several areas of service quality performance that are not covered by the CSGP, including the following:

- Telephone Answer Time – Repair Centers (SQIP Measure No. 6)
- Telephone Answer Time – Business/Sales Office (SQIP Measure No. 7)
- Dial Tone Speed (SQIP Measure No. 4)
- Complaint Response to WUTC Consumer Affairs (SQIP Measure No. 8)
- Trunk Blocking (SQIP Measure No. 9)

¹⁵⁵ Importantly, the SQIP also includes an annual report to customers summarizing the Company's performance (similar to the reports provided under the SQPP, shown in Exh. No. 52). Exh. No. 121, p. 3.

¹⁵⁶ Exh. No. 118C (Kimball Direct), pp. 17-18.

¹⁵⁷ Exh. No. 62. The \$43,833 paid in pro-rata credits in 2006 is 23 percent higher than the \$35,551 paid in 2005. Mr. Williams at hearing testified this may have been due to unusual weather in January, November, and December 2006. Tr. 421:1-15.

¹⁵⁸ Exh. No. 53C, p. 9; Exh. No. 63C, p. 4. In Colorado in 2006, for example, Qwest paid **[Begin Confidential]** xxxxxxxx **[End Confidential]** as part of the self-executing service quality metric for out-of-service conditions (Exh. No. 53C, p. 9) and **[Begin Confidential]** xxxxxxxx **[End Confidential]** as part of their customer remedy program for out-of-service (Exh. No. 63C, p. 4).

5. The SQIP helps protect against uneven investment and ensures all customers get consistent service quality, even though competition is uneven.

110. Both settlement panel witnesses testified that competition is uneven across the state. Mr. Saunders stated that “competition burns much brighter and seems to be much hotter in Seattle than it is in the rural parts of Eastern Washington.”¹⁵⁹ Mr. Reynolds observed that rural customers “might not see competition develop as quickly.”¹⁶⁰

111. Qwest’s witness Mr. Williams testified at hearing that the Company’s declining investment trend and any potential deleterious effect that could have on service quality should not be a concern because of the “competitive landscape” in Washington.

I think the real point why this is not a concern or shouldn’t be, I don’t believe, is because the competitive landscape here is such that no company who’s doing business in Washington in the telecom business and competing for customers can afford to let their service decline, and so they would assure that they’re investing in rehabilitation *where that makes sense* or in new plant *where that makes sense*, just as a matter of staying competitive.¹⁶¹ (emphasis added).

112. This answer underlines the concern that investment in service quality will go to some areas and not others. Public Counsel’s SQIP provides a benefit to all customers, regardless of their location in the state.¹⁶² Qwest is seeking significant regulatory flexibility in this proceeding, such as the ability to raise certain prices, transfer property of \$78 million or less without Commission approval, and waivers of many rules and statutes. As such, there is significant uncertainty as to the manner in which the Company will operate in the state going

¹⁵⁹ Saunders, Tr. 300:8-10.

¹⁶⁰ M. Reynolds, Tr. 301:14-16.

¹⁶¹ Williams, Tr. 434:22 – 435:5.

¹⁶² Kimball, Tr. 628:10-19.

forward. Public Counsel's SQIP helps provide some assurance that all customers will receive good service quality.¹⁶³

B. As Noted, Other Qwest States Have Included Service Quality Plans As An Important Component of the AFOR.

113. As already discussed, several Qwest states have adopted retail service quality performance plans, with self-executing payments in the event of sub-standard performance, reflecting their important role as part of an alternative regulation plan. Such plans have been established in Arizona, Colorado, Minnesota, New Mexico, and Oregon. Exhibit 53C shows the specific performance measures and standards included in the different plans, as well as amounts paid by Qwest from 2001 to 2006.¹⁶⁴

114. In four of the states in Qwest's 14-state territory, when the state Commission originally approved an AFOR for the Company, the AFOR plan included a service quality plan with self-executing payments. Those four states are: Arizona, Colorado, Minnesota, and New Mexico.¹⁶⁵

115. Each of the Commissions in the four states identified above have recently reviewed Qwest's original AFOR. Three of the four states identified above – Arizona, Colorado, and New Mexico – have recently made decisions to continue to include a self-executing service quality plan as part of a revised AFOR for Qwest in their state. In the revised AFOR plan in Arizona, a settlement agreement approved by the Arizona Corporation Commission in March 2006, Qwest agreed to continue the five-metric service quality plan that had been part of the original AFOR, with some revisions to the penalty calculations. The revised Arizona plan also includes a

¹⁶³ Kimball, Tr. 628:1-19.

¹⁶⁴ Exh. No. 53C, pp. 9-10.

¹⁶⁵ Williams Rebuttal, Tr. 405:11-20; Exh. No. 47, pp. 6-8.

provision that in any year in which Qwest is subject to penalties in two or more of the five performance measures, an additional credit of \$2.00 for each residential and business access line shall be applied. The settlement agreement states that the purpose of this provision is “To ensure service quality during the term of the Renewed Price Cap Plan.”¹⁶⁶

116. In New Mexico, the Commission’s November 2006 Final Order on Pricing and Service Quality incorporates service quality provisions that had been established as part of a separate docket, which include performance standards with self-executing penalties, as well as provisions for direct customer remedies in certain areas.¹⁶⁷

117. In Colorado, the revised AFOR plan, a settlement agreement approved by the Commission in 2005, Qwest agreed to continue two of the thirteen measures in the original service quality plan.¹⁶⁸

118. Appendix C summarizes the measures included in the Arizona, Colorado, and New Mexico service quality plans, and also indicates whether Qwest has a separate customer remedy program. Public Counsel’s SQIP is comparable to these plans in structure, and covers similar performance areas. The standards and payment calculations in Public Counsel’s SQIP are identical to the standards and payment calculations recommended by Qwest in early 2004 as part of the merger docket.¹⁶⁹ To the extent that Qwest believes they are somehow unfair or

¹⁶⁶ Exh. No. 2, Attachment V, Arizona Corporation Commission, Decision No. 68604, Settlement Agreement at p. 11.

¹⁶⁷ Exh. No. 2, Attachment P, Final Order on Pricing and Service Quality, pp. 43-56, and Appendix B.

¹⁶⁸ Exh. No. 2, Attachment CC, pp. 50-51.

¹⁶⁹ Of the nine performance measures included in the SQIP, the first eight measures and associated penalty calculations are identical to those recommended by Qwest in 2004 in the merger proceeding, UT-991358. The ninth measure, related to trunk blocking, is a new measure recommended by Public Counsel in this proceeding. Exh. No. 121.

unreasonable at this point in time, the company could have made an alternative recommendation to modify those standards or payment calculations. They have chosen not to do so.

119. Qwest witness Mr. Reynolds asserts in his rebuttal testimony that the SQIP recommended by Public Counsel witness Ms. Kimball is “retrogressive and discriminatory.”¹⁷⁰ Yet, this “retrogressive and discriminatory” policy approach has repeatedly been adopted in other Qwest states as part of AFORs--- in Arizona and Colorado by settlement.¹⁷¹ Thus, rather than being “retrogressive and discriminatory,” the SQIP would provide parity with Qwest customers in other states.

C. The Settlement Is Not Adequate to Enhance or Protect Service Quality.

1. Continuing the Customer Service Guarantee Program does not by itself preserve or enhance service quality.

120. Under the terms of the Settlement Agreement proposed by Qwest and Staff, Qwest would continue to offer its Customer Service Guarantee Program (CSGP) under tariff during the term of the AFOR.¹⁷² In addition, the proposed Settlement would re-institute three elements that had been previously part of the CSGP, but were discontinued in October 2005, along with other components of the CSGP that were also eliminated at that time.¹⁷³

121. Public Counsel supports continuation of the CSGP as part of an AFOR, as described in Ms. Kimball’s direct testimony.¹⁷⁴ While Public Counsel does not oppose the re-institution of the three additional elements of the CSGP under the settlement, the record shows that these

¹⁷⁰ Exh. No. 71, p. 16:9 (M. Reynolds Rebuttal).

¹⁷¹ Williams, Tr. 438:25 – 439:4.

¹⁷² Exh. No. 4, p. 3 at Exception (3)(a)(v).

¹⁷³ Id., Appendix C; *See also* Exh. No. 118C, p 13.

¹⁷⁴ Exh. No. 118C, p. 13; Exh. No. 103.

additional elements are inconsequential, in terms of the dollar amounts Qwest is likely to pay out, particularly when compared to the Company's revenues in Washington and number of customers who benefit. Public Counsel therefore disagrees strongly with the characterization of Qwest and Staff that the additional service quality commitments in the settlement "substantially strengthen the Commission's basis for finding that service quality will be preserved or enhanced."¹⁷⁵ As Ms. Kimball testified at hearing, the likely credit amounts the Company would pay "don't provide the kind of incentive that a self-actuating service quality plan does."¹⁷⁶ The CSGP is a compensation program, not an incentive plan, as discussed above.¹⁷⁷ As a result, as Ms. Kimball further testified, Public Counsel's proposal, which includes the SQIP and continuation of the CSGP, is the only proposal that would meet the statutory requirements to preserve or enhance service quality.¹⁷⁸

2. The additional elements of the CSGP will not result in significant credit amounts and are not carefully crafted.

122. At hearing, Staff witness Mr. Saunders indicated that Staff performed an analysis of "the likely cost or payout by the company under the Customer Service Guarantee Program as amended by the Settlement Agreement," but that he did not "recall the contents of it exactly."¹⁷⁹ Based on what Qwest paid to customers when the three additional CSGP program elements were previously in place, Qwest may face approximately **[Begin Confidential] xxxxxxxx [End**

¹⁷⁵ Exh. No. 5, at ¶ 36 (Joint Narrative Supporting Settlement Agreement).

¹⁷⁶ Tr. 640:5-6.

¹⁷⁷ When specifically asked by Commissioner Jones whether the CSGP is "an incentive program" or a "compensation program," Qwest witness Mr. Williams responded "We kind of broadly do put it under remedies as we look across the company." Tr. 436:14-21.

¹⁷⁸ Tr. 639:6 – 641:23.

¹⁷⁹ Tr. 655:13-19.

Confidential] in additional credits by re-instituting these programs.¹⁸⁰ This represents about **[Begin Confidential] xxxxxxxxxxxx [End Confidential]** of Qwest's Total Washington Revenues in 2005 of **[Begin Confidential] xxxxxxxxxxxx [End Confidential]** .¹⁸¹

123. The Settlement Agreement re-institutes a two-tier credit program for out-of-service conditions not cleared within two working days or seven calendar days.¹⁸² This program was originally established as part of the US West-Qwest merger settlement agreement. At that time, the Commission's standards required restoration of out-of-service conditions within two working days. However, the Commission's current standard, which became effective July 2003, requires restoration within forty-eight hours.¹⁸³ In light of the current forty-eight hour standard, it is unclear why Qwest and Staff decided, in re-instituting this program, to include a two-working day standard, a less stringent standard than 48 hours, particularly since Qwest's service quality reports reflect performance under the 48 hour standard.¹⁸⁴

124. Analysis of the data further shows that most Qwest customers who experience an out-of-service condition will not benefit from this additional program element. In 2006, Qwest provided pro-rata credits to 35,868 customers.¹⁸⁵ Qwest has indicated that nearly 7,400 customer credits provided in 2006 were for out-of-service conditions greater than 48 hours, about 20 percent of the customer receiving credits.¹⁸⁶ In other words, the settlement only benefits

¹⁸⁰ Appendix D provides data from 2004, the last full year these program elements were in place.

¹⁸¹ Exh. No. 123C, reflects adjusted intrastate WA Total Revenues for 2005.

¹⁸² Exh. No. 4, at p. 10, Appendix C (2).

¹⁸³ *In the Matter of Amending, Adopting and Repealing: Chapter 480-120 WAC Relating to Telephone Companies*, Docket No. UT-990146, General Order No. R-507 at ¶ 155, adopting WAC 480-120-440.

¹⁸⁴ Also contributing to the confusion is the fact that Section (2)(d) of Appendix C states that "Sundays and legal holidays are excluded from the 48 hour and 72 hour periods," but the time periods in the program are two working days and seven calendar days.

¹⁸⁵ Exh. No. 161, p. 1.

¹⁸⁶ Exh. No. 161, p. 2. While Qwest states in this data request response that "more than 25,000 credits" were applied in 2006 that appears to be a typo. The 2006 monthly data on p. 1 of this response totals 35,868.

about 7,400 customers, 20 percent of those with out-of-service conditions reported to the Company.¹⁸⁷ While the settling parties characterize this additional element as an “enhancement” to the CSGP, it will not affect the vast majority of customers who experience an out-of-service condition, nor is it likely to result in significant additional credit amounts.¹⁸⁸

125. In addition, the plain wording of the Settlement appeared to indicate that the pro-rata out-of-service program would be eliminated.¹⁸⁹ The Settlement does not expressly state that Qwest would continue to offer a pro-rata credit program, as required by WAC 480-120-164, although at hearing Qwest indicated the company would do so.¹⁹⁰ It appears that Qwest would offer two different out-of-service remedy programs to customers. The two day/seven day program would be offered under the CSGP tariff, while the pro-rata program would continue, but be eliminated from the CSGP tariff.

126. As described by Public Counsel witness Ms. Kimball at hearing, the language in Qwest’s CSGP tariff should be clarified to make clear that the credits will be provided to customers automatically. Similar language appears in the company’s programs in other states.¹⁹¹

D. Service Quality Reporting Issues.

1. General service quality reporting requirements.

127. Under the terms of the Settlement Agreement Qwest will file monthly service quality

¹⁸⁷ Since the two working day standard is less stringent than the 48 hour standard, a smaller portion of customers would be eligible for credits under the program in Appendix C.

¹⁸⁸ When asked about which features are considered “associated regulated features,” qualifying for a credit under the 7 calendar day portion of the program, Mr. Saunders at hearing conceded: “I would agree the terms on their face are potentially less than crystal clear.” Tr. 672:6-8.

¹⁸⁹ Exh. No. 4 (Settlement Agreement), at Appendix C, n. 5.

¹⁹⁰ Reynolds, Tr. 581:8 – 582:24.

¹⁹¹ Kimball, Tr. 630:4 – 631:1. Qwest witness Mr. Reynolds stated at hearing that these credits are applied automatically. Tr. 605:17-606:9 and Tr. 607:24-608:11.

reports consistent with ‘Class A’ company requirements of WAC 480-120-439.¹⁹² This level of reporting is acceptable to Public Counsel, with one exception. The rule does not require companies to file telephone answer time reports if they meet the standard for a given month. If Public Counsel’s SQIP is adopted, which includes two measures related to telephone answer time, we recommend the Company include this report in their monthly service quality report. This is a one-page report, and Qwest is already required to gather the necessary data to determine compliance with the standard.

2. Qwest’s CSGP reports should include information about all customer remedy programs.

128. As discussed above, it appears that under the settlement Qwest would offer two different customer remedy programs for out-of-service conditions. While the settlement calls for semi-annual reporting of the CSGP, there is nothing in the settlement agreement that requires reporting of *both* of the out-of-service remedy programs.¹⁹³ This is inconsistent with the intent and meaning of the Commission’s general requirement that Qwest provide data about its customer remedy programs to the Commission.¹⁹⁴ Moreover, this aspect of the settlement proposal will not provide a complete, meaningful picture of out-of-service credits the company is providing to its customers. Staff has said they intend to monitor Qwest’s performance under the CSGP, to determine whether the company has “maintained or improved” its performance, based on the amount of credits provided.¹⁹⁵ That cannot effectively occur without complete reporting

¹⁹² Settlement Agreement, Exh. No. 4, p. 2.

¹⁹³ Settlement Agreement, Exh. No. 4, p. 2. The agreement refers to the Seventeenth Supplemental Order in UT-991358. That order provides the specific mechanics and reporting requirements in more detail, based on the then-existing CSGP. *See also* Exh. No. 118C, pp. 5-7 (Kimball).

¹⁹⁴ *See* Exh. No. 118C, p. 6, citing the Sixteenth Supplement Order, UT-991358.

¹⁹⁵ Exh. No. 139.

of all customer remedy programs, including the out-of-service programs. We recommend the Commission order Staff, Public Counsel and Qwest to develop an appropriate reporting format for all customer remedy programs.

V. PUBLIC COMMENT

129. A public hearing was held in Tacoma on March 6, 2007. Eight witnesses addressed the Commission at the Tacoma hearing, all in favor of the proposed AFOR. Attendees included Qwest employees, public executives, as well as consumers of Qwest's residential and business services. Of those attendees not employed by the company, several comments in favor of the AFOR underscored concerns of Public Counsel. For example, Ms. Teri Tingvall Moore discussed her options for telephone service in these terms:

I wondered if at the time I should cancel my land line since I have a wireless phone that actually works from Black Diamond, but during the recent storm, trees absolutely everywhere, I still had service from Qwest, and as a mother of an 11-year-old daughter, I found that was really important to have this service.¹⁹⁶

130. Exhibit No. 154 consists of 178 letters, e-mails, and other written materials submitted by the public to the Commission and to Public Counsel to provide comment on this case, primarily opposing the AFOR. Ms. Lisa Barnes and Mr. Thomas Berg of Pt. Townsend wrote opposing the petition, "How has Qwest demonstrated that it needs the additional \$24 per household per year?...This guaranteed increase in land-line fees, without review, could easily provide Qwest with money to use on other non-telephony services."¹⁹⁷

131. Mr. John Van Dinter commented on the company's financial operations:

¹⁹⁶ Tr. 53:22-53:4.

¹⁹⁷ Exh. No. 154, pp. 48-49.

I believe that Qwest should be allowed to make a profit, but I do not want to pay fees as a part of my basic service to support new and expanding types of services. Between direct mail, newspaper inserts and television advertising, I am constantly bombarded with advertisements from Qwest. Is the cost of this abundant advertising (to a current customer, I might add) being paid for by me and other current customers? Are the investors seeing a reduced return in exchange for multiple glossy inserts and direct mail pieces?¹⁹⁸

132. Ms. Mary Jensen attached her phone bill, which totals \$21.11 per month and wrote:

Having a telephone is a safety issue. A telephone is not an entertainment device like television or internet service...If the cost of having telephone service increases, it will become too expensive for some low-income families to afford ...while basic service itself is only \$12.50, that isn't all that we have to pay to have basic service.¹⁹⁹

133. Mr. Paul Siscel wrote, "Qwest cites increased competition as its rationale for less regulation. Yet increased competition should drive prices down, not push them up, making their argument specious and hollow."²⁰⁰ Numerous consumers expressed concern over a lack of competition in the market. Mr. Mark Gagnon wrote, "Alternatives that do exist usually require different or additional equipment or services. I should not have to pay for internet service in order to sign up for a cheaper, alternative phone service."²⁰¹ Ms. Marlin Schabell adds, "Wireless service is an add-on service for most customers versus replacement for local phone service."²⁰²

134. Numerous consumers commented on their frustration with tactics used to pressure customers into expensive bundled packages, hidden charges, and their dissatisfaction with Qwest's service quality and customer service. Ms. Noma Campbell wrote:

¹⁹⁸ Exh. No. 154, p. 63.

¹⁹⁹ Exh. No. 154, pp. 39-40.

²⁰⁰ Exh. No. 154, p. 111.

²⁰¹ Exh. No. 154, p. 129.

²⁰² Exh. No. 154, p. 118.

“In October of 2006 I fell for their advertisements about bundling with Qwest for \$99. What a farce. Every month my bill... is at least double that. Every month I call them and try to straighten it out, to no avail.”²⁰³

135. Rocklyn L. Quinn wrote, “I personally have spent over six hours on the phone with their “Customer Care Service” people since September 2006 correcting the billing statements to match what was quoted.”²⁰⁴ Mr. John Afana noted, “...[I]t took six months to get credit for overcharges on my telephone bills.”²⁰⁵ Mr. Milton Horst commented:

[T]he changes requested by the Qwest AFOR will result in insufficient protection of consumer interests. Qwest would like to be regulated in the same manner as cable and wireless companies. These types of companies often are inferior in customer service and value...As we saw during the storms earlier this winter, the land-based telephone system was the only reliable means of communication when cable and wireless failed. I believe the regulatory system in effect until now has contributed to this reliability, which we cannot afford to lose.²⁰⁶

VI. CONCLUSION

136. For the foregoing reasons, Public Counsel recommends that the Commission reject the Qwest/Staff AFOR. Qwest and Staff have failed to show that their proposed plan is appropriate

//

///

////

/////

²⁰³ Exh. No. 154, p. 35.

²⁰⁴ Exh. No. 154, p. 27.

²⁰⁵ Exh. No. 154, p. 145.

²⁰⁶ Exh. No. 154, p. 127.

under the statutory criteria. Public Counsel respectfully requests that the Commission adopt its alternative plan.

DATED this 13th day of April, 2007.

ROB M. McKENNA
Attorney General

Simon J. ffitch
Assistant Attorney General
Public Counsel

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	THE CONTEXT FOR REVIEW OF THE AFOR PROPOSALS.....	3
	A. Applicable Law.....	3
	B. Competition In Qwest’s Washington Residential Market.....	4
	1. This case is focused on the residential market.....	4
	2. Qwest is the dominant carrier in its residential market.....	5
	3. The residential market has three segments.....	7
	4. The market for bundled services is the most competitive part of the residential market.....	9
	5. The market for stand-alone residential telephone service and for à la carte features is not effectively competitive.....	9
	6. Half of Qwest’s customers do not have broadband service.....	11
	C. Alternative Regulation In Other Qwest States.....	12
	1. Colorado.....	13
	2. Arizona.....	15
	3. New Mexico.....	17
	4. Minnesota.....	19
III.	A PROPOSED ALTERNATIVE FORM OF REGULATION FOR QWEST IN WASHINGTON.....	20
	A. Term and Effective Date.....	20
	B. Pricing Flexibility.....	21
	1. Public Counsel AFOR.....	21
	2. Public Counsel conditions.....	22
	C. Protection of Basic Residential Service.....	24

1. Services remaining under tariff.	24
2. Hard rate cap.	24
a. The record is not adequate to support a determination that a rate of \$13.50 would be fair, just, and reasonable and sufficient.....	25
b. Qwest’s authorized rate of return is stale.....	28
c. Qwest’s lack of recent rate history does not justify an increase.....	30
d. Qwest understates its current actual rate of return.....	30
e. The residential rate is not below cost.....	31
f. Risk to DEX benefits.	32
g. Other states adopting alternative regulatory frameworks for Qwest have capped the basic rate to protect residential customers.	32
3. Installation/Connection fees.	33
4. The directory assistance free call allowance should be retained.....	33
D. Retail Service Quality.....	34
E. Deployment of Technological Improvements and Advanced Services.....	34
1. Public Counsel AFOR.....	34
2. Qwest/Staff AFOR.....	36
F. Accounting and Reporting – Transfer of Property.	37
G. Wholesale Provisions.....	38
H. Extension, Modification or Termination of the AFOR.....	38
1. Public Counsel AFOR.....	38
2. Qwest/Staff AFOR.....	39
I. Notice to Customers.....	40
J. Public Counsel’s AFOR Avoids the Uncertainty Created By The Settlement Plan.	40

IV.	A SERVICE QUALITY INCENTIVE PLAN AS PROPOSED BY PUBLIC COUNSEL IS ESSENTIAL TO ENHANCE AND PROTECT SERVICE QUALITY	41
A.	Rationale – Why Do We Need a SQIP?	42
1.	SQIP focuses on results to encourage investment.....	42
2.	The SQIP is an anti-backsliding measure, not a response to recent performance.....	45
3.	The statutory complaint and penalty mechanism is not as effective.....	47
4.	The SQIP advances different goals than the Customer Service Guarantee Plan.....	47
5.	The SQIP helps protect against uneven investment and ensures all customers get consistent service quality, even though competition is uneven.	49
B.	As Noted, Other Qwest States Have Included Service Quality Plans As An Important Component of the AFOR.	50
C.	The Settlement Is Not Adequate to Enhance or Protect Service Quality.	52
1.	Continuing the Customer Service Guarantee Program does not by itself preserve or enhance service quality.....	52
2.	The additional elements of the CSGP will not result in significant credit amounts and are not carefully crafted.	53
D.	Service Quality Reporting Issues.....	55
1.	General service quality reporting requirements.	55
2.	Qwest’s CSGP reports should include information about all customer remedy programs.....	56
V.	PUBLIC COMMENT	57
VI.	CONCLUSION	59

TABLE OF AUTHORITIES

Statutes

C.R.S. §40-15-502(3)..... 13

chapter 80.04 RCW..... 4

RCW 80.04.130 26

RCW 80.04.130(1)..... 26

RCW 80.04.130(2)..... 26

RCW 80.36.135 3

RCW 80.36.135 (2)(d) 41

RCW 80.36.135(1)(a) 3

RCW 80.36.135(2)..... 4, 26

RCW 80.36.135(2)(a)-(f) 4

RCW 80.36.135(2)(e) 24, 26

RCW 80.36.135(3)..... 4

RCW 80.36.300 24

RCW 80.36.300 and 80.36.135..... 3

RCW 80.36.320 40, 41

RCW 80.36.330 41

Other Authorities

Leonard S. Goodman,
The Process of Ratemaking (1998), p. 1131 25

Rules

WAC 480-120-164..... 55

WAC 480-120-439..... 56

Commission Orders

In the Matter of Amending, Adopting and Repealing: Chapter 480-120 WAC Relating to Telephone Companies,
Docket No. UT-990146, General Order No. R-507 at ¶ 155, adopting WAC 480-120-440 54

In the Matter of the Application of Avista, PacifiCorp, and PSE for Authority to Sell Interests in The Centralia Power Plant, Docket No. UE-991255, et al. Second Supplemental Order, ¶ 86 38

In the Matter of the Petition of GTE Northwest, Incorporated To Adopt An Alternative Regulatory Framework, Docket U-89-3031-P, Second Supplemental Order (GTE AFOR Order) 26

WUTC v. PacifiCorp,
Docket No. UE-050684, Order No. 4, ¶ 264 29

WUTC v. PSE,
Docket Nos. UE-060266, UG-060267, Order No. 8, Table 6 29

WUTC v. U S West Communications, Inc,
UT-950200, Fifteenth Supplemental Order (1995 US West Rate Case)..... 28, 41

WUTC v. U S West Communications, Inc., UT-970766, Tenth Supplemental Order 1997 (Make Whole Rate Case)..... 28, 33, 42