

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Qwest's Petition to be
Regulated Under an Alternative Form of
Regulation Pursuant to RCW 80.36.135

Docket No. UT-061625

QWEST'S POST-HEARING BRIEF

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1 Pursuant to the procedural schedule established in this case, Qwest Corporation (“Qwest”) files its initial post-hearing brief with the Washington Utilities and Transportation Commission (“Commission”).

I. INTRODUCTION

2 In this case, all of the parties except Public Counsel have entered into a Stipulation and Settlement Agreement that addresses all of the contested issues in this docket.¹ Indeed, in the words of one of the public witnesses at the public hearing on March 6, Qwest has been “a contortionist” in its ability to satisfy the competing interests in this proceeding.² The settlement includes a revised plan for an alternative form of regulation (“AFOR”) that would allow Qwest to be regulated in a way that is more similar to its competitors.³

3 As will be discussed below, even under the AFOR Qwest will be much more regulated than some of its competitors, such as wireless and cable providers. However, within this highly competitive environment, the Commission has the discretion to recognize that competition will serve the same purpose as pervasive regulation, and the Commission can, and should, relieve Qwest of regulatory obligations consistent with the revised AFOR.

4 This AFOR plan is far less sweeping than “total deregulation” – it continues price regulation on a number of services, does not diminish service quality regulation in any way, and it allows continued monitoring and oversight of Qwest’s financial operations. Further, it will promote

¹ The Parties to the Settlement Agreement are Qwest; Commission Staff (“Staff”); Integra Telecom of Washington, Inc., Time Warner Telecom of Washington, LLC, Covad Communications Company, and XO Communications Services, Inc. (collectively, “Joint CLECs”); Northwest Public Communications Council (“NPCC”); WeBTEC; and, the Department of Defense on behalf of the consumer interest of the Department of Defense and all other Federal Executive Agencies (“DOD”) (Joint CLECs, NPCC, WeBTEC, and DOD are also collectively referred to as “Intervenors”). The Parties agree that the Settlement Agreement is in the public interest.

² Public witness Mr. David W. Graybill, President and CEO of the Tacoma Chamber of Commerce, noted that under usual circumstances, he would not appear and testify in proceedings such as this because his membership would have widely divergent views on whether the AFOR should be approved or not – however, in this case, no members are opposed.

³ The Stipulation and Settlement, along with the revised plan of AFOR, and a Narrative supporting the Settlement, were filed on March 6, 2007. The revised plan of AFOR is contained in Exhibit 4.

broadband deployment in Qwest's service territory in a way that would not occur without this AFOR. Nevertheless, it allows Qwest to have important pricing flexibility to react in a competitive market, and creates a streamlined and more efficient regulatory environment in terms of required filing and reporting requirements.

5 RCW 80.36.135 was amended in 2000 in order to give the Commission and the regulated telecommunications companies in this state the freedom and the incentive to alter the historic regulatory compact and allow businesses to compete without unnecessary constraints. The revised plan of AFOR does just that, while preserving or enhancing broadband deployment, service quality, and access to services at fair, just and reasonable rates. As described in the Narrative filed by Qwest and Staff, the AFOR meets the policy goals of the state regarding telecommunications services, and is otherwise consistent with both RCW 80.36.135 and 80.36.300. The Commission should act quickly to approve the AFOR, and allow Qwest to begin realizing the benefits of the plan, and bringing those benefits to Washington customers.

6 Public Counsel, the only party who did not settle this case, presents a different plan to the Commission – a plan of “additional,” not “alternative” regulation, a plan that, if ordered, Qwest would reject, as it has a right to do under RCW 80.36.135. However, that is not the reason the Commission should decline to adopt it – the Commission should decline to adopt Public Counsel's proposed AFOR because it creates additional regulatory burdens that are wholly inconsistent with a competitive environment, and because it is unlawful in a number of ways.

7 Qwest will discuss the shortcomings of Public Counsel's plan in more detail in Section III below. However, Public Counsel's plan is plainly unlawful in that Public Counsel in several areas asks the Commission to order requirements in connection with services over which the Commission has no jurisdiction, such as DSL, or would have the Commission impose

requirements (such as a moratorium on seeking forbearance of certain requirements under the Telecommunications Act of 1996) that are preempted by federal law. The Public Counsel plan would also revoke some important regulatory freedoms that Qwest has already been granted under RCW 80.36.330.⁴ Those freedoms may only be revoked if the Commission has engaged in a proceeding under that statute and determined that revocation is in the public interest. However, no party in this case has asserted that those services are no longer subject to effective competition, and no party in this case has identified any harm to any markets for, or customers of, those services.⁵ Against the backdrop of pervasive and growing competition in all markets that is presented in this proceeding, Public Counsel's proposal should be rejected in its entirety.

II. THE SETTLEMENT IS IN THE PUBLIC INTEREST AND IS CONSISTENT WITH APPLICABLE LAW

8 In the Narrative supporting the Settlement Agreement, filed on March 6, 2007, Qwest and Staff described the essential terms of the AFOR and explained how the revised AFOR meets the requirements of RCW 80.36.135. Qwest will not unnecessarily repeat that discussion in this brief, but rather will provide additional description of how the AFOR meets the statutory requirements, particularly focusing on information provided during the hearing.

A. Qwest Faces Unprecedented Competition in the Market for All of its Services

9 The background against which this AFOR is presented to the Commission is the competitive telecommunications market in Washington for virtually all services. The direct and rebuttal testimony of David Teitzel demonstrates conclusively that consumers of all of Qwest's services have choice in the marketplace.⁶ This is illustrated by the dramatic decline in Qwest

⁴ Qwest has previously been granted competitive classification of all of its analog business services throughout the state. Public Counsel's plan would subject those services to additional regulation. For example, under Public Counsel's proposal, Qwest would not be permitted to deaverage the prices for those services, and would not even be permitted to enter into individual contracts for those services. This would effectively revoke the pricing freedom that Qwest currently enjoys for those services under RCW 80.36.330.

⁵ Loube, Tr. 455:20 – 456:12.

⁶ Exhibits 11C and 16C.

access lines over the past six years,⁷ by the comprehensive service offerings of CLECs serving in the state,⁸ by the pervasive availability of wireless service options,⁹ and by the growing availability of VoIP service options.¹⁰

10 This testimony is essentially un rebutted – Public Counsel does not contend that competition does not exist, only that it is not enough, yet, to grant Qwest flexibility. However, Dr. Loube observed that wireless substitution is currently at 8%, and, in his opinion, at 50% Qwest is “out of business.”¹¹ Public Counsel further acknowledged that wireless substitution as a competitive alternative has been growing year over year, and that trend is not expected to change.¹² It is unclear just how close to 50% Qwest would have to be for Public Counsel to allow flexibility. But it is clear to any objective analyst that competition is real, it is present, it is growing, and Qwest is currently not permitted to conduct its business in the same manner, or under the same rules, as its competitors in Washington. The Commission has the authority to ameliorate that situation by approving the proposed AFOR.

11 Wireless carriers and VoIP providers are not regulated by the Commission, either as to price or as to service quality. Nor do they have any regulatory reporting requirements. They can change prices at will, and react quickly to the competitive market. And their services are generally available statewide. CLECs, though subject to some Commission oversight, are similarly free of price regulation and, for the most part, regulatory reporting requirements. The AFOR removes some of the constraints that Qwest faces and that hinder Qwest’s ability to compete in the market.

⁷ Exhibit 12C.

⁸ Exhibit 13C.

⁹ Exhibit 14.

¹⁰ Exhibit 15.

¹¹ Loube, Tr. 468:21-25.

¹² Loube, Tr. 470:15-22.

12 Other states, both in Qwest’s historic service region and outside its region, have recognized increased competition in the market by granting incumbent carriers regulatory freedom. For example, both New York and California recently entered orders that significantly reduce regulation for the incumbents. As noted by Mr. Teitzel, the competitive environment in those states is strikingly similar to that in Washington, illustrated by the table included below, and on page 41 of Exhibit 11C.

	New York: Verizon	California: SBC/AT&T	Washington: Qwest
% Switched Access Line Loss: 2000-2005	25%	21%	24%
% Decline in Switched Access MOU: 2001-2004	30.5%	25.3%	29.5%
CLEC Market Share Statewide: 12/2005	31%	13%	14%
Wireless Subscribers Exceed <u>Combined</u> ILEC and CLEC Lines in the State?	Yes	Yes	Yes
% of Total Population with Cell Phones (Statewide): 12/2005	70%	66%	66%
% Households with DSL or Cable Modem: 12/2004	33%	35%	32%
% Increase in Broadband Lines: 2000-2004	365%	415%	355%

13 While these states illustrate the current thinking in terms of how to appropriately react to competitive markets where some participants are subject to significantly more regulation than others, Qwest does not believe that other states necessarily provide significant guidance in terms of the specific terms of an appropriate AFOR. Instead, the Commission should evaluate the level of competition *in Washington*, the regulatory requirements for carriers and other competitors operating *in this state*, the existing regulations that preserve service quality *in Washington*, and should approve the proposed AFOR as a modest and appropriate step toward flexible regulation.

14 Further, in a very recent order, the FCC acknowledged that intermodal competition is a potent and growing force in the market.¹³ In the Executive Summary portion of that order, discussing mass market voice competition, the FCC noted the rapid growth of intermodal competitors –

¹³ *In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, ___ FDD Rcd ___ (2007). (“AT&T/BellSouth Order”).

particularly cable telephony providers (whether circuit-switched or VoIP) – as an increasingly significant competitive force in this market. The FCC stated that “we anticipate that such competitors likely will play an increasingly important role with respect to future mass market competition.”¹⁴ The FCC went on to observe that intermodal competition will likely continue to provide small enterprise customers with viable alternatives.¹⁵

15 In connection with wireless competition, the FCC stated that growing numbers of subscribers in particular segments of the mass market are choosing mobile wireless service instead of wireline local service.¹⁶ It is the FCC’s expectation that intermodal competition between mobile wireless and wireline services will likely increase in the near term. Furthermore, consistent with Dr. Taylor’s testimony, discussed below, the FCC noted that even if most segments of the mass market are unlikely to rely solely upon wireless services instead of wireline local services today, the product market analysis only requires that there be evidence of sufficient substitution for significant segments of the mass market to consider it.¹⁷

16 Finally, the FCC also addressed the issue of CLEC competition. Public Counsel has suggested that CLEC competition is not as robust as it once was, and implies that any decline in CLEC competition is an indication that the market is not as competitive as Qwest asserts. In the AT&T/BellSouth merger, parties similarly argued that the merger would result in anticompetitive effects due to the lack of competition by the parties as CLECs in each other’s territories. The FCC considered and rejected these arguments, concluding that competition from intermodal competitors is growing quickly, is expected to become increasingly

¹⁴ *AT&T/BellSouth Order* ¶ 3.

¹⁵ *Id.* ¶ 83.

¹⁶ *Id.* at ¶ 96. Recent research sponsored by the Bureau of Labor Statistics reveals that, for certain segments of the U.S. population, a significantly higher percentage of households rely solely on mobile wireless services (*e.g.*, renters (11.8 percent), adults between the ages of twenty-three and thirty-four (9.6 percent), and single individuals (10.5 percent)). (Citing the Household Telephone Survey at Tables A and B of that same order.)

¹⁷ *Id.* ¶ 96

significant in the years to come, and that current and future pricing incentives are based more on likely competition from intermodal competitors than from competitive LECs.¹⁸

17 Dr. Taylor's testimony further demonstrates that intermodal competitors constrain price in the market to the benefit of all Qwest customers, not just those who would consider switching to another provider, and that a price comparison between stand-alone wireline service and the bundles offered by intermodal competitors is not relevant. Significant fractions of Washington households already subscribe to cable service and to broadband Internet access. For those households, the relevant price comparison is between the *incremental* price of telephone service (cable telephony or standalone VoIP) and the price of wireline telephone service. Moreover, wireline carriers do not know which households subscribe to cable or to broadband services and cannot set different access prices for those households. Hence, *all* Washington households – not just those with cable or broadband service – benefit from the price competition that stems from the comparison of wireline telephone prices with the incremental prices for telephone service add-ons to cable and broadband service. The number of households that subscribe to cable or broadband access services does not need to be very large to discipline wireline telephone prices.¹⁹

18 Indeed, even Public Counsel has concluded that there is effective competition in the residential market for packaged and bundled services, and for second lines.²⁰ Why Public Counsel nevertheless advocates for continued price regulation of these services is a puzzle that is discussed below. However, what is clear is that no party denies that there is effective competition for bundled residential services. Public Counsel's focus is on the stand-alone residential line, a service that is not properly identified as a separate market, and which has not

¹⁸ *Id.* ¶¶ 106, 109.

¹⁹ Exhibit 66, pp. 20-21.

²⁰ Loube, Tr. 462:15-23 and 478:2-5.

been priced by a competitive market. Qwest's testimony explains why the stand-alone 1FR is not appropriately identified as a separate market. But that aside, Qwest's testimony also evidences that there is competition for all aspects of the residential market, and that the Commission should recognize that the appropriate regulatory environment in this market is one of reduced, not increased, regulation.

B. The AFOR Satisfies the Policy Goal of Broadband Deployment

19 As a major component of the AFOR, Qwest has committed to deploy high speed internet service to the seven wire centers where it currently does not offer DSL.²¹ This deployment would not occur without the AFOR plan, and this commitment satisfies the policy goals set forth in both RCW 80.36.135 (2) and RCW 80.36.300(5).

20 In considering a proposed AFOR plan, the statute directs the Commission to consider whether the plan will “facilitate the broad deployment of technological improvements and advanced telecommunications services to underserved areas or underserved customer classes. . . .” The revised AFOR contains a provision for DSL deployment in the state. Additional deployment of broadband capability enhances subscribers’ ability to obtain advanced telecommunications and information services, and this aspect of the AFOR therefore furthers this goal.²²

21 RCW 80.36.300(5) states that it is a policy goal of the State of Washington to promote diversity in the supply of telecommunications services and products in telecommunications markets throughout the state. The AFOR contains a provision for DSL deployment to every wire center in the state. Additional deployment of broadband capability enhances subscribers’ ability to obtain telecommunications and information services, and this aspect of the AFOR

²¹ The Qwest Washington wire centers in which Qwest does not currently offer its high speed Internet (DSL) services are Easton, Elk, Northport, Pateros, Roy, Springdale, and Waitsburg.

²² In addition, the revised AFOR includes a provision that it will not geographically deaverage its rates for the services that will be treated as competitively classified services if the AFOR is approved. This means that rural customers will receive the benefit of any price changes for those services made by the company to compete in the competitive urban markets.

therefore furthers this goal.

- 22 The AFOR's DSL provision is a significant commitment by Qwest to deploy DSL in underserved areas of the state, resulting in DSL availability in 100% of its wire centers. Qwest's commitment is further articulated in Exhibit 162 where it indicates that although it has not decided on the deployment method that would be used in each wire center, it would devise a deployment plan that makes its DSL service available to approximately 50% of customers in the seven wire centers.²³ The estimated cost of the deployment is \$1.2 - \$2 million.²⁴ Qwest has not deployed DSL in these wire centers to date because it has been Qwest's assessment that it does not have the ability to recover this investment and thus, the AFOR DSL provision extends a measurable benefit to Washington consumers that will not exist without the AFOR.²⁵
- 23 During the hearing, Chairman Sidran questioned Mr. Reynolds about the DSL investment Qwest has made in Washington compared to other Qwest states, based on data presented in Qwest's response to Bench Request #3 (Exhibit 3C).²⁶ These questions suggested a concern about why Qwest has spent less, on a percentage of revenue received or per access line basis, to deploy DSL in Washington than other comparable states in Qwest's region. Qwest believes that its recent supplement to Bench Request #3 provides some insight into its DSL investment history. Specifically, in response to Supplemental Bench Request #3(a) Qwest provided the percentages of living units²⁷ to which it can provide DSL in its serving territory in each of its 14 states. For 2006, the percentage for Washington is very similar to the percentages for other comparable states in Qwest's region. The important thing is not the investment per line, but

²³ The percentage availability of DSL for each individual wire center may be greater or less than 50% depending on the existing facilities in place in each particular wire center.

²⁴ Reynolds, Tr. 566:8-11.

²⁵ Reynolds, Tr. 293:17 – 294:5.

²⁶ Reynolds, Tr. 591:5 – 593:6.

²⁷ A "living unit" is either a business or a residential location. Exhibit 3.

rather the percentage of customers to which Qwest can provide DSL service. A key component of the investment required to provide DSL is the condition of the network. For example, if the outside plant between central offices and customer premises is modern, robust, and has ample capacity to provide additional services, significantly less investment will be required to deploy DSL than in a situation where the network is aged or at capacity. As the responses to Bench Request #3 indicate, in Washington Qwest has been able to deploy roughly the same level of DSL availability as it has in other Qwest states at a lower relative capital expense. This is likely because of the relatively good condition of its Washington network.

C. Service Quality is Preserved and Enhanced by the AFOR

24 RCW 80.36.135 (2)(d) directs the Commission to consider whether the AFOR will preserve or enhance service quality and protect against the degradation of the quality or availability of efficient telecommunications services. RCW 80.36.135(3) contains further specific direction that the plan must also contain a proposal for ensuring adequate carrier-to-carrier service quality, including service quality standards or performance measures for interconnection, and appropriate enforcement or remedial provisions in the event the company fails to meet service quality standards or performance measures.

1. Retail Service Quality

25 The revised AFOR plan contains additional service quality commitments that substantially strengthen the Commission's basis for finding that service quality will be preserved or enhanced. In the revised AFOR Qwest has committed to retain the Customer Service Guarantee Program ("CSGP") in its tariff, and has further committed to add three provisions associated with provisioning, repair, and network reliability, as described by Mr. Reynolds and Mr. Saunders.

26 In addition, the AFOR plan has no impact whatsoever on Qwest's obligation to comply with the Commission's service quality rules – rules that are among the most robust in Qwest's

region and the country.²⁸ The Commission's rules, coupled with the CSGP, adequately ensure that service quality will be preserved.

27 Further, no party identified any changes in management or proposed operations as a result of the AFOR that would raise doubts about continued service quality. Indeed, Public Counsel candidly admitted that there was nothing about Qwest's service quality that warranted imposition of additional measures, it was merely the existence of the AFOR itself that justified, in Public Counsel's view, a service quality "incentive" (more accurately "penalty") plan.²⁹

28 In the Verizon/MCI merger case, Public Counsel proposed enhanced service quality reporting for Verizon, citing the concern that merger-related cutbacks might negatively impact customer service. The Commission rejected this request for additional service quality reporting.³⁰ The Commission noted that Verizon had a history of satisfactory performance and that nothing in the record indicated that performance would decline after the merger.³¹ Similarly, in this case Qwest's performance has been satisfactory and there is no showing on the record that any aspect of the AFOR makes it likely that performance will decline.

29 Qwest's service quality is and has been excellent, measured both objectively and relative to other companies in the state.³² Qwest's service quality stayed the same or improved in 2006 relative to 2005 performance, with no SQPP in place.³³ Region-wide, punitive service quality plans have been eliminated or allowed to expire.³⁴

²⁸ Williams, Tr. 429:16-18; 440:2-5.

²⁹ Williams, Tr. 436:7-8.

³⁰ Exhibit 111, ¶ 176.

³¹ Exhibit 111, ¶ 124.

³² Exhibit 134, p. 19.

³³ Exhibit 47, pp.3-6

³⁴ *Id.*, pp. 6-8.

30 Further, service quality is driven by the market – competition assures that Qwest cannot let service quality slide. In the retail market, the provider/customer relationship is between ILEC (or another carrier) and the retail customer. With respect to service quality, the incentives in the retail marketplace are for all competitors to constantly seek ways to improve service quality to competitive levels – levels that by nature are in the customer’s interest and thus in the public interest. Certainly, there is no incentive in the retail marketplace for ILECs to harm their customers, particularly in light of the competition that exists. In Washington and other states, Qwest has been experiencing significant line losses over the past several years. If Qwest is to have any success in slowing or offsetting these losses, it must do all it can to keep service quality levels competitive. The incentives associated with this competitive reality make artificial attempts to create incentives, such as SQIP, pale in comparison and also make them redundant and unnecessary.³⁵

2. Wholesale Service Quality

31 The AFOR does not alter the Commission’s authority to regulate Qwest’s wholesale obligation under the Telecommunications Act of 1996, nor does it address existing carrier-to-carrier service quality requirements, including service quality standards or performance measures for interconnection and appropriate enforcement or remedial provisions in the event Qwest fails to meet service quality standards or performance measures.

32 Further, in order to address concerns raised by the Intervenors, Qwest has expressly agreed that if the Commission determines, after an appropriate proceeding, to revoke the previously-granted competitive classification for Qwest’s DS-1 or DS-3 private line services, Qwest will not contend that the provisions of this AFOR nonetheless require those services to be treated as competitively classified. This is an additional protection for wholesale customers that tends to further protect carrier-to-carrier service quality.

³⁵ Exhibit 47, pp. 15-16.

33 Perhaps the most important consideration regarding this issue is that there are four CLEC
intervenor in this docket, and it is those parties who could be expected to most vigorously
litigate to ensure that the wholesale service quality requirements of the Act are met. Those
same four CLECs are parties to the Settlement Agreement that resolves the contested issues in
this proceeding. The Commission should accept this as additional persuasive evidence that
this aspect of the statute is satisfied by the AFOR.

D. Reduced/Streamlined/Efficient Regulation

34 The revised AFOR plan eliminates some reporting requirements for Qwest, while continuing
to provide the Commission information it needs to discharge its regulatory duties. In this way,
the AFOR serves the public interest by enhancing regulatory efficiency.

35 The proposed AFOR does not alter Qwest's obligations to report under the Commission's
service quality rule, WAC 480-120-439, and modifies reporting under the CSGP to twice a
year instead of monthly. Qwest will no longer be required to file reports under Chapter 80.08
RCW, because the information is publicly available. In addition, as set forth in the plan, there
are reduced reporting and approval requirements under Chapters 80.12 and 80.16 RCW.
Finally, the settling parties have agreed on provisions regarding accounting requirements for
Qwest that should allow Qwest to achieve some efficiencies in connection with how it
maintains its books for regulatory reporting purposes.

36 In furtherance of the statutory goals, it is likely that the plan will improve the efficiency of the
regulatory process. A relief of the burden of making filings to react to changing market
conditions, and streamlined reporting, will benefit Qwest. In 2006, Qwest made 169 filings
before the Commission. This included ten affiliated interest filings, 39 special contracts, 20
price lists, and 30 tariff filings. If the AFOR plan were in place, the ten affiliated interest
filings could have been handled one time in an annual format, rather than ten times on the

Commission's No Action Agenda. The 39 contract filings would be eliminated under the plan, and 24 of the tariff filings would be eliminated (two that would not have been eliminated were promotions for win-back of residential subscribers). Thus, it can be estimated that the improved plan would reduce Qwest filing activity alone by 43 percent in the first year – a potentially substantial increase in regulatory efficiency.

37 With two exceptions, it appears as though Public Counsel is not opposed to this part of the AFOR. The exceptions are Public Counsel's request for an additional, unwarranted, reporting provision regarding discounts on packages, discussed below, and its request that the property transfer reporting threshold be set at 1% of rate base instead of 5%. However, it is Staff's considered opinion that the 5% threshold strikes the appropriate balance between regulatory freedom for Qwest and protection of the public interest. Qwest supports adoption of the Settlement Agreement, which contains the 5% trigger for review of property transfers.

E. Rates are Fair, Just and Reasonable

38 The statute also directs the Commission to consider whether the AFOR will provide for rates and charges that are fair, just, reasonable, sufficient, and not unduly discriminatory or preferential. The revised AFOR plan is consistent with each of these goals. The combination of safeguards in the AFOR plan, including the residential service price cap, deaveraging prohibition, service quality rules and guarantee program incentives, plus the existence of a price-constraining competitive market described in testimony will assure that prices remain fair, just and reasonable.

39 The plan includes a provision that continues to treat the recurring and non-recurring charges for basic stand-alone residential flat-rated local exchange service ("1FR") and measured local exchange service ("1MR") as tariffed services. A price increase for these services is limited to \$1.00 during the term of the AFOR, so long as Qwest maintains and augments certain service

quality measures and customer remedies. This is a reduction from Qwest's original request of \$0.50 per year for each of four years of the plan. The 1FR is currently priced at \$12.50 per month and would not increase to more than \$13.50 under the revised plan. This proposal preserves affordable universal telecommunications service, consistent with the policy goals.

40 Qwest and Staff's testimony supports the conclusion that the increase will not cause the company's earnings to exceed the authorized rate of return. Even if Qwest were to implement all of the possible price increases in its petition (which it would not do under the revised AFOR), the resulting prices would not be out of line with other Washington residential basic exchange rates.³⁶ Moreover, Qwest's resulting intrastate accounting rate of return, even after the initially proposed \$2.00 per month increase, would not exceed previously authorized levels.³⁷

41 The reasonableness of Qwest's rates is further supported by comparison of current and proposed rates to other affordable rates, analysis of TELRIC cost based rates, rural versus urban economies of scale, and the review of Qwest's results of operations and its rate of return performed by Staff. The Commission does not need to perform a fully contested rate case to determine whether the plan will provide fair, just and reasonable rates during the term of the AFOR. For purposes of the AFOR, it is appropriate and sufficient for the Commission to review objective, verifiable evidence, as provided by testimony in this case.

42 As noted by the FCC in the AT&T/BellSouth merger order discussed above, competition is increasingly focused on combinations of services. It is likely not even reasonable to define the stand-alone 1FR as a separate market, and it is certain that Qwest faces price constraining competition even for the stand-alone 1FR customer, as service offerings expand, prices come

³⁶ Exhibit 142C, p. 60.

³⁷ Exhibit 127C, p. 16.

down, and customers themselves recognize the value in packages. Thus, it is open to reasonable debate as to whether any sort of rate cap is even necessary, much less one as modest as \$1.00 over four years. Nevertheless, that is the commitment Qwest is willing to make, it is the agreement of the parties, and it is certainly reasonable on the conservative side.

43 There are other factors that the Commission may consider as well in determining that rates under the AFOR would be reasonable. Dr. Taylor's testimony provides further assurance that the 1FR rate remains fair, just and reasonable. Since 1998, Qwest's residential basic exchange prices have increased at an average annual rate of 1.7 percent (due to an increase in the Subscriber Line Charge), while the consumer price index has increased at an average annual rate of 2.7 percent.³⁸ Thus, in real terms – *i.e.*, the value of goods and services a consumer has to give up to buy residential access service – residential access service prices have fallen by about 1 percent per year. If inflation were to continue through 2010 at its average rate over the 1998-2006 period, and if Qwest were to increase its residential basic exchange prices by the full \$2 per month originally proposed, at the end of 2010, residential basic exchange rates will still have fallen in real terms by 0.65 percent per year from the time the Commission set the rate at \$12.50.³⁹ Obviously, a rate increase of only \$1.00, as proposed in the settlement, would result in an even greater reduction in 'real' rates.

44 Thus the price of residential basic exchange service, which can be assumed to have been affordable in 1998, is lower in real terms today, and can reasonably be forecast to be even lower in real terms in 2010. Taking household income into account suggests strongly that residential basic exchange service will be more affordable under Qwest's proposal than it was in 1998 when the Commission presumably found a \$12.50 basic exchange rate to be

³⁸ Exhibit 112.

³⁹ Exhibit 66, p. 20.

affordable.⁴⁰

III. PUBLIC COUNSEL'S AFOR PROPOSAL IS UNACCEPTABLE

45 Public Counsel's "AFOR" proposal actually results in more regulation for Qwest rather than less, is contrary to the statutory goals in several important respects, and is unlawful. Indeed, much of the problem stems from the fact that "AFOR" as used by Public Counsel means "*additional* form of regulation" rather than "alternative form of regulation." There are no changes, modifications, or revisions to Public Counsel's plan that would make it acceptable to Qwest, as it represents the view of a party who utterly fails to comprehend the competitive marketplace or what might constitute an appropriate regulatory response to that market. In a misguided attempt to "protect" consumers, Public Counsel overreaches in the extreme, fails to promote the public interest, and offers a retrogressive and punitive plan, which does nothing to enhance Qwest's ability to compete.

46 Public Counsel's proposal adds additional regulatory burdens to Qwest, including, without limitation: additional DSL commitments, including broadband lifeline; additional deaveraging commitments; additional financial reporting in connection with discounts; restrictions on how discounts should be applied; caps on features; a flow-through of the cap on packages and bundles; a freeze on the 1FR frozen; and a "service quality incentive plan" which is essentially a penalty plan. Qwest has none of these obligations in the current regulatory environment, and it would be a step backwards to impose any of Public Counsel's recommendations.

47 Public Counsel's plan is contained in Exhibit 103. As illustrated through Public Counsel's testimony during the hearing, many of the proposals are without any basis other than the fact that Public Counsel views this AFOR proceeding as an opportunity to extract additional concessions from Qwest that Public Counsel wants. Other proposals are without any basis at

⁴⁰ *Id.* at 21.

all, and still others are unreasonable or unlawful if ordered. The main issues raised by Public Counsel's proposal are discussed below.

A. Public Counsel's Forbearance Proposal is Unlawful

48 Public Counsel recommends that Qwest be prohibited from seeking relief under the Telecommunications Act of 1996.⁴¹ There is no basis for this proposal, which was simply adopted from Staff's initial position. However, Staff no longer advocates for this outcome, and Public Counsel presented no evidence in support of it. Further, to the extent that this proposal might be argued to be necessary because of wholesale service quality concerns, that argument is defeated by the plain fact that no CLEC party to this case supported this proposal. It is not reasonable to conclude that this provision is necessary for service quality.

49 Furthermore, the Commission's authority does not extend to prohibiting a carrier from exercising its rights under the Act. RCW 80.36.610 states that the Commission may take actions, conduct proceedings, and enter orders as permitted or contemplated for a state commission under the Telecommunications Act of 1996. There is no authority under the Act to enter an order prohibiting a carrier from asking the FCC for relief for certain obligations under the Act, obligations that the FCC, not state commissions, has the right to impose, and to forebear from enforcing. Thus, any such condition in the AFOR would be unlawful.

B. Public Counsel's Broadband Proposals are Unacceptable and Unlawful

50 The Commission simply does not have jurisdiction to order DSL deployment, and certainly does not have authority to order any of Public Counsel's proposals (discussed and criticized below).⁴² The Commission faced a similar issue in the recent Verizon/MCI merger case.⁴³

⁴¹ Exhibit 103, Section G, Wholesale Provisions.

⁴² DSL is an interstate information service, it is not an intrastate service and it is not a telecommunications service. DSL transport, which had been classified as an interstate telecommunications service subject to the exclusive jurisdiction of the FCC, was reclassified as an information service. *Report and Order and Notice of Proposed Rulemaking*, CC Docket No. 02-33 (rel. Sept. 23, 2005) ¶ 3. The FCC and the courts have consistently held that states are preempted from regulating "information services" within the meaning of the Communication Act. *See, e.g. Vonage Holdings Corp. v. Minn. PUC*, 290 F. Supp. 2d 993, 998-999 (D. Minn. 2003); *California v. FCC*, 39 F.3d 919, 931-33 (9th Cir. 1994) (affirming the FCC's authority to preempt state regulation of jurisdictionally mixed enhanced (information) services),

There, Public Counsel recommended a broadband deployment provision in the Verizon/MCI merger proceeding – both the applicants and Commission Staff in that case argued that the Commission did not have jurisdiction to order that deployment. The Commission in fact declined to order broadband deployment, without deciding the jurisdictional issue.

1. Public Counsel’s 75% proposal

51 Public Counsel’s DSL deployment plan requires Qwest to commit to deploying DSL facilities such that by the end of the AFOR term, 75 percent of its lines in each of its wire centers would be broadband capable. The 75 percent goal appears to be arbitrary, as Public Counsel provided absolutely no economic or public policy justification for the plan.⁴⁴ Furthermore, Public Counsel provided no analysis as to what such a plan would cost.⁴⁵ Adoption of such a proposal, without any understanding of the cost, would be irresponsible and unreasonable. Qwest’s estimate of cost associated with its own plan suggests that Public Counsel’s plan would be extremely costly to deploy, and would afford Qwest little or no hope of ever recouping its investment. Consequently, any AFOR that includes such a plan is unacceptable to Qwest. In contrast, Qwest’s DSL commitment, as previously described, is clearly focused on satisfying the public policy goal in the AFOR statute that directs the Commission to consider whether the plan will “facilitate the broad deployment of technological improvements and advanced telecommunications services to underserved areas or underserved customer classes. . . .”

2. Broadband Lifeline

52 Public Counsel recommends that as a part of its AFOR, Qwest be required to offer a

aff’d Minn. PUC v. FCC, 2007 U.S. App. LEXIS 6448 (8th Cir. 2007)).

⁴³ *In the Matter of the Joint Application of Verizon Communications Inc. and MCI, Inc., for Approval of Agreement and Plan of Merger*, Docket No. UT-050814. Order No. 07 included in this record as Exhibit 111.

⁴⁴ Exhibit 90, p. 5, lines 1-19; p. 6, lines 1-3.

⁴⁵ Exhibit 113.

broadband lifeline service.⁴⁶ As an example, it states that “. . . the Company could offer broadband service at \$10 per month to families eligible for free or reduced price school meals.”⁴⁷ The issue that Public Counsel is evidently trying to resolve is its perception that families with an annual income less than \$25,000 engage in significantly lower broadband internet usage than families with higher income levels. This perception is based on several fairly old studies conducted by the National Telecommunications and Information Administration (“NTIA”) referenced by Dr. Loubé in his direct testimony.⁴⁸ In his rebuttal testimony, Mr. Teitzel points out that NTIA studies that Dr. Loubé references are out of date and of little value, and provides updated information that refutes Dr. Loubé’s contention that lower income families use broadband internet significantly less than higher income families. Furthermore, Dr. Loubé agreed that broadband *usage* was not the same as broadband *availability*, and further conceded that there might be other barriers to the use of broadband services, such as the cost of a computer.⁴⁹ Thus, even if Public Counsel has identified a problem, which Qwest does not concede, Public Counsel has certainly not devised an appropriate solution. This effectively eliminates Public Counsel’s stated basis for the broadband lifeline proposal.

53 Furthermore, Public Counsel offers no proposal on how such a service would be funded. As Mr. Reynolds testified in his rebuttal testimony, “[b]roadband service is competitive and does not warrant discounts that must be cross-subsidized by other services. In fact, it would be anti-competitive to cross-subsidize a competitive service like DSL with revenues from regulated

⁴⁶ Exhibit 103, Section E.2.a. Broadband Lifeline, states: “Offer a broadband lifeline service which will make broadband available at a discount, similar to the WTAP program. Qwest will develop a plan within 6 months in consultation with Staff and Public Counsel and will begin implementation of the lifeline service no later than one year from when the AFOR takes effect.”

⁴⁷ Exhibit 90C, p. 11, lines 7-9.

⁴⁸ Exhibit 90C, p. 6, lines 5-11, and fn. 4.

⁴⁹ Loubé, Tr. 465:9 – 466:4.

services.”⁵⁰ Public Counsel’s broadband lifeline service is unacceptable to Qwest as is any AFOR that includes it. The same holds true for Public Counsel’s alternative proposal that Qwest pay \$1,000,000.00 into an undefined “Community Technology Program.”

3. Stand-alone DSL

54 Public Counsel’s AFOR proposal also requires Qwest to offer stand-alone DSL during the term of the AFOR.⁵¹ Although Qwest currently has no plans to eliminate stand-alone DSL, Qwest should not be under any regulatory obligation to continue offering the service.⁵² Qwest’s competitors are not subject to any such regulatory obligation and Qwest’s primary rationale in petitioning for an AFOR is to reduce and not increase its current level of regulation.

55 Furthermore, consistent with the discussion above, the Commission lacks jurisdiction to order stand-alone DSL, as it is not an intrastate telecommunications service over which the Commission has authority. The Commission faced this same issue in the Verizon/MCI merger, and in that case the Commission essentially concurred in an FCC requirement that Verizon offer stand-alone DSL, while expressing reservations about its independent authority to do so.⁵³

C. Public Counsel Proposes to Unnecessarily Regulate Features and Constrain Qwest’s Ability to Competitively Price Packages

56 Public Counsel recommends that residential features be capped at the Consumer Price Index (“CPI”) less 2 percent.⁵⁴ However, there is no economic or regulatory rationale for that recommendation. The direct and rebuttal testimony of David L. Teitzel provide ample

⁵⁰ Exhibit 71, p. 24, lines 15-17.

⁵¹ Exhibit 103, Section B.1.b. Stand-alone DSL.

⁵² Reynolds, Tr. 587:17 – 588:17.

⁵³ Exhibit 111, ¶ 148, fn. 92, and ¶ 150.

⁵⁴ Exhibit 103, Section B.1.c., Features Cap.

evidence that the market for packaged services and discretionary features is very competitive. Furthermore, the testimony of Dr. William Taylor provides economic justification that the market for these services is effectively competitive. Finally, Dr. Loube himself agreed that bundled or packaged services are subject to effective competition.⁵⁵

57 Public Counsel offers no economic rationale for why features should be capped at the CPI less 2 percent. The 2 percent reduction from the CPI effectively limits any annual feature increases to a miniscule 1-1.5 percent increase.⁵⁶ When coupled with Public Counsel's recommended price freeze for residential exchange service, the features cap effectively constricts any flexibility Qwest has in competitively pricing its packaged services. The only effective difference between the status quo and Public Counsel's pricing proposal for features and packaged services is that as a fully regulated company, Qwest could at least file for tariff rate changes to respond to the competitive market, whereas under Public Counsel's AFOR it would be totally constricted from doing so for 4 years. Consequently, Public Counsel's retrogressive residential exchange service, residential features, and residential packaged exchange services pricing proposals are totally unacceptable to Qwest, as is any AFOR that includes them.

D. The Major Outage Provision should be Rejected

58 Public Counsel added the major outage provision to its litany of additional regulatory obligations after Staff initially proposed it in its direct testimony, but offered no independent rationale in support of this provision.⁵⁷ Staff no longer advocates for that provision, and it is not a part of the AFOR Settlement. The provision requires that when Qwest incurs a major outage within its control at one of its wire centers, it should build either more redundancy to serve the affected area or add a technological improvement that removes the vulnerability that

⁵⁵ Loube, Tr. 462:15-20.

⁵⁶ Exhibit 71, p. 20, lines 10-12.

⁵⁷ Exhibit 152C, p. 30. lines 14-17; Loube, Tr. 509:17 – 510:6.

caused the outage. As Mr. Reynolds points out in his rebuttal testimony, this provision is not well defined and appears to be a solution in search of a problem.⁵⁸ Although most major outages are due to reasons beyond Qwest's control, the provision does not clearly indicate what 'under Qwest's control' comprises.⁵⁹ Furthermore, even if an outage is 'under Qwest's control,' it is not clear that building in redundancy or a technological improvement will prevent such an outage in the future. The cure for many major outages is simply to replace the equipment that has been damaged. For these reasons, the provision is unacceptable to Qwest.

E. The SQIP is Punitive and Unnecessary

59 Public Counsel, through the testimony of Mary Kimball, recommends that Qwest be subject to a "Service Quality Incentive Plan," or SQIP, for the duration of the AFOR. This proposal is punitive and unwarranted. The proposal completely disregards the fact that Qwest's service quality is excellent in comparison to other Class A companies, that the Commission does not even regulate the service quality of many of Qwest's competitors, that there is no indication that Qwest's service quality will decline under the AFOR, and that the Commission already has in place a set of robust service quality rules, as well as a Qwest tariff for its customer service guarantee programs which will remain in place for the duration of the AFOR.

60 The proposed SQIP places \$16 million annually at risk for Qwest and virtually guarantees that Qwest will pay out under it, in spite of excellent service. Public Counsel's own exhibit shows that if the SQIP had been in place for the year 2006, Qwest would have paid \$1.136 million in penalties⁶⁰ – and Qwest would pay penalties based on metrics that other reporting companies also failed to meet, but would not be penalized for.⁶¹ As such, it is clear that Public Counsel misses the mark by characterizing the SQIP as an "anti-backsliding" plan, since Qwest would

⁵⁸ Exhibit 71, p. 11, lines 13-23.

⁵⁹ WAC 480-120-412 defines major outages and Qwest's current reporting obligations of major outages.

⁶⁰ Kimball, Tr. 626:3-9.

⁶¹ Kimball, Tr. 634:7 – 635:14.

be penalized and required to pay even at its current level of performance. The SQIP places Qwest in a position of being more heavily regulated than if it did not obtain an AFOR.

61 As noted above in Section II.C.1., Qwest's service quality is good, and is objectively better on certain elements than any other Class A company in the state who reports on the same measures. Staff's testimony speaks persuasively to the point of why the SQIP is not warranted. Staff noted that the scope or the scale of the incentives provided by the remedies in the Customer Service Guarantee Program might not be sufficient, by themselves, to motivate the company to maintain service quality performance levels. However, considered in combination with rules, other programs that are in effect, and the nature of the competitive marketplace, it was Staff's opinion that the Customer Service Guarantee Program would provide a significant and sufficient degree of incentive to ensure the continuation of Qwest's already good service quality.⁶²

62 As in the Verizon/MCI merger case, there is simply no basis upon which to justify imposition of additional service quality metrics, reporting, and penalty payments.

F. Residential Exchange Service, the Directory Assistance Free Call Allowance, and Caller ID

63 Public Counsel proposes a series of conditions in connection with Qwest's pricing for local exchange service, directory assistance service, and Caller ID. None of these requirements is warranted, and the Commission should reject them as inconsistent with the Settlement Agreement.

1. 1FR Pricing

64 Public Counsel proposes freezing the stand-alone residential rate (the 1FR) for the duration of the AFOR and recommends that the Commission reject the agreed-upon pricing flexibility that would allow an increase of \$1.00 on the 1FR over the duration of the AFOR. Public Counsel's

⁶² Saunders, Tr. 657:13 – 658:1.

position is unreasonable in light of Qwest's and Staff's testimony with regard to Qwest's current earnings and rate levels. This issue has been discussed in more detail above in paragraphs 39-44.

65 Further, although Dr. Loube testified that there were no circumstances under which he would consider a \$1.00 increase to be reasonable,⁶³ this testimony is simply not credible in light of his testimony in this and other dockets. For example, Dr. Loube testified in this docket that Qwest was not, according to his evaluation, earning more than its authorized rate of return.⁶⁴ Dr. Loube also testified, in the Verizon rate case, that as of October 15, 2003, the average residential rate for local service in urban areas, according to an FCC report, was \$14.57, with a subscriber line charge of \$5.91, for a total of \$20.58. He noted that Verizon's then current total of \$19.50 *appeared to be reasonable compared to the national average*.⁶⁵ Public Counsel subsequently agreed to a settlement in that case which allowed Verizon to *increase* its residential rates by \$2.43 per month in 2005 and \$1.47 per month in July of this year. The Commission approved and adopted the settlement in that matter.⁶⁶ Thus, the Commission should reject Public Counsel's rate freeze, and should do so with confidence that even at \$13.50, Qwest's rates remain fair, just and reasonable.

2. Residential Directory Assistance

66 Public Counsel proposes to retain the residential "one free call" for directory assistance for the duration of the AFOR. However, there is no rational basis for doing so – Qwest's directory assistance was competitively classified long ago,⁶⁷ and there is no evidence that the first call to directory assistance is subject to any less competition than subsequent ones, or ones that are

⁶³ Loube, Tr. 523:17-20.

⁶⁴ Loube, Tr. 516:4-8.

⁶⁵ Exhibit 108, p. 51.

⁶⁶ Exhibit 109.

⁶⁷ *In the Matter of the Petition of U S WEST Communications, Inc., for Competitive Classification of its Directory Assistance Services*, Order Granting Petition, (April 29, 1999) Docket No. UT-990259.

made from business lines. No other carrier in the state is mandated to offer free directory assistance, and indeed it may be anti-competitive to do so. Should Qwest, or any other carrier, wish to offer free DA as a promotional offering, or as a way to enhance a packaged offering, there is no prohibition on doing so, but mandated free DA dilutes the ability to do so. For these reasons the Commission should reject Public Counsel's recommendation to freeze the free DA call in tariff for the duration of the AFOR.

3. Caller ID

67 Public Counsel further recommends that the Commission freeze the rate for Caller ID for the duration of the AFOR. The only stated rationale for this proposal is that Public Counsel believes it is a feature that enhances public safety,⁶⁸ but Public Counsel does not make any assertions or provide any proof that pricing flexibility for this service will negatively impact public safety. Certainly Qwest has no interest, economic or otherwise, in making any of its services unaffordable, or pricing them in such a way as to drive consumers away from the service. However, the competitive rationale that supports the AFOR as a whole also supports allowing pricing flexibility on features, including Caller ID.

G. Bundles

68 Public Counsel makes several proposals in connection with Qwest's bundled service offering. As noted previously, it is unclear what justification Public Counsel can offer for continued and further regulation of services that even its own witness agreed were subject to effective competition.

1. Application of Discount

69 Public Counsel proposes that, for jurisdictional accounting purposes, Qwest be required to apply the discount in connection with any bundle or package so that the interstate or deregulated services are discounted, but not the regulated intrastate telecommunications

⁶⁸ Loube, Tr. 500:9-15; 528:16.

services.⁶⁹ Public Counsel offers no good rationale for this proposal, and it is inconsistent with Public Counsel's position that Qwest should in fact be permitted to discount intrastate services so long as they are not priced below cost.⁷⁰ Further, Public Counsel would add a reporting requirement on this issue – a report Qwest is not required to file as a fully regulated company.⁷¹

70 Even worse, such a requirement would impermissibly extend the Commission's authority over pricing to services outside the Commission's jurisdiction, specifically, to interstate or deregulated services. There is no provision in Washington law that allows an AFOR to contain a provision such as this, nor is there a provision in Washington law that prohibits discounts on intrastate services, subject to a cost floor. As such, the Commission should reject this proposal.

2. A La Carte Services

71 Public Counsel's AFOR proposal requires that services within Qwest's packages or bundles remain available as stand-alone services ("a la carte") which can be purchased without purchasing other Qwest services.⁷² Although Qwest currently has no plans to eliminate a la carte features, it does not believe it should be under any regulatory obligation to continue offering the services. Qwest's competitors are not subject to any such regulatory obligation and Qwest's primary rationale in petitioning for an AFOR is to reduce and not increase its current level of regulation.

3. Bundle Maximum

72 Public Counsel's AFOR proposal requires that the prices for Qwest bundles of services which include regulated or competitively classified services may not exceed the sum of the prices for

⁶⁹ Exhibit 103, Section F.1., Accounting Requirements

⁷⁰ Loube, Tr. 507:16-19.

⁷¹ Loube, Tr. 508:21 – 509:3.

⁷² Exhibit 103, Section B.1.a., A La Carte

the stand-alone components of the bundle.⁷³ Although Qwest currently has no plans to price its packages at rates higher than the sum of the a la carte services, and no consumer would likely buy such a package in any event, Dr. Taylor's testimony offers persuasive rationale for why such a requirement is unnecessary.⁷⁴ Qwest's competitors are not subject to any such regulatory obligation and Qwest's primary rationale in petitioning for an AFOR is to reduce and not increase its current level of regulation.

4. Average Price

73 Public Counsel's AFOR proposal would not permit Qwest to deaverage any rates for any of its services during the term of the AFOR.⁷⁵ In the Settlement AFOR, Qwest commits to not deaverage the rates for any services that will be treated as competitively classified as a result of the AFOR. These services include residential features and packages, digital business services, and analog private line service. However, Public Counsel would extend the limitation to services that have been determined to be competitive statewide, such as analog business services.⁷⁶ However, such a restriction would contravene the statutory provisions that allow competitively classified services to be priced without such restrictions. There is no reason that Qwest should be required to extend this commitment to services which the Commission has already found to be effectively competitive and granted competitive classification. Qwest's competitors are not subject to any such regulatory obligation and Qwest's primary rationale in petitioning for an AFOR is to reduce and not increase its current level of regulation.

H. Price Information

74 For services that would be treated as competitively classified under its AFOR proposal, and

⁷³ Exhibit 103, Section B.1.d., Bundle Maximum

⁷⁴ Exhibit 66, pp. 26-27.

⁷⁵ Exhibit 103, Section B.1.e., Average price

⁷⁶ Loube, Tr. 497:7-9.

thus no longer offered to customers pursuant to tariff or price list, Public Counsel proposes that Qwest be held to a strict set of standards regarding how it sets forth such services at its Internet website.⁷⁷ Public Counsel's recommendation does not reduce Qwest's filing obligations, but rather transfers them from a tariff-based platform to a web-based platform. Such a proposal is completely at odds with how the Commission has determined to regulate (or not regulate) competitively classified services that were formerly subject to price lists.⁷⁸ Further, none of Qwest's competitors are held to such standards and neither should Qwest. Qwest has been offering most of its business services without tariff or price list for nearly a year now and there has been no perceptible increase in customer complaints or customer confusion. The fundamental reason that Qwest is petitioning to be regulated under an AFOR is to achieve a degree of regulatory freedom that is commensurate with its competitors. Public Counsel's proposal is retrogressive, unnecessary, and inconsistent with the highly competitive environment in which Qwest operates and should thus be rejected by the Commission.

I. Other Issues

75 This brief does not address each and every element of Public Counsel's proposal. Many of the components of Public Counsel's plan are unsupported by evidence, or are on their face unnecessary – for example, Public Counsel proposes that the AFOR contain a provision that states that the AFOR does not in any way alter the Commission's jurisdiction over, or Qwest's obligations under, federal and state law regarding Customer Proprietary Network Information.⁷⁹ Public Counsel offers no reason for including this provision, and does not point

⁷⁷ Exhibit 103, Section B.3., Price Information, states: "Qwest will maintain clear, conspicuous, accurate, and accessible price information on its website for stand-alone services. The format for the information will be developed in consultation with Commission Staff, and Public Counsel. Qwest will regularly archive the website pricing information for bundled and stand-alone service and make the archives available for review by the Commission, its Staff, or Public Counsel on request."

⁷⁸ See Docket No. UT-060676 and the Commission's recently adopted rule, WAC 480-120-266. In this rulemaking proceeding the Commission considered, but did not adopt, recommendations that companies be required to provide a particular level of pricing detail on web sites or elsewhere. Several participants in the rulemaking argued that such a requirement would be contrary to the legislative intent in abolishing pricelists.

⁷⁹ Exhibit 103, Section C.6, Privacy.

to any provision in Exhibit 4 that would even suggest that the AFOR alters the laws or rules applicable to CPNI. As such, this provision is unnecessary. Other such provisions are those that attempt to dictate, at this point, what process should be followed at the end of the AFOR instead of leaving the question open for a Commission determination when the issue actually presents itself. Nor is the customer notice provision necessary – Qwest has already provided notice to customers of the AFOR, and no legitimate purpose would be served by an additional notice once the AFOR is approved.

76 These are just a few examples from Public Counsel’s ill-founded proposal. In this regard Qwest believes that the most important thing to consider is that the AFOR statute allows the Commission to consider either Qwest’s plan for an AFOR, or to consider an AFOR on its own motion. The statute does *not* contemplate the consideration or approval of a plan submitted by another party, such as Public Counsel, and the statute directs the Commission to order implementation of the company’s proposed plan unless the plan fails to meet the considerations of RCW 80.36.135 (2). By and large, Public Counsel presents its proposal as one which would be “nice to have,” but utterly fails to demonstrate that the AFOR plan in the Settlement fails to meet the statutory considerations. As such, the Commission should order implementation of the Settlement AFOR.

IV. CONCLUSION

77 For the reasons set forth herein, the Commission should expeditiously approve the Settlement Agreement and the revised plan of AFOR without additional conditions or requirements. The Commission should reject Public Counsel’s proposal, and any components thereof, as unlawful, unnecessary, or unrelated to any type of AFOR that is appropriate for the current competitive environment.

DATED this 13th day of April, 2007.

QWEST

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