

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of

QWEST CORPORATION

for an Alternative Form of Regulation
Pursuant to RCW 80.36.135.

DOCKET NO. UT-061625

REPLY BRIEF OF COMMISSION STAFF

May 1, 2007

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I. INTRODUCTION

1 Public Counsel takes issue with several elements of the modified AFOR proposal contained in the multiparty settlement agreed to by all the other parties to this docket and presented to the Commission for approval. Staff reiterates that the settlement agreement meets all of the statutory criteria set forth in RCW 80.36.135, is in the public interest, and should be approved. Many of the arguments raised by Public Counsel have already been addressed by Staff in its initial brief. In particular, Staff has already set forth in detail why Public Counsel's proposal for imposing a punitive "Service Quality Incentive Program" (SQIP) on Qwest is both unnecessary and unwarranted, and should be rejected. *Initial Brief of Commission Staff*, at 9-15. Staff has also addressed how the modified AFOR proposal provides significant DSL benefits to Qwest's Washington customers, and that attainment of the goal of 83 percent DSL availability (with additional network line rearrangement) would place Washington in the top tier among Qwest's 14 states. *Initial Brief of Commission Staff*, at 2-5.

2 However, Staff also disagrees with Public Counsel's assertion that the price cap of \$13.50 for stand-alone residential service in the modified AFOR proposal has not been shown to be fair, just, or reasonable. Staff also disagrees with Public Counsel's position that the modified AFOR proposal, without modification, does not provide sufficient benefits to Qwest's Washington residential customers.

II. THE STANDALONE RESIDENTIAL SERVICE PRICE CAP OF \$13.50 IS FAIR, JUST, AND REASONABLE.

3 Public Counsel contends that there is not sufficient evidence in the record to support a finding that the modified AFOR proposal's provision for a price cap of \$13.50 for stand-alone residential service is fair, just, and reasonable. This assertion appears to

be premised on the assumption that a general rate case is a mandatory prerequisite to the implementation of any AFOR in which rate levels are set. But RCW 80.36.135 contains no such requirement. Furthermore, there is substantial evidence in this case that supports the \$13.50 price cap contained in the AFOR.

4 Public Counsel points out that, in Verizon's 2004 general rate case, Commission Staff witness Paula Strain filed substantial testimony and exhibits that reviewed Verizon's overall results of operations and financial condition, and addressed several different accounting adjustments. Ex. 155. But this extensive analysis was necessary because Verizon had not had a rate case *for 23 years*, from 1982 through 2005. Docket No. UT-040788, *Washington Util. & Transp. Comm'n v. Verizon Northwest, Inc*, Order No. 15, Order Approving and Adopting Proposed Settlement; Rejecting Filed Rates; Accepting Proposed Settlement Rates, at ¶ 6 (April 12, 2005). By contrast, Qwest had an extensive rate case in 1995 to 1996 (Docket UT-950200), and a follow-up rate case in 1997 to 1998 (Docket UT-970766). Moreover, Qwest has continued to file reports of operations with the Commission on an annual basis for the past nine years, incorporating several major ratemaking adjustments that Ms. Strain sets forth in her testimony and exhibits. Ex. 127C (Strain); Ex. 131C (Table of Current and Proposed Accounting and Reporting Requirements).

5 Staff thus has had ample and substantial updated information concerning Qwest's financial condition to review in conjunction with Qwest's request for an AFOR. Staff, accordingly, performed an analysis of Qwest's intrastate results of operations for the year ending December 2005, incorporating several regulatory adjustments, and concluded that Qwest is earning below its authorized rate of return. Ex. 127C (Strain) at 3, 11-13. Staff,

furthermore, determined that even with a \$2.00 increase to the current \$12.50 rate (and the modified AFOR proposal allows only a \$1.00 increase), Qwest would still earn below its authorized rate of return. Ex. 127C (Strain) at 15-16. Dr. Loube performed a similar analysis and reached the same conclusion, though Public Counsel chooses not to ascribe significance to that fact. *Opening Brief of Public Counsel*, at ¶ 64.

6 The significantly different factual situation presented by Verizon in 2004-05 necessitated a general rate case to determine whether its rates would be fair, just, and reasonable. Qwest's situation does not present the need for a general rate case, though Staff agrees that a thorough analysis of Qwest's financial condition—which it has performed—is necessary.

7 Staff has also demonstrated that the \$13.50 price cap is reasonable by other measurements as well. It is less than the average rate of \$13.90 charged by all other ILECs in the state, and at the low end of the current range of \$8.47 to \$26.00. It is significantly below Verizon's residential rate. It also compares favorably to the rate charged by Qwest in its other states. Furthermore, as Staff witness Thomas Wilson demonstrated (notwithstanding the disagreement of Dr. Loube), Qwest's standalone residential rate, even with a \$1.00 increase, is reasonable when compared to the total element long range incremental cost (TELRIC) rates paid by competitors. By several measurements based upon evidence provided in this docket, the standalone residential price cap of \$13.50 in the modified AFOR proposal is fair, just and reasonable.

III. THE MODIFIED AFOR PROPOSAL PROVIDES SIGNIFICANT BENEFITS FOR QWEST'S RESIDENTIAL CUSTOMERS, AND DOES NOT REQUIRE MODIFICATION.

8 Public Counsel sets forth a list of conditions that it contends must be imposed, in addition to the several protections already contained in the modified AFOR proposal for Qwest's residential customers, to render the AFOR proposal acceptable. Staff disagrees, and reiterates that the legal standard is whether the multiparty settlement proposal before the Commission meets the statutory criteria set forth in RCW 80.36.135. Staff strongly believes that it does so, without modification.

9 The settlement preserves Qwest's standalone residential service in tariff, with a \$13.50 price cap, for the four-year duration of the AFOR. It also preserves several important ancillary services in tariff, including line extensions and extended area service, nonrecurring charges (e.g., installation and connection fees), the WTAP program, tribal lifeline and linkup programs, and basic enhanced 911 service. Ex. 4, Exceptions ¶ 3; Ex. 142C (Wilson) at 66; Tr. 245:17-246:3. All of these services, remaining in tariff, are thus subject to Commission oversight, and any proposed increases could be suspended or rejected if found to be unfair, unjust, or unreasonable. Thus, there is no need, for example, for a price cap for installation and connection fees, as Public Counsel recommends. *Brief of Public Counsel* at ¶ 74. In addition, directory assistance charges will not apply to calls from persons certified as unable to use a published telephone directory, or to calls from hospitals. Ex. 4, Exceptions ¶ 3(a)(iv). While the allowance for one free call is removed, this treats Qwest similarly to other Washington companies, and thus is not unfair or unreasonable.

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Public Counsel submits additional proposed conditions, including a requirement that residential features be offered on an a la carte basis, that residential features be price capped, and that bundled prices be limited to a level that does not exceed the sum of the prices of the stand-alone services. *Brief of Public Counsel*, at ¶¶ 48-52. However, all of these services will be treated as competitively classified under the modified AFOR, and as Staff has previously indicated in its initial brief, Staff has concluded that Qwest's services are subject to increasing levels of market competition from a variety of intermodal competitors, including wireless, cable, and voice-over Internet protocol (VOIP) providers, that justifies competitive classification treatment for the four-year period of the AFOR. Ex. 142C (Wilson) at 32-36. Thus, the Commission need not impose additional requirements on services whose prices will be set by market conditions.

IV. CONCLUSION

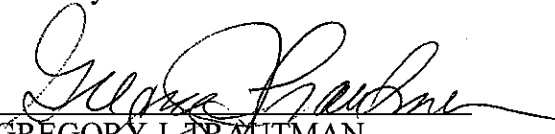
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Public Counsel's objections to the modified AFOR proposal presented to the Commission are without merit. The settling parties' AFOR proposal meets all of the statutory criteria set forth in RCW 80.36.135, achieves necessary public policy goals, and is in the public interest. Staff, therefore, recommends its approval by the Commission.

DATED this 1st day of May, 2007.

Respectfully submitted,

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