

Qwest Corporation d/b/a CenturyLink QC's Petition for Elimination of Performance Assurance Plan and Performance Indicator Definitions	<u>DOCKET NO. 22-049-60</u> <u>ORDER</u>
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ISSUED: October 13, 2022

BACKGROUND

This matter is before the Public Service Commission (PSC) on the petition of Qwest Corporation d/b/a/ CenturyLink QC (“CenturyLink”) for the elimination of the Performance Assurance Plan (PAP) and Performance Indicator Definitions (PIDs)¹ contained within its interconnection agreements. Additionally, consistent with prior PSC proceedings and orders amending the PAP and PIDs, CenturyLink further requests that the PSC deem all existing interconnection agreements that currently contain the PAP and PIDs be modified to incorporate the elimination of the PAP and associated PIDs, effective on the date of the order without need for further filings or approvals. The petition was filed July 19, 2022, and is unopposed.

¹ The PAP is a self-effectuating performance assurance plan that provides assurance of continued appropriate interconnection and network access between CenturyLink and competitive local exchange carriers (CLECs). The PAP’s terms and conditions, including PIDs, were established as part of CenturyLink’s (then US West) effort to obtain Federal Communications Commission (“FCC”) approval to enter the interstate long distance telecommunications market in the early 2000’s pursuant to 47 U.S.C. § 271. The PAP is implemented as Exhibit K to all interconnection agreements (“ICAs”) between CenturyLink and CLECs that opt to include it in their ICAs. The PIDs are implemented as Exhibit B to CenturyLink’s ICAs, containing the definitions and metrics that support the PAP. The PSC’s June 18, 2002 Order in Docket No. 00-049-08 approved and established the PAP for Utah.

CenturyLink asserts the PAP and PIDs have successfully accomplished their goal of developing performance parity in the Utah telecommunications marketplace as evidenced by low and declining volumes of penalties. This achievement, coupled with the substantial changes recently ordered by the Federal Communications Commission (FCC) to significantly reduce the unbundled network elements CenturyLink is required to offer² CLECs, has created an environment in which the PAP and PIDs have become irrelevant and are no longer useful to the CLECs. Further, CenturyLink explains maintaining the PAP and PIDs cause it to expend substantial resources inapposite of their value. As evidence of this CenturyLink states that annual payments to competitive local exchange carriers under the PAP amounted to only \$300 for all CLECs operating in Utah in 2021, and there have been zero payments in 2022 to date.

The Utah Division of Public Utilities (DPU) reviewed CenturyLink's petition and recommends the PSC grant the petition and eliminate the PAP and PID obligations. DPU explains it conducted its own analysis of the necessity for the PAP and the associated PIDs. It

² As represented by CenturyLink in its petition, the FCC eliminated and modified some obligations of regional bell operating companies (RBOC) to provide certain products and network elements. Specifically, in Petition of US Telecom et al. for Forbearance, WC Dkt. No. 18-141, Memorandum Opinion and Order, FCC Release 19-72; Released August 2, 2019, and the Report and Order on Remand and Memorandum Opinion and Order, FCC Release 19-66; Released July 12, 2019, the FCC eliminated the requirement for RBOCs to continue offering the avoided cost retail discount to resellers, and also eliminated the requirement for RBOCs to continue offering analog loops. On October 28, 2020, the FCC issued its 'UNE Modernizing Forbearance Order' that eliminated the following: a. Unbundling requirements, subject to a reasonable transition period, for enterprise-grade DS1 and DS3 loops; b. Unbundling requirements for broadband-capable DS0 loops in the most densely populated areas, and for voice-grade narrowband loops nationwide; c. Unbundled dark fiber transport provisioned from wire centers within a half-mile of competitive fiber networks but provide an eight-year transition period for existing circuits to avoid stranding investment and last-mile deployment by CLECs that may harm consumers.

contacted industry representatives that were active in the recent FCC dockets cited by CenturyLink, evaluated CenturyLink's market share in Utah with respect to regulated revenues and the number of connections, the history of penalty payments under the PAP, and the effect of changes in the industry (such as the predominance of wireless service, the emergence of VoIP carriers, and other forms of communication). DPU concludes it is in the public interest for the PSC to grant CenturyLink's petition to eliminate the PAP and associated PIDs and to modify its ICAs as requested.

FINDINGS, CONCLUSIONS, AND ORDER

Based on the evidence presented in CenturyLink's petition, the analysis, comments, and recommendation of DPU, and there being no opposition, we find that the PAP and associated PIDs are no longer necessary to achieve parity in Utah's telecommunications market, and we conclude that the elimination CenturyLink requests in this docket is consistent with that finding and with recent federal changes implemented by the FCC. Accordingly, we grant CenturyLink's petition for the elimination of the PAP and the associated PIDs. Additionally, we deem all existing interconnection agreements that currently contain the PAP and PIDs to be modified to incorporate the elimination of the PAP and PIDs, without the need for further filings or approvals.

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DATED at Salt Lake City, Utah, October 13, 2022.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#325803

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the PSC within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the PSC fails to grant a request for review or rehearing within 30 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the PSC's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on October 13, 2022, a true and correct copy of the foregoing was served upon the following as indicated below:

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