BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of QWEST CORPORATION Petition for Commission Approval of Stipulation Regarding Certain Performance Indicator Definitions and Qwest Performance Assurance Plan Provisions	DOCKET NO. UT-073034 NARRATIVE IN SUPPORT OF SETTLEMENT AGREEMENT

I. INTRODUCTION

1 On June 26, 2007, Qwest Corporation ("Qwest"), on behalf of itself, Eschelon Telecom, Inc. ("Eschelon"), DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad") and McLeodUSA Telecommunications Services, Inc. ("McLeodUSA") (collectively, the "Stipulating Parties" or "Parties" and each individually, a "Party"), filed a Petition with the Washington Utilities and Transportation Commission ("Commission"), asking it to consider and approve a Stipulation Regarding Certain Performance Indicator Definitions and Qwest Performance Assurance Plan Provisions

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

("2007 Stipulation" or "Stipulation"). The Stipulating Parties[1] asked that the Commission approve the 2007 Stipulation, apply the agreed upon changes to the Qwest Performance Assurance Plan ("PAP"), and also allow the Performance Indicator Definitions ("the PID" or "PIDs") to take effect. Qwest asked the Commission to apply the approved changes to the PID/PAP to all CLEC interconnection agreements containing the PAP.[2]

2 Subsequent to the June 26, 2007 filing, other parties intervened in the proceeding, and the Commission established a procedural schedule. As a component of that schedule, the Parties were ordered by the Commission to file a narrative in support of the Stipulation, in accordance with WAC 480-07-740(2)(a):

> "***Narrative.*** Supporting documentation should include a narrative outlining the scope of the underlying dispute; the scope of the settlement and its principal aspects; a statement of parties' views about why the proposal satisfies both their interests and the public interest; and a summary of legal points that bear on the proposed settlement. The documentation may be in the form of a memorandum, supporting prefiled testimony, brief, or other form that serves the same functions."

3 The Stipulating Parties hereby supplement the June 26 Petition with the following Narrative as required by the rule. The Narrative is not intended to modify any terms of the proposed Stipulation and, if there are any inconsistencies between this Narrative and the proposed Stipulation, the proposed Stipulation controls.

---

[1] US Link, Inc. d/b/a TDS Metrocom ("TDS Metrocom") is a Stipulating Party, however, it is certified as a CLEC only in North Dakota and Minnesota, and as such is not bringing this motion with the other Stipulating Parties.

[2] *See,* Stipulation at ¶ 5.

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

II. SCOPE OF THE UNDERLYING DISPUTE AND SCOPE OF THE SETTLEMENT

4 This submission results from collaborative work sessions among certain Competitive Local Exchange Carriers ("CLECs") and Qwest. The participants agreed upon a number of modifications to the PIDs and PAPs that would provide a fair resolution and be in the public interest. The Stipulating Parties' agreement has been documented in the 2007 Stipulation attached to the Petition as Exhibit 1.

5 These agreements were reached between Qwest and the CLECs in meetings between May 23, 2006, and May 17, 2007.

6 All of these changes were discussed by the participants in one or more of the sessions. Qwest provided notice of the opportunity to participate in the process as well as the issues presented for discussion to each CLEC certified in each of its fourteen states; nineteen CLECs in the region then elected to be notified of updates and meetings while six regularly participated.

7 The proposed Stipulation is structured to apply to all fourteen states in Qwest's service territory. Certain provisions of the Stipulation, however, are narrower in scope and apply only to one state or a group of states within the territory. Those provisions that apply to Washington are clearly delineated in the proposed Stipulation.[3] If the Washington Commission (or any other state commission) does not approve the proposed Stipulation in its entirety, or denies Qwest's request to amend CLEC agreements according to the

---

[3] *See,* Stipulation, ¶¶ 24-40.

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

changes in the PIDs/PAP, any party to the Stipulation may rescind the Stipulation *as to that particular state.*[4]

8 The impacted PIDs are currently found in Exhibit B to the Statement of Generally Available Terms and Conditions ("SGAT"), while the PAP is currently found in Exhibit K of the SGAT. A comprehensive redline of the changes to the PAP is attached to the Petition as Exhibit 2. A comprehensive redline of the PIDs is attached to the Petition as Exhibit 4. The "clean" versions of both documents are also attached to the Petition as Exhibits 3 and 5 respectively.

9 A summary of the provisions of the proposed Stipulation applicable to Washington, including the scope of the dispute and settlements, is provided below.

A. Agreements Applicable to all 14 States, including Washington

1. Eliminate resale DSL from PIDs and Modify PID and PAP references to Qwest DSL.

Background: In the Federal Communications Commission's ("FCC") Broadband Order,[5] the FCC made certain rulings regarding the classification of certain retail

---

[4] *See,* Stipulation, ¶ 5.

[5] *In the Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements; Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises; Consumer Protection in the Broadband Era,* Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005), pets for rev. pending, sub nom. Time Warner Telecom v. FCC, No. 05-4769 (and consolidated cases) (3rd Cir. Filed Oct. 26, 2005)(Broadband Order).

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

DSL offerings. Qwest contends that DSL offerings are now information services and are therefore not subject to resale under Section 251 of Title II.

Specific Agreement: The Stipulating Parties have agreed that resold DSL product offerings, as information services, will be removed from all PIDs. Additionally, the Stipulating Parties have agreed to new retail analogues for the remaining wholesale products that are currently subject to a parity evaluation with retail Qwest DSL service. Moreover, in recognition of the volume of DSL products classified as telecommunications services decreasing to zero, the Stipulating Parties agreed to apply the new retail analogues retroactively for up to six months upon Commission approval by a specified date. [6]

2. Change the MR-11 PID title to "LNP Trouble Reports Cleared within Specified Timeframes."

Background: As a result of the 2003 Audit of the CPAP, Qwest concurred with the auditor that the MR-11 title, "LNP Trouble Reports Cleared within 24 Hours," was inappropriate, given that MR-11A measures trouble reports cleared within four hours and MR-11B measures trouble reports cleared within 48 hours. Qwest agreed to change the title of the PID with the next opportunity to make administrative updates.

Specific Agreement: The Stipulating Parties have agreed to retitle the MR-11 PID "LNP Trouble Reports Cleared within Specified Timeframes."

---

[6] The new retail analogues will apply retroactively for a maximum of six months or back to December 2006 if the Commission approves the changes by August 31, 2007, see 2007 Stipulation ¶9. However, in response to queries about providing additional time for various states to review the petition and in discussions with the other Stipulating Parties, Qwest has offered to extend the August 31, 2007 deadline.

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

3. **Update the PID references to unbundled 2-wire non-loaded loop and unbundled ISDN capable loop disaggregations to reflect the retail analogue of "ISDN BRI (designed)."**

Background: During the ROC PAP Audit, the auditor found that OP-5A used ISDN BRI retail orders following the designed provisioning flow as the retail analogue for Unbundled 2-wire Non-Loaded Loops and Unbundled ISDN Capable Loops. Qwest has represented that this is historically how Qwest has applied the retail analogue to these products because both loop types follow the designed provisioning flow. Qwest further stated that, like OP-5A, several other OP and MR PIDs use only the designed ISDN BRI retail orders/tickets for the retail analogue.

Specific Agreement: Without passing judgment on Qwest's historical application of the retail analogue under this PID, Stipulating Parties have agreed going forward to update the Unbundled 2-wire Non-Loaded Loop and Unbundled ISDN Capable Loop product disaggregations to consistently reflect when the retail analogue of ISDN BRI is limited to orders/tickets following the designed flow by specifying "ISDN BRI (designed)" in the applicable OP and MR PIDs.

4. **Update PO-20 to reflect it is fully implemented by making PID and PAP revisions specified in the 2007 Stipulation.**

Background: When the last version of the PID document was issued, the PO-20 measure had future phases defined and the potential for inclusion of additional CLEC-specified Feature Detail Field Identifiers ("FIDs") or Blocking Type entries. All PO-20 phases have been implemented without further CLEC identification of additional FIDs or blocking entries.

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

Specific Agreement: Stipulating Parties have agreed to update PO-20 to reflect that it is fully implemented. Further, the Stipulating Parties acknowledge that the absence of proposals to modify the PO-20 PID in conjunction with the implementation of Phase IV in no way forecloses any party's ability to submit subsequent PID change proposals to modify the PO-20 PID in the future.

5. **Remove the PIDs specified in the 2007 Stipulation from PAP payment mechanisms to the extent they currently are included in a specific state's PAP, subject to a Reinstatement/Removal process. Also, add a root cause analysis provision.**

Background: Qwest proposed adopting the CPAP Reinstatement/Removal process in each of the remaining thirteen in-region states.

Specific Agreement: The proposed Stipulation includes a Reinstatement/Removal process under which certain PIDs are removed from the PAP subject to Qwest's continued obligation to report its performance on the measures and track avoided payments. If Qwest subsequently falls below set performance metrics for the PIDs, they will be reinstated with retroactive payments for the three months causing reinstatement. The PIDs excluded subject to the Reinstatement/Removal process have generated very few payments in the past and were not particularly customer-effecting measures.

6. **Add exclusion to MR-6 PID that allows No Trouble Found (NTF) and Test Okay (TOK) trouble reports to be removed when the ticket's duration is one hour or less.**

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

Background: The Parties discussed the most appropriate use of No Trouble Found (NTF) and Test Okay (TOK) in reporting the mean time to restore for retail and wholesale repairs.

Specific Agreement: Stipulating Parties agreed to add an exclusion to the MR-6 PID that allows NTF and TOK trouble reports to be removed when the ticket's duration is one hour or less. The Parties agreed that a ticket duration of more than an hour is more likely to be an instance of a trouble that should be included in the measure.

7. **Change the standard for BI-3A PID to a 98% benchmark and add a provision to the PAP for the BI-3A PAP payment calculation, creating a tiered structure of per occurrence amounts and modifying the per measurement cap for the sub-measure.**

The Parties expressed differing views about retaining the parity standard versus establishing a benchmark, eventually agreeing upon a benchmark while recognizing that the specific BI-3A benchmark needed to be high to ensure Qwest was not incented to lower billing quality. In addition to creating a benchmark standard, the Parties agreed to use the total amount adjusted (not just the amount missing the standard) to determine the "per occurrence" payment amount and to significantly increase the cap on the payment amounts in the PAP as the total amount adjusted increases.

B. Agreements Applicable to all States, including WA, but excluding CO

1. **Add one allowable miss provision to the PAP for individual CLEC results when the CLEC aggregate results have met the standard.**

Background: Qwest proposed applying one allowable performance miss to benchmark and non-interval parity measurements where 100% performance would otherwise be required to meet the standard. CLECs raised concerns about unlimited application of this provision.

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

Specific Agreement: Stipulating Parties have agreed to add a one allowable miss provision for individual CLEC results only if the CLEC aggregate results have met the standard. If the CLEC aggregate results require 100% performance to meet the standard, the one allowable miss provision is applied to determine if the CLEC aggregate results have met the standard.

2. **Revise the PAP to change the flat minimum payment amounts of $300/$600 (MN) and $2000 (the remaining states, including Washington) with a tiered minimum payment approach that establishes a relationship between the monthly PAP payment and the required minimum payment amount.**

Background: Qwest proposed revising the minimum payment provisions so that minimum payments are made only to smaller CLECs and operate so as to maintain a relationship with levels of performance. Qwest and CLECs exchanged several proposals.

Specific Agreement: Stipulating Parties have agreed to change the minimum payment provision, replacing the flat minimum payment amounts of $2000 with a tiered minimum payment approach that establishes a relationship between the monthly PAP payment which reflects Qwest's overall performance level and the required minimum payment amount.[7]

3. **Remove the following list of product disaggregations from all applicable OP and MR PIDs in the 13 state PAPs: Resale Centrex, Resale Centrex 21, Resale DS0, E911/911 Trunks, Resale Frame Relay, Resale Basic ISDN,**

[7] Currently, Qwest owes the minimum of $2000 for each month in which there is *any* PAP payment due. When the total payment for a month is $1900, for instance, Qwest would owe an additional $100 in minimum payments. If Qwest were able to improve performance such that the monthly payment was reduced to $100, the $1800 reduction would be completely offset by an $1800 increase in the minimum payment owed.

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

Resale Primary ISDN, Resale PBX, Sub-loop Unbundling, UNE-P POTS, UNE-P Centrex and UNE-P Centrex 21.

Experience has revealed some products with minimal to non-existent demand. The Stipulating Parties agreed to remove certain product disaggregations from applicable OP and MR PIDs that were low volume across the entire region and did not appear likely to have a resurge of interest in the near future. This change streamlines the PAP and does not diminish it in any substantive way.

C. Agreements Applicable to MT, NE, NM, SD, UT, WA, and WY Only

1. Adopt the Montana Tier 2 provision to modify Sections 7.3 and 9 of the PAP such that Tier 2 payments will be based on the number of performance measurements exceeding critical z-value for three consecutive months unless there have been two misses in any three consecutive months during the past 12 months. If there have been two misses in any three consecutive months during the last 12 months, Tier 2 payments will be triggered by either two additional consecutive months' misses (for PIDs that are classified as both Tier 1 and Tier 2) or the current month's miss (for PIDs that are Tier 2 only)

Background: Qwest proposed modifying the PAP provision 7.3 so that Tier 2 payments are based on the number of performance measurements exceeding the critical z-value for three consecutive months, rather than the number of performance measurements failing performance standards for the current month as currently applies in these states' PAPs. CLECs raised concerns with adopting the three consecutive month standard. The Parties reviewed the Tier 2 provisions from other states and found variations on the multiple month misses with a more stringent standard if there had been two out of three months misses during the last year.

Specific Agreement: Stipulating Parties have agreed to adopt the Montana Tier 2 provision. Under the provision, Tier 2 payments will be based on the number of

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

performance measurements exceeding the critical z-value for three consecutive months unless there have been two misses in any three consecutive months during the last 12 months. If there have been two misses in any three consecutive months during the last 12 months, Tier 2 payments will be triggered by either two consecutive months' misses (for PIDs that are classified as both Tier 1 and Tier 2) or the current month's miss (for PIDs that are Tier 2 only).

Qwest believes that the changes are in the public interest because they strengthen the performance incentives in the PAP by allowing Qwest to focus on improving performance in areas with repeated performance failures. Qwest believes that the previous Tier 2 structure was simply too punitive in nature and that payment of Tier 2 payments for every month a measure is missed causes excessively large Tier 2 payments for small performance misses and does not effectively fulfill the purpose of the PAP to guard against backsliding. In all the other states where Qwest pays Tier 2 payments consistent with the structure it has proposed in the Settlement for Washington, Qwest states that its performance is comparable to that in Washington, indicating that the higher Tier 2 payments in Washington do not create materially better performance than in other states that already operate under the proposed Tier 2 structure and the additional Tier 2 incentive imposed by the current provision is not needed. Thus, Qwest considers the Washington structure to be more in the nature of a penalty than an incentive, and believes that it is not appropriate in the QPAP.

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

D. Agreements Applicable to CO, ID, MN, ND, OR, UT and WA Only

1. Eliminate six-month cap on Tier 1 escalation payment amounts so that payments will continue to increase in the event the payment level indicator increases beyond payment level 6.

Specific Agreement: Stipulating Parties agreed to eliminate the six-month cap on Tier 1 escalation payment amounts in CO, ID, ND, OR, UT and WA, so that payments will continue to increase in the event the payment level indicator increases beyond payment level 6.

III. THE SETTLEMENT IS IN THE PUBLIC INTEREST

10 The process leading to the Stipulation began with a May 2006 invitation by Qwest to CLECs to join in discussions regarding proposed changes to performance measures. Qwest later invited all state Commission Staffs to join in the process. The parties participating in the discussions put more than a year into developing a Stipulation which they believe reasonably accommodated their various positions and the public interest. The Parties agree that the Stipulation satisfies their interests and the public interest in resolving the issues as set forth herein.

11 The Stipulating Parties believe that the Stipulation resolves issues without the time, expense, and uncertainty of litigation. The Stipulation conserves the resources of the providers, who would otherwise be litigating these issues before state commissions. The settlement also conserves the regulatory resources of the multiple administrative agencies who would be involved in litigation proceedings regarding changes to performance measures, absent the Stipulation.

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

12 The Stipulation brings the provisions of the various state PAPs into greater uniformity. While consistency should not outweigh the best interests of providers, consumers, or agencies, the Parties believe that in this instance the two are consistent. Greater uniformity of the PAPs will facilitate monitoring of Qwest's performance by CLECs and various state commissions, who may wish to compare performance across states.

13 Where PIDs were removed from the payment mechanism of the PAP (except for DSL, which was removed because Qwest no longer offers it as a telecommunications service), the PAP provides for Qwest's continued performance reporting and tracking of avoided payments, and the opportunity for retroactive reinstatement if Qwest's performance on the measures falls below an agreed upon standard.

14 The above summary of the proposals and compromises reached indicates that the resolution reached in the Stipulation is a considered result, negotiated by Parties who had conflicting interests, thereby ensuring a disciplined result. Consistent with the state's and the Commission's stated preference for negotiated results, Qwest believes that the Stipulation is a fair result of the negotiation process and benefits all parties, as well as the Commission, by avoiding the costs of litigation and arriving at standards that are consistent with the public interest.

IV. RELIEF REQUESTED

15 Qwest, on behalf of itself and the Stipulating Parties, respectfully requests that the Commission approve the 2007 Stipulation describing proposed changes to the PAP and PID, apply the changes to any interconnection agreements containing the PAP, and allow

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

the PID to go into effect no later than November 30, 2007.

DATED this 12th day of September, 2007.

QWEST

____

Lisa A. Anderl, WSBA #13236
Adam L. Sherr, WSBA #25291
1600 7th Avenue, Room 3206
Seattle, WA 98191
Phone: (206) 398-2500