

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of the Investigation Into)	
U S WEST Communications, Inc.'s)	Docket No. UT-003022
Compliance With Section 271 of the)	
Telecommunications Act of 1996)	
_____)	
)	
In the Matter of U S WEST Communications)	Docket No. UT-003040
Inc.'s Statement of Generally Available)	
Terms Pursuant to Section 252(f) of the)	
Telecommunications Act of 1996)	

**WORLDCOM AND AT&T COMMENTS ON QWEST'S RESPONSES TO THE
BENCH REQUESTS**

WorldCom, Inc., on behalf of its regulated subsidiaries, (collectively "WorldCom") and AT&T Communications of the Pacific Northwest, Inc. ("AT&T") hereby file these Comments on Qwest's Responses to Bench Request Nos. 37 and 38.

Bench Request No. 37:

Please update the Qwest Performance Assurance Plan ("QPAP") the Commission on July 24, 2001 to reflect the recommendations in the facilitator's report from the multistate QPAP proceeding issues on October 22, 2001. Please provide a red-lined version to identify any changes made to the July 24, 2001 version of the QPAP.

On November 7, 2001, Qwest filed a red-lined version of the previously filed QPAP. WorldCom and AT&T have the following comments on provisions that they believe are not fully consistent with the facilitator's report.

1. Allowing CLEC Recovery of Non-Contractual Damages in Other Proceedings

Qwest, as requested, has stricken the language in Section 13.6. However, Qwest has added language to Section 13.6 that is inconsistent with the facilitator's language

that, “Qwest may replace [the stricken language] with a simple provision requiring a CLEC to elect either: (a) the remedies otherwise available at law, or (b) those available under the QPAP and other remedies as limited by the QPAP.”¹

Qwest inserted the following language:

By electing remedies under the PAP, CLEC waives any causes of action based on a contractual theory of liability, and any right of recovery under any other theory of liability (including but not limited to a regulatory rule or order) to the extent such recovery is related to harm compensable under a contractual theory of liability (even though it is sought through a noncontractual claim, theory, or cause of action).

Qwest’s language should be deleted and replaced with the following:

A CLEC may elect either: (a) the remedies otherwise available at law, or (b) those available under the QPAP and other remedies as limited by the QPAP.

2. Offsetting QPAP Payment Liabilities by Other Awards

In Section 13.7, Qwest has added the following language purportedly required by the facilitator:

This section is not intended to permit offset of those portions of any damages allowed by noncontractual theories of liability that are not also recoverable under contractual theories of liability.

There is nothing in the facilitator’s report directing Qwest to add this language. Rather, the report directs Qwest to only add the last sentence to Section 13.7.² Accordingly, Qwest’s additional sentence should be stricken.

3. Impact of Force Majeure Events on Interval Measures

In the last sentence of Section 13.3, Qwest added AT&T language as directed by the facilitator.³ However, that language addresses parity measurements as well as

¹ See, QPAP Report, dated October 22, 2001, at pp. 32-33, under 3. Preclusion of Other CLEC Remedies.

² See, QPAP Report, dated October 22, 2001, at p. 36, under (c) Injury to Persons or Physical Property.

benchmark measurements. In view of the facilitator's ruling that force majeure events only apply to benchmark measures, the reference in last sentence of Section 13.3 to parity measures should be stricken.

4. Tier 2 Payment Use

The facilitator directed Qwest to modify SGAT Section 5.8.1 to include a provision stating that:

payments pursuant to the QPAP should not be counted against the limit provided for in this SGAT section.

Since Qwest has only filed its modified QPAP for Washington, there is no evidence that it has made this change to its SGAT. On the other hand, Qwest has stated in its comments that it will do so, WorldCom and AT&T expect Qwest will make this change to the SGAT as required.

5. Funding Commission Qwest/CLEC Oversight Activities

The language that Qwest included in Section 11.3.1 appears inconsistent with what the facilitator recommended.⁴ One-fifth of all Tier 1 payments is different then one-fifth of the escalation portion. The facilitator's language states that "one-fifth of the **escalation portion** of payments otherwise due to CLECs" should be made to the special fund.

Qwest Exhibit K, PAP Section 11.3.1 states, "Qwest shall be authorized to withhold and deposit into the Special Fund one-fifth of **all** Tier 1 payments to CLECs."

³ See, QPAP Report, dated October 22, 2001, at p. 40, 36, under (d) Nexus between Force Majeure Events and Qwest Performance; and AT&T and Ascent's Verified Comments filed in the 9-state QPAP Proceeding on July 27, 2001, at p. 10.

⁴ See, QPAP Report, dated October 22, 2001, at p. 42, under (1) Tier 2 Payment Use

6. Three Month Trigger

Qwest states that it has incorporated the facilitator's changes into the QPAP in Section 9.1.2. However, Qwest's language is inconsistent with the trigger in the facilitator's report.⁵ Qwest also does not include the facilitator's language on escalation. This language needs to be revised to reflect the facilitator's language.

The facilitator's report states:

In any 12-month rolling period in which there have been two non-compliant months out of any consecutive three months, payments for those Tier 2 payments without a Tier 1 payment obligation should be triggered by a single additional month of non-compliance. Escalation should then take place as provided in the QPAP, while assuring that payments do not drop back to zero until there is reached a point where there has been no occasion in the preceding 12 months during which non-compliant Tier 2 performance has occurred in two of three consecutive months.

In the case of Tier 2 payments that have Tier 1 counterparts, therefore, the QPAP should trigger Tier 2 payments in the second consecutive month of non-performance, provided that the same two-out-of-three month condition (recommended immediately above for Tier 2 measures that have no Tier 1 counterpart) is met.

Qwest Exhibit K, PAP Section 9.1.2 states:

To determine if Tier 2 payments for performance measurements listed on Attachment 1 shall be made in the current month, the following shall be determined. For Tier 2 measurements that have Tier 1 counterparts, it shall be determined whether Qwest missed the performance standard for three consecutive months, or if Qwest has missed the standard in any two out of three consecutive months for the 12 month period, for two consecutive months. For Tier 2 measurements that do not have Tier 1 counterparts, it shall be determined whether Qwest missed the performance standard for three consecutive months, or if Qwest has missed the standard in any two out of three consecutive months for the 12 month period, for the current month.

7. Adding Measures to the Payment Structure

⁵ See, QPAP Report, dated October 22, 2001, at p. 43, under (2) Three Month Trigger for Tier 2 Payments

Qwest did not discuss changes made to “Adding Measures to the Payment Structure” Section V B of the report. Prior to the Qwest’s filing of this bench request response, Qwest distributed a revised spreadsheet outlining the agreed upon measures being negotiated in the ROC to establish standards for those measures and sub-measures that were listed as Diagnostic or TBD measures. In the ROC, the parties have agreed to certain standards. While it does look like Qwest added the change management measures GA-7 and OP-16, it is unclear whether other agreed upon sub-measures related to such measures as OP-5B/C (FOC) and OP-3/4/5 (Line Sharing/EELs/Loop Conditioning) have been added. Qwest needs to clarify that these agreed upon standards have also been included.

8. Rounding Problems with Small Order Volumes

Qwest has made changes in Section 2.1. However, Qwest states on page 12 of Qwest’s Comments on the Facilitator’s QPAP Final Report that Qwest “has made a minor adjustment to the recommended calculation...” Qwest’s change does not appear to implement the spirit of the facilitator’s decision in Section 2.4. Page 59 of the report calls for using a “rolling average applied yearly.” However, Qwest changed to “sufficient number of consecutive months.” Using a rolling 12-month average versus a sufficient number of consecutive months can result in very different results.

9. Assuring Continuing Data Accuracy

WorldCom and AT&T are concerned with Qwest’s statement on page 13 of Qwest’s Comments on the Facilitator’s QPAP Final Report, “There are, however, specific areas of concern on Qwest’s part, which result in the insertion of several key

concepts not included by the Facilitator.” Qwest also appears to be leaving out key concepts of the facilitator. The facilitator’s report states, “Their purpose should be to allow Qwest to report on and the auditor to ask questions about changes made in the Qwest measurement regimen. The meetings would then produce reports by the auditor to the commissions and, where the commissions deem it appropriate, other participants.”⁶ This language does not appear to be addressed in Qwest’s changes to the QPAP. Qwest also does not appear to describe the funding of the audit programs.

10. Performance Reports Pending Section 271 Approval

WorldCom and AT&T question Qwest’s language on page 17 of Qwest’s Comments on the Facilitator’s QPAP Final Report that limits Tier 1 reporting on an aggregate basis. WorldCom and AT&T do not see any such restriction in the facilitator’s report limiting reporting to aggregate Tier 1 reporting. Part of the reason for receiving CLEC reporting prior to 271 is to view CLEC specific results. The facilitator’s report states, “It will also be helpful in accommodating CLECs to the QPAP reports, to their independent confirmation efforts, and to the general relationship that exists between the performance they are receiving and the payments they are getting.”⁷ This cannot happen if CLECs only receive aggregate CLEC results. CLECs should also receive their individual Tier 1 results.

Bench Request No. 38:

Assuming that Qwest’s Performance Assurance Plan (QPAP), as modified by the facilitator’s report from the multi-state QPAP proceeding, had taken effect on June 1, 2001, please provide:

⁶ See, QPAP Report, dated October 22, 2001, at p. 80, under Discussion of Audit Program.

⁷ See, QPAP Report, dated October 22, 2001, at p. 75, under Discussion of Effective Dates.

- (a) **The amount of Tier I and Tier II QPAP incentive payments Qwest would have made to CLECs and the state in Washington for the period of June-September, 2001, based on Washington state performance results for that same period.**
- (b) **Please include the CLEC by month, but do not provide the identity of the individual CLEC associated with the data and payment amounts. Also include the Tier II aggregate data, calculations and payment amounts by month.**

Please include the spreadsheets and programs used to make the statistical calculations and payment calculations in electronic form and ensure all formulae and calculations in the spreadsheet(s) can be reviewed and edited by Commission Staff.

At this time, WorldCom and AT&T have no comments on the accuracy of Qwest's response to this Bench Request. WorldCom and AT&T refer the Commission to their respective comments filed contemporaneous herewith, regarding Liberty Consulting's October 22, 2001 Report on Qwest's QPAP as well as the parties' previous pleadings on the QPAP. There, the parties discussed their views of the relevance of this data to the issue of whether the proposed PAP provides a "meaningful and significant" incentive for Qwest to comply with the designated performance standard, consistent with the FCC requirements.⁸

⁸ See e.g., WorldCom's Comments on Liberty Consulting's Report on Qwest's QPAP, dated November 20, 2001 at pages 6-7.

Dated this 21st day of November 2001.

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