

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of
Qwest Corporation
For Commission Approval of
Stipulation Regarding Performance
Indicator Definitions and Qwest
Performance Assurance Plan Provisions.

Docket No. UT-073034

QWEST CORPORATION'S INITIAL
COMMENTS

- 1 Qwest Corporation ("Qwest") hereby files its Initial Comments pursuant to Order No. 02, in accordance with the requirements of that order. Rather than repeat what was provided in the Narrative in Support of the Settlement Agreement, these Initial Comments address the agreed-upon changes that were previously commented on by Staff in this proceeding. Further, in light of Qwest's agreement to waive the statutory deadline of 252(f)(3) and proceed on a paper record before the Commission, these comments do not discuss the procedural issues or the legal issues related to that topic.

- 2 Qwest agrees with Staff that there should only be one Qwest Performance Assurance Plan (QPAP) in operation in the state, that the QPAP serves as more than a contract between CLECs and Qwest, and changes should be applied to all contracts containing the

QPAP.¹ The QPAP, available to CLECs entering into Section 252 interconnection agreements with Qwest (and as recently agreed in the AFOR proceeding), was designed to ensure continued compliance with the provisions of Section 271 of the Telecommunications Act once Qwest obtained approval to provide long distance service in Washington. Intertwined in that design is a consideration of whether the plan provides sufficient incentives to deter any backsliding in service CLECs receive, and whether it serves to avoid a stifling of competition in the state.²

3 Many types of incentives are contained in the QPAP, including the following: payment liability may reach 36 percent of Qwest's Washington ARMIS revenue; Tier 1 escalation payments; Tier 2 payments; and provisions allowing the Commission to assess penalties to address service quality issues. Qwest's performance results under the Washington QPAP reveal that service has not deteriorated. Qwest's total payments have decreased and year over year, despite the refinement and addition of measurements to the plan.

4 From inception of the QPAP through July 2007, millions of items have been measured and met, according to the 14-state Performance Indicator Definition (PID). Specifically, the number of items measured in Washington thus far is 570,543,919. Of those items, Qwest met the standard for 565,132,781. This means that over the course of more than four years, Qwest met over 99 percent of the measurements (99.1%).

5 By comparison, in the five states with a Tier 2 structure similar to the one proposed for Washington, performance levels ranged from 99.1 percent to 99.7 percent. In the one

¹ See Commission Staff's Objection to Qwest's Petition and Memorandum Regarding Procedural Issues, ¶¶ 8, 12.

² See *30th Supplemental Order*, Dockets UT-003022 and UT-003040 (consolidated), ¶¶ 5, 20, 37 (April 5, 2002) (citations omitted).

state with an even more simplified multiple month Tier 2 structure, Qwest achieved performance results that met the standards 99.8 percent of the time.

- 6 Unlike the circumstances that surrounded the initial adoption of the PID and QPAP, history now provides a view of performance under the plan that shows the higher payments in Washington resulting from its current Tier 2 structure neither materially impact performance nor serve to further open the local telephone market to competition.³ The existing Tier 2 structure was the result of initial fears that Qwest's performance would deteriorate and the originally recommended multiple month payment trigger would not be sufficient incentive to maintain service levels. That has not happened and those fears have now been invalidated. The current Tier 2 structure is punitive in nature and provides no additional incentive to Qwest. The Tier 2 structure should be modified as proposed in the Stipulation and PID and QPAP changes submitted.
- 7 Given that Qwest's performance is not currently significantly different from other states in the region with the proposed structure, reducing the Tier 2 financial consequences of missing a standard makes sense; it serves the public interest to not be punitive where need for penalties has not been shown.
- 8 As to the remainder of the changes proposed, Qwest believes they too are in the public interest. These changes have evolved out of many work sessions between the parties who elected to participate. They build on work in other states⁴, consider issues raised between

³ Tier 2 payments were originally put in place not as a revenue stream to the state, but to provide additional incentive to Qwest without unjustly enriching the CLECs. To the extent that the current Tier 2 payment do not provide additional incentive, it is appropriate to modify that payment structure.

⁴ *Id.* at ¶ 42. Commission also anticipated that the QPAP and PID would change over time, building on their own work as well as that of other states, and the process would evolve over time.

the parties, bring more consistency to the application of the QPAP in the Qwest region that facilitates work among states, as well as more efficient implementation, use of resources and administration.

9 With eighty-four (84) CLECs that have opted-into the QPAP and use the PID with the multiple measures and sub-measures, administering different versions is simply not feasible. Qwest must stress the importance of having one QPAP and one PID in effect in Washington and encourages the Commission to apply the changes to those contracts that contain these exhibits.

10 Thus, Qwest respectfully requests that the Commission approve the 2007 Stipulation describing proposed changes to the QPAP and PID, apply the changes to any agreements containing the QPAP, and allow the PID to go into effect no later than November 30, 2007.

DATED this 5th day of October, 2007.

QWEST CORPORATION

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