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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of	:	Docket No. 00-049-08
QWEST CORPORATION for Approval of	:	
Compliance with 47 U.S.C. § 271(d)(2)(B)	:	
	:	STIPULATION BETWEEN
	:	ADVOCACY STAFF AND QWEST
	:	REGARDING PERFORMANCE
	:	ASSURANCE PLAN

Judith Hooper, temporarily acting as Advocacy Staff for the Public Service Commission of Utah (“Advocacy Staff”) pursuant to the Procedural Order issued December 6, 2001 (“Order”), and Qwest Corporation (“Qwest”) hereby stipulate that the sections of the Performance Assurance Plan (“PAP”) attached to this Stipulation as Attachment 1 are intended to resolve issues raised and changes to the PAP recommended by the “Staff Report on the Qwest Post Entry Assurance Plan (QPAP)” dated October 26, 2001 (“Advisory Staff’s Report”) that

differ from those in the “Report on Qwest’s Performance Assurance Plan” issued by the Facilitator on October 22, 2001.¹ This Stipulation is based upon the following:

1. In August of 2000, eleven of the 14 states participating in Qwest’s Regional Oversight Committee (“ROC”), including Utah, invited interested parties to participate in a collaborative process designed to seek creation of a consensus PAP. Staffs of the state commissions, competitive local exchange carriers (“CLECs”), including AT&T Communications of the Mountain States, Inc. (“AT&T”), WorldCom, Inc. (“WorldCom”), McLeodUSA Telecommunications Services, Inc. (“McLeod”), XO Utah, Inc. (“XO”) and Electric Lightwave, Inc. (“ELI”) (XO and ELI will be referred to hereinafter collectively as “XO/ELI”) and other CLECs, and Qwest participated in the collaborative. Five multi-day workshops, a number of conference calls and numerous exchanges of proposals, supporting data and other information occurred from October 2000 through May of 2001.

2. The statistical methods and payment structure of the PAP approved by the Federal Communications Commission (“FCC”) in SBC Communications, Inc.’s application under 47 U.S.C. § 271 for the state of Texas (“Texas PAP”) served as the starting point for the ROC collaborative. Through the collaborative process, consensus was reached on a number of issues, including several modifications to the Texas PAP.

3. After it appeared in May 2001 that further collaborative efforts were in doubt, the seven state commissions then participating in multi-state workshops on other aspects of Qwest’s

¹ In addition to Advisory Staff’s Report, John Antonuk of The Liberty Consulting Group, the facilitator selected by the Commission and the commissions from six other states to conduct multi-state workshops on issues arising under 47 U.S.C. § 271 (“Facilitator”) issued a report on the PAP dated October 22, 2001 (“Facilitator’s Report”). Qwest filed a PAP with the Commission on November 15, 2001 that incorporated the Facilitator’s recommendations. Qwest will file a red-lined version of the PAP incorporating the changes in Attachment 1 into the PAP filed in this docket on November 15, 2001.

271 compliance, including Utah, determined to hold multi-state hearings to determine the sufficiency of the PAP. Two additional states also decided to participate in these multi-state PAP hearings. The Facilitator, who had not previously been involved in the ROC collaborative, was asked to conduct these hearings. Procedural issues were resolved by conferences and briefing. Hearings were held during the weeks of August 13 and August 27, 2001, during which several parties submitted evidence and comment. Briefs and reply briefs were filed in September of 2001. In addition to the staffs of the nine state commissions, CLECs, including AT&T, WorldCom, and XO/ELI, participated in this process. Through this process, consensus was reached on additional PAP issues.

4. On October 22, 2001, the Facilitator issued the Facilitator's Report in all states except Utah. The Facilitator's Report recommended resolutions for all impasse issues.

5. On October 26, 2001, Utah Staff issued Advisory Staff's Report. Although Advisory Staff's Report was consistent with the Facilitator's Report on many issues, it departed from the Facilitator's Report on several significant issues.

6. Qwest filed comments in the other eight states on the Facilitator's Report on November 1, 2001 with an errata filed on November 6, 2001. Although Qwest did not agree with all of the further modifications to the PAP recommended by the Facilitator, it stated that it was prepared to accept them subject to clarification and limited modification. Qwest filed a red-lined PAP with its comments providing changes consistent with the Facilitator's Report and its comments. Various CLECs also filed comments on the Facilitator's Report accepting some recommendations and disagreeing with others.

7. On November 6, 2001, Qwest filed comments on Advisory Staff's Report generally disagreeing with the changes made by Advisory Staff to the Facilitator's

recommendations. AT&T, WorldCom and XO/ELI also filed comments. They agreed with some of the recommendations of Advisory Staff's Report, but suggested that Advisory Staff did not go far enough in increasing Qwest's obligations under the PAP on some issues.

8. A technical conference on the PAP was held before the Commission on November 19, 2001. At the technical conference, Qwest and the CLECs presented their positions to the Commission and responded to questions from the Commission and Advisory Staff.

9. On December 6, 2001, the Commission issued the Order temporarily designating Judith Hooper as Advocacy Staff for purposes of determining if agreement could be reached on the PAP. The Order directed interested parties to contact her to participate in negotiations and directed that at a minimum one meeting should be held on December 12, 2001 at which all parties could participate. The Order also directed the parties to file a report of the status of their negotiations by December 18, 2001 and indicated that any party could seek to extend the date for negotiations beyond December 18, 2001.

10. Pursuant to the Order and notice issued on December 10, 2001, Advocacy Staff held a meeting on December 12, 2001 at which Qwest, AT&T, WorldCom, XO/ELI and the Utah Rural Telecom Association participated. At the meeting, Advocacy Staff stated that the purpose of the discussions was to determine if agreement could be reached on resolution of issues with the bounds being the Facilitator's Report and Advisory Staff's Report. All parties were allowed to present their views on each of the issues in which the Facilitator's and Advisory Staff's Reports differed. In addition, at least one CLEC presented positions that sought to impose obligations on Qwest in excess of those imposed by Advisory Staff's Report.

11. Following the December 12, 2001 meeting, Advocacy Staff continued to meet with Qwest and to meet separately with other parties. Qwest was unwilling to be bound to joint negotiations with all parties. Advocacy Staff determined that further negotiations, holding separate Qwest and CLEC meetings, would be worthwhile and requested that the Commission extend the date for negotiations beyond December 18, 2001. Since December 18, 2001, Advocacy Staff has had several additional meetings and discussions with Qwest and separate meetings and discussions with CLECs.²

12. Advocacy Staff and Qwest stipulate that the provisions of the PAP attached to and incorporated in this Stipulation are intended to resolve the issues raised and changes to the PAP recommended by Advisory Staff's Report that differ from those in the Facilitator's Report.

13. Although the CLEC parties have not entered into this Stipulation, Advocacy Staff believes it has given serious consideration to the positions they have expressed in both their filed comments and positions taken during this negotiation period, and has attempted to accommodate these positions to the extent possible consistent with the public interest. Advocacy Staff and Qwest stipulate that the Commission should immediately issue a notice affording CLECs an opportunity to comment on this Stipulation and recommend that they be given ten days to submit comments to the Commission before the Commission accepts this Stipulation. If CLECs submit comments opposed to this Stipulation, Advocacy Staff and Qwest recommend that they be given seven days to respond to those comments before the Commission acts on this Stipulation.

² On January 23, 2001, AT&T filed "AT&T's Notice of Violation of the Public Service Commission of Utah's December 6, 2001 Order and Motion To Remand the QPAP to the Commission with Request for Forthwith Determination" objecting to the separate negotiations. Qwest responded on January 24, 2002, objecting to AT&T's notice and requesting that the negotiations be allowed to continue. AT&T filed "AT&T's Notice of Continued Violation of the Public Service Commission of Utah's December 6, 2001 Order and Motion To Compel" on March 4, 2002, reiterating the argument in the original notice.

Thereafter, if the Commission believes further proceedings are necessary, Advocacy Staff and Qwest recommend that the Commission conduct a technical conference or hearing at the Commission's earliest convenience.

14. The Order directed that "public policy justification" be provided for the agreements reached on the PAP. In general, Advocacy Staff and Qwest have attempted to balance Staff's interest in allowing future changes in the PAP with Qwest's interest in having certainty regarding its obligations and potential liability under the PAP. They have attempted to balance Advisory Staff's interest in flexibility in approaching issues either on a Utah-only basis or a multi-state basis with Qwest's interest in limiting exposure to potentially duplicative proceedings.

15. Advocacy Staff and Qwest reserve the right to withdraw from this Stipulation or to advocate or support positions different than those set forth in this Stipulation if the Commission rejects all or any portion of the proposed language contained in Attachment 1, recommends any different or additional conditions with respect to such issues or is not able to make a positive recommendation to the FCC based on the November 15, 2001 PAP as modified by Attachment 1. In such case, neither Advocacy Staff nor Qwest shall be bound or prejudiced by the terms of this Stipulation, and each of them shall be entitled to seek reconsideration of the Commission's recommendation regarding changes to the proposed PAP and to take other steps as it deems appropriate.

16. Except to the extent expressly stated in this Stipulation, nothing in this Stipulation shall be (1) cited or construed as precedent or as indicative of Advocacy Staff's or Qwest's positions on a resolved issue or (2) asserted or deemed to mean that either of them agreed with or adopted the other's legal or factual assertions in this or any other proceeding, including those

before the Commission, the state courts of Utah or of any other state, the federal courts of the United States of America, or the FCC. The limitation in this paragraph shall not apply to any proceeding to enforce the terms of this Stipulation. In entering into this Stipulation, neither Advocacy Staff nor Qwest is waiving any position regarding the Commission's authority.

17. Advocacy Staff and Qwest acknowledge that this Stipulation is the product of negotiation and compromise and shall not be construed against either of them on the basis that it was the drafter of any or all portions of this Stipulation. This Stipulation constitutes Advocacy Staff's and Qwest's entire resolution of all matters set forth herein, and it supersedes any and all prior oral and written understandings or resolutions on such matters that previously existed or occurred in this proceeding, and no such prior understanding or resolution or related representations shall be relied upon by them.

18. Advocacy Staff and Qwest agree to support acceptance of the Stipulation by the Commission.

DATED: March 27, 2002.

Judith Hooper
Advocacy Staff

Lynn Anton Stang
Qwest Corporation

Gregory B. Monson
Ted D. Smith
STOEL RIVES LLP

Attorneys for Qwest Corporation

CERTIFICATE OF SERVICE

I hereby certify that a copy of STIPULATION BETWEEN ADVOCACY STAFF AND QWEST REGARDING PERFORMANCE ASSURANCE PLAN was served upon all parties on the service list for this docket and upon the Multi-state 271 Super List by electronic mail on March 27, 2002.
