**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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| In the Matter of the Petition of<br><br>Qwest Corporation<br><br>For Commission Approval of Stipulation Regarding Performance Indicator Definitions and Qwest Performance Assurance Plan Provisions | Docket No. UT-073034<br><br>QWEST CORPORATION'S APRIL 2, 2008 COMMENTS REGARDING REMAINING DISPUTED ISSUES |

## I. INTRODUCTION

*1* Qwest Corporation ("Qwest") submits its comments regarding the Petition for Approval of Stipulation Regarding Certain Performance Indicator Definitions and Qwest Performance Assurance Plan Provisions ("Third Six-Month Review proceeding"). As a result of the negotiated partial settlement ("2008 Partial Settlement") concurrently filed, Qwest's comments are limited to the two remaining disputed issues between Staff and the parties to the June 26, 2007 Stipulation ("2007 Stipulation").

*2* Qwest respectfully recommends that the Washington Utilities and Transportation Commission ("Commission") enter an Order approving the disposition of the issues contained in the 2008 Partial Settlement. Further, Qwest recommends the Commission enter an order approving the



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disposition of the remaining two issues as agreed to by the 2007 Stipulation parties and apply all of the approved changes to any agreements containing the PID and PAP.

3 On September 12, 2007, Qwest, on behalf of the 2007 Stipulation parties, filed a narrative describing the scope of the 2007 Stipulation and how approval served the public interest.[1] As was described in the 2007 Narrative, the 2007 Stipulation represents a collective settlement of multiple issues based on open negotiations between Qwest and interested CLECs.[2] This agreement was not entered into lightly by the parties. In fact, the negotiations resulting in the agreement lasted a year.[3] The settlement includes compromises from all parties, including collective agreements that warrant evaluating the 2007 Stipulation as a whole, rather than addressing issues in isolation as the Staff has done.

4 Consistent with the state's and the Commission's stated preference for negotiated results, Qwest believes that the 2007 Stipulation, as modified by the 2008 Partial Settlement, is a fair result of the negotiation process and benefits all parties, as well as the Commission, by having produced an improved QPAP and should be approved in its entirety.

## II. ONE ALLOWABLE MISS

Issue Description

5 The One Allowable Miss provision of the 2007 Stipulation modifies the QPAP to eliminate the unreasonable performance standard of "perfection" as the only way to avoid a PAP payment. Currently, if a CLEC's monthly volume is low enough for a given unit of measure (e.g., LSRs, service orders, trouble tickets), the stated standard defined in the PID can only be achieved

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[1] Narrative in Support of Settlement Agreement, filed September 12, 2007 ("2007 Narrative")

[2] Nineteen CLECs expressed interest in receiving information and materials during the process and six of those CLECs regularly participated in the negotiations. See 2007 Narrative, ¶6

[3] 2007 Narrative at ¶5.



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through perfect performance that month. For example, Installation Commitments Met ("OP-3") has a 95% benchmark for the Line Splitting product. In a month where a CLEC's order volume is 15, the only way to meet the standard is for Qwest to meet the due date on all orders, or 100% of the time.

6 Qwest initially proposed adoption of the one allowable miss provision from its Colorado PAP ("CPAP"). In the CPAP, whenever this situation occurs for benchmark or non-interval parity measures, the terms of the CPAP allow for one miss before Qwest is liable for a PAP payment. In the 2007 Stipulation, the parties have agreed to a modified term whereby Qwest must meet the performance standard at the CLEC aggregate level before being allowed to apply one allowable miss at the individual CLEC level.[4] What this means is that Qwest must still have overall performance that meets the standard, so the incentive for good performance is still there, but that Qwest is not penalized for situations where small numbers make "perfection" the defacto standard on a CLEC-by-CLEC basis.

7 When the PAP was initially developed, the clear intent was to evaluate Qwest's performance based on the standards defined in the PID which does not contain a single "perfect performance" requirement. The negotiated one allowable miss provision is a balanced and reasonable modification that eliminates individual payments based on standards higher than ones defined in the PID while ensuring Qwest continues to perform at and above those defined levels in the aggregate.

<u>Staff's Objection is One Dimensional and Should be Rejected</u>

8 The Staff's opposition was first identified in its original comments filed in response to the

[4] In those instances where the CLEC aggregate volume also requires perfection, the parties have agreed one miss applies in determining if the performance standard is considered "being met".



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2007 Stipulating Parties' petition.[5] The sum of the objection is that had the term been in effect during the July 2006 – June 2007 twelve month period evaluated ("evaluation period"), there would have been a 19% reduction in Tier 1 payments and that the reduction would have been spread across most of the CLECs receiving payments.[6] Qwest understands that this remains the sole basis for Staff's continued objection.

*9* The estimated impact on PAP payments details the exact reason why the existing PAP should be modified. During the evaluation period, Qwest has encountered more than 6,200 situations[7] where the mathematical calculations demanded perfect performance in order to meet the standard. Qwest strove to meet each and every one of these instances and succeeded most of the time. Qwest was perfect 78% of the time. However this performance was not perfect enough and resulted in CLEC payments of $29,631 simply because Qwest was not perfect 100% of the time. $29,631 is a significant amount of money for failure to meet such a stringent standard, particularly in light of the small volumes that are a natural facet of these situations. Furthermore, the impact of missing a standard of perfection is not automatically harmful to the CLEC, which accentuates the fact that making a payment for having failed to achieve perfection and for which there is no deleterious effect is unjustified.

*10* Staff's objection appears to also include the number of CLECs impacted by this proposal. In fact, the number of CLECs impacted illustrates that there is a problem with the standard, not with Qwest's performance. The fact that almost each and every CLEC had some instance of low volume where Qwest was unable to perform perfectly points to the flaw in the current PAP.

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[5] Staff Initial Comments, filed October 5, 2007 at ¶38.

[6] *Id.*, ¶30

[7] Individual standards, whether benchmark or parity, for aggregate measurements, sub-measurements or individual disaggregations – in other words, all instances where a payable standard was encountered.



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11 Moreover, Staff's position fails to recognize the fair and balanced approach toward correcting this flaw. There were a total of 100 CLEC/performance month payments affected by this change during the evaluation period out of a possible 324 (27 CLECs multiplied by 12 months). More than two thirds of the CLEC monthly payments would *not* have been reduced by the change. Of the 100 payments that would have been reduced, the average monthly reduction would have been less than $300 and 35 of the estimated reductions were less than $100.[8]

Conclusion Regarding One Allowable Miss

12 Qwest's initiation of most of the issues contained in the 2007 Stipulation was the fact that despite its high level of performance overall, it was still required to spend millions of dollars annually in PAP payments across its region. Throughout the original negotiations as well during the more recent discussions, Qwest's focus has been on finding balanced solutions to the issues at hand. Maintaining such a stringent standard is not a balanced solution. The stipulating CLECs recognized that. The intervening CLECs have not objected to this change. Nine other state Commissions have approved or allowed this change to their states' PAP.[9]

13 The one allowable miss proposal in the 2007 Stipulation corrects an unanticipated flaw in the existing PAP. The parties' resolution is reasonable and achieves the objective of reducing unnecessary PAP payments while ensuring adequate incentive for Qwest to continue its high level of performance. Staff's objection ignores the unfairness of a standard of perfection, Qwest current high level of performance, the safety valve of requiring aggregate CLEC performance to meet standards before being allowed to apply the one allowable miss and instead offers the status quo based on an estimated savings of less than $300 per CLEC per

[8] This information was provided in Qwest's response to WUTC Staff Data Request 01-001.

[9] Colorado, Idaho, Iowa, Minnesota, Nebraska, North Dakota, Oregon, South Dakota and Wyoming.



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month. The Commission should find in favor of the parties to the 2007 Stipulation and approve this change.

## III. TIER 2 TRIGGER CHANGE

Issue Description

*14* Certain performance measures are subject to Tier 2 payments for two reasons. These are 1) when performance results are available only on a regional basis, and 2) because of their importance to CLECs' ability to compete.[10] In the first instance, where results are aggregate regional results, dividing payments between the 14 Qwest in-region states was preferable to developing some complex mechanism to fairly allocate the payment amongst the various CLECs that operate within Qwest's region. For those measures that that carry a Tier 2 designation because of their important to competition, the PAP provides for both Tier 1 and 2 payments. The dual Tier structure was designed to ensure an adequate incentive for good performance while preventing a financial windfall to individual CLECs.

*15* The Tier 2 Trigger Change provision of the 2007 Stipulation modifies when certain Tier 2 payments are required by replacing the current single month miss trigger with the Montana QPAP's multiple month trigger.[11] Under the provision, Tier 2 payments will be based on the number of 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

[10] See Thirtieth Supplemental Order in Docket UT-003022, ¶80.

[11] The Arizona, Idaho, Iowa, Oregon and North Dakota PAPs also have a multiple month trigger for Tier 2 payments. Nebraska, South Dakota and Wyoming had the same single month trigger as Washington but have adopted the multiple month trigger in their dispositions of the 2007 Stipulation.



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2 only).

16 The proposed change does not apply to the regional-results based, Tier 2 only measures contained in Section 7.4 of the PAP; payments for these measures will continue to be based on each month's performance. Therefore, almost all the measures affected by this change are subject to both Tier 1 and Tier 2 payments. This means that each CLEC's individual monthly result will continue to be evaluated based on the standards in the PID and will be subject to payment if the monthly result does not meet the standard.[12]

17 While the multiple month trigger eliminates payments based on isolated monthly misses, it also cares for ongoing performance shortfalls by reducing the payment trigger whenever there are two misses in three months. The reduced trigger remains in effect for a year. The reduced trigger would cause Tier 2 payments after two consecutive month's misses for most of the affected measures; for GA-7 and PO-16, [13] the payments for each subsequent individual month that failed to meet the performance standard.

<u>Staff's Concerns are Not Supported by the Actual Performance</u>

18 Once again the Staff's opposition appears to be rooted in the financial impact of the proposal rather than its merits. In Staff's original comments filed in response to the 2007 Stipulating Parties' petition, Staff pointed to the fact the Commission rejected a multiple month trigger in 2002. However, that decision was made nearly six years ago, and was based on little to no experience to inform the Commission's decision at that time.[14] The second concern is with the financial impact based on estimated payments had the provision been in place during the

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[12] With the exception of those PIDs that are also subject to the reinstatement/removal provision contained in the 2008 Partial Settlement.

[13] The Tier 2-only measures that are impacted by the change.

[14] Commission Staff's Initial Comments, filed 10/5/07 at ¶11.



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evaluation period.[15] Lastly, Staff is concerned that the three-consecutive-month-trigger reduces Qwest's incentive to meet the performance standards set out in the PIDs.[16]

*19* Staff argues that the Commission has already rejected a similar proposal to modify the Tier 2 triggers.[17] In May 2002, the Commission found a plan with a three consecutive month trigger "…does not create a meaningful and significant incentive to comply. Nor would the plan adequately detect and sanction poor performance when it occurs."[18] However, this finding was looking at the Tier 2 provision in isolation and without a proven track record on which to rely. There is now not only a Washington specific record of performance, but five years worth of experience from other Qwest states – some with the single month trigger and some with a multiple month trigger. A modification such as is now proposed is supported by the record.

*20* Additionally, the Commission should evaluate this change as one component of the larger plan. As described above, where the plan relies on Tier 2 payments as the sole measure of detecting and sanctioning poor performance i.e., Tier 2 only measures, the 2007 Stipulation does not propose changing the existing single month trigger. Further, the fact that 16 of the 18 measures impacted by the proposed change continue to be subject to Tier 1 payments based on monthly performance creates a meaningful and significant incentive for Qwest to comply. The two remaining measures, GA-7 and PO-16, did not have a single miss during the evaluation period and all the parties have agreed to these measures becoming subject to the reinstatement/removal process contained in the 2007 Stipulation.

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[15] *Id.*, ¶37.

[16] Qwest notes that the 2007 Stipulation Tier 2 change applies a three consecutive month trigger *only* when there have not been two misses in any three-month period in the last 12 months, otherwise the trigger steps down to a one or two month trigger. Qwest notes this difference between the proposed change and concerns about a three-consecutive month trigger here and though applicable, does not repeat its comment about this difference when addressing Staff's concerns throughout the remainder of these comments.

[17] Staff Initial Comments, ¶11.

[18] [Internal quotes and citations omitted.] 33rd Supp. Order, Dockets UT-003022 and UT-003044 (consolidated), ¶ 102 (May 20, 2002).



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21 Staff's concern that Qwest's incentive to comply with the PID standards is reduced by a three consecutive month trigger fails to recognize the significant incentive retained by the monthly Tier 1 payments opportunities that apply to almost all of these measures. That incentive is demonstrated by the lack of any demonstrable difference in performance between states with a single month Tier 2 trigger and states with a multiple month Tier 2 trigger.[19]

22 From the inception of the PAP through June 2007, for the 12 states with similar PAPs, i.e., Qwest's in-region states excluding Colorado and Minnesota, the number of items evaluated under Tier 2 between single-month and multiple month states are comparable.[20] Qwest's performance is comparable; Qwest met 99.25% of the items evaluated under Tier 2 in the single-month states while meeting 99.58% in the multiple-month states. Closer examination of the data produces the same conclusion. A review of the more than four years worth of data, separated out into twelve month increments, reinforces what the aggregate result shows. The incremental data shows an extremely high level of performance, with little to no difference between single-month trigger states and multiple-month trigger states. In fact, in all but one of the twelve month periods examined,[21] the states with a multiple month trigger performed better than those without. During the evaluation period, the overall single-month states met percentage was 99.97% and the multiple-month states percentage was 99.98%.

23 The concerns raised by Staff are further allayed by the actual performance under the specific sub-measure/product combinations generating actual Tier 2 payments currently. During the evaluation period, there were 34 PID sub-measure/product disaggregations that generated Tier

[19] See Qwest response to WUTC Staff Data Request 04-006

[20] *Id.* Out of a total of 2,082,217,586 items, 1,027,712,000 were in the six states with a single month trigger and 1,054,505,586 were in the six states with a multiple month trigger.

[21] During the July 2003 – June 2004 period, the single-month states performed slightly better than the multiple-month states.



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2 payments. Of these, the vast majority were isolated misses with no pattern of missed performance; 15 instances with a single miss, nine with two misses and five with three misses during the year.[22]

24 More than 85% of the time the aggregate CLEC performance missed the benchmark, it was an isolated incident or reflected no pattern of missed performance. These incidents resulted in Tier 2 payments of over $72,000. Because every one of these measures is also subject to Tier 1 payments, the more than $72,000 is on top of the Tier 1 payments made directly to the CLEC. These Tier 2 payments for isolated misses do not provide added incentive but are simply punitive in nature.

Conclusion Regarding Tier 2 Triggers

25 CLECs have repeatedly expressed that performance is more important than maintaining PAP payment levels. The Commission's prior orders focused on the need for the plan to adequately detect and sanction poor performance, thereby providing a meaningful incentive for Qwest to comply with the defined standards. The proposed Tier 2 payment trigger is consistent with both of these priorities. Tier-2-only measures, based on regional results, will continue to trigger payments when a single month's performance does not meet the standard. For the remaining Tier 2 measures, individual CLEC monthly performance will trigger Tier 1 payments whenever results fall short. These ongoing payments provide appropriate "sanctions" for individual month misses. Further, the change allows Qwest to focus on improving performance where it is needed – where the performance misses the standards on more than just a single month's basis.

[22] There were two additional product/sub-measure combinations with three performance misses during the year but these did have a pattern and under the proposed change these payments would not have been avoided.



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DATED this ___ day of April, 2008.

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