

**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 )  
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**ADDITIONAL STATEMENT OF SUPPLEMENTAL AUTHORITY  
REGARDING QWEST'S PERFORMANCE ASSURANCE PLAN**

AT&T Communications of the Pacific Northwest, Inc. and AT&T Local Services on behalf of TCG Seattle and TCG Oregon ("AT&T") hereby submit the Montana Final Report<sup>1</sup> and the Colorado Public Utilities Commission's Decision on Remand<sup>2</sup> as well as an Affidavit of Steven Davis, Esq. of Qwest<sup>3</sup> as supplemental authority stating as follows:

In pleadings before this Commission, Qwest has indicated that decisions from the two above stated commissions regarding the Qwest Performance Assurance Plan should carry no weight because they either were not "final" (in the case of Montana) or that they were just the decision of a "hearings commissioner" (in the case of Colorado).

AT&T's most current supplemental authority includes the final report in Montana that contains sound and well-reasoned dicta supporting its preliminary findings. These findings include:

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<sup>1</sup> Exhibit A.

<sup>2</sup> Exhibit B.

<sup>3</sup> Exhibit C.

- 1) Maintaining a 36% procedural cap as opposed to hard cap.
- 2) Maintaining equalization principles if the Commission ultimately decides to institute a hard cap.
- 3) Basing the procedural cap on **current**, as opposed to historical, ARMIS data.
- 4) Finding that the QPAP is not a “liquidated damages” contract and thus CLECs can seek alternative remedies after meeting a procedural threshold (as instituted by the Colorado PUC and also adopted in Washington State).
- 5) Finding that only a court or agency that awarded damages to CLEC determine offset as opposed to Qwest making that determination.
- 6) Striking the use of Tier 1 payments to fund the Commission’s QPAP oversight.
- 7) Finding that there is no escalation of Tier II payments to the states.
- 8) Continuing Tier 1 payment escalation continuously after six months (as instituted by the Colorado PUC).
- 9) Finding that it is not timely to include special access **penalties** but indicates that it retains the right to implement at the six-month review.
- 10) Finding that the Commission as opposed to Qwest will maintain ultimate change control over the QPAP including the right to resolve disputes occurring in the six-month review.
- 11) Finding that Qwest need not make changes to the 100% cap for interval measures. However, the Commission retains the right to require Qwest to do so (as well as any other changes the Commission so requires) at the six-month review.
- 12) Finding that language should be added to the QPAP allowing CLECs to seek interconnection remedies until entering into the QPAP. Also, requires Qwest to institute language clarifying that the CLECs would receive remedies for performance not included in the QPAP.
- 13) Finding that bill credits are appropriate.
- 14) Maintaining Commission control over audit while contemplating participation in multi-state auditing effort.
- 15) Including AT&T’s suggested language in §13.10 related to payments should not be recovered in rate escalation.

As such, Qwest’s argument that these findings were “preliminary” carries no weight.

AT&T’s supplemental authority also includes the Colorado Public Utilities Commission’s “Decision on Remand and Other Issues Pertaining to the Colorado Performance Assurance Plan” and the Affidavit of Steven Davis, Esq. accepting the plan. The Colorado Public Utilities Commission’s created plan (contained in Attachment A of Exhibit B) is contrary in several key aspects to Qwest’s currently proffered QPAP.

Interestingly enough, the Colorado Commission made analogous findings on the same several key issues to the findings made by various Commissions that have entered findings on the QPAP. Although Qwest has argued that the QPAP and CPAP are “different plans,” they are certainly not different in terms of the key elements at issue including legal operation, ability for CLECs to seek alternative remedy, payment escalation, inclusion of special access measures and the relevant commission’s ability to craft and maintain a performance assurance plan. Most importantly, the Order on Remand is unambiguous; if Qwest does not accept the Colorado Commission’s mandated CPAP, the Colorado Commission “would recommend to the Federal Communications Commission that Qwest has not complied with the public interest requirements of §271.”<sup>4</sup>

AT&T suggests that these orders, including Qwest’s acquiescence in the Colorado PAP, be considered as strong precedent in building Washington’s performance assurance plan.

Respectfully submitted on April 23, 2002.

AT&T COMMUNICATIONS OF THE  
PACIFIC NORTHWEST, INC. AND  
AT&T LOCAL SERVICES ON BEHALF  
OF TCG SEATTLE AND  
TCG OREGON

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<sup>4</sup> Exhibit B at p.57.