

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 PETITION
FOR ADMINISTRATIVE REVIEW OF
ORDER 07, INITIAL ORDER

I. INTRODUCTION

- 1 Pursuant to WAC 480-07-825, Qwest Corporation ("Qwest") hereby files its petition for administrative review of the Initial Order ("Order 07") that was served on June 5, 2008 in this docket.
- 2 Under the Commission's rule, petitions for administrative review must clearly identify the nature of each challenge to the initial order, the evidence, law, rule or other authority that the petitioner relies upon to support the challenge, and state the remedy that the petitioner seeks.
- 3 Qwest challenges the holding of Order 07 that the two disputed issues are not appropriately considered in a six-month review. Citing Section 16.1 of the PAP, Order 07 declined to address the merits of the two disputed issues (One Allowable Miss – paragraphs 10, 13, 19 and

Tier 2 - paragraphs 20, 23, 26). Qwest also challenges Order 07's refusal to consider these disputed issues because of how they relate to Qwest's recently approved AFOR (paragraphs 24, 25). Qwest asks the Commission to consider the disputed issues on the merits and to resolve them in favor of Qwest's position.

4 Qwest will not repeat its arguments regarding why the disputed issues should be resolved in Qwest's favor – those arguments are set forth in three sets of comments already filed with the Commission on October 5, 2007, and April 2 and 25, 2008. In this petition, Qwest simply argues that those issues should be resolved on the merits and that consideration of those issues is not outside the scope of this docket.

II. ARGUMENT

The PAP Does Not Prohibit Consideration of the Disputed Issues

5 Qwest does not dispute that Section 16.1 of the PAP sets forth a limited scope of review for what issues may be raised in a six-month review proceeding. However, there is no prohibition against broadening the scope of review with the consent of all parties, and that is what occurred in this case. This proceeding was explicitly scoped to allow consideration of all of the issues presented by the 2007 Stipulation, and it was error to refuse to consider those issues after all the months of negotiations, after agreement had been reached on a number of other issues, and after the issues had been fully briefed.

6 This proceeding was originally opened as one in which the full settlement agreement would be reviewed. After some parties objected, Qwest agreed that the proceeding should be converted to a six-month review, thereby, in Qwest's view, *broadening* the scope of the docket. At that point, yet another notice was provided to all interested CLECs advising them of their opportunity to participate in the process. There was no objection by any party or other entity to the consideration of the issues presented by the settlement in this six-month review.

7 It would be wrong to now find that the settlement issues cannot be addressed in the newly-noticed six-month review docket. Whether the issues fall inside or outside of the direct language of the PAP is immaterial when all parties have agreed that it is appropriate to consider the issues.

8 Furthermore, there are issues that were not disputed in the 2007 Stipulation and in the 2008 Settlement that have now been approved as changes to the PAP, even though those issues may also technically fall outside the language of Section 16.1. Again, whether those issues are in the scope of Section 16.1 review or not, it was appropriate to consider them in this proceeding because of the scope of the docket and the consent of the parties. The disputed issues should be considered as well.

9 One example of a non-disputed issue that was considered in this proceeding is the Tier 1 Payment Cap issue. This issue was addressed in Order 06, paragraphs 18, 30, and 34:

18. Tier 1 Payment Cap. The parties considered eliminating the six-month cap on Tier 1 escalation payment amounts so as to allow further increases beyond payment level 6. All parties agreed that the six-month cap should be eliminated.¹ Section 6.2 of the redlined version of the PAP attached to the proposed 2008 Partial Settlement as Exhibit 1 implements the parties' agreement in this regard.

30. **DISCUSSION AND DECISION:** In considering settlement agreements, the Commission "may accept the proposed settlement, with or without conditions, or may reject it."² The Commission must "determine whether a proposed settlement meets all

¹ 2008 Partial Settlement, ¶ 12; *see also* 2008 Narrative, ¶ 12 and 2007 Narrative, ¶ 9.D.

² *WAC 480-07-750(2)*.

pertinent legal and policy standards.”³ The Commission may approve settlements “when doing so is lawful, when the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission.”⁴

34. Consistent with WAC 480-07-750, the Commission finds that its approval and adoption of the 2008 Partial Settlement is in the public interest, that the 2008 Partial Settlement is supported by an appropriate record, and that approving this agreement is lawful. The Commission concludes that it should approve and adopt the 2008 Partial Settlement as partial resolution of the issues pending in this proceeding.

10 Thus, Order 06 considered and approved the change to the Tier 1 payment cap, even though consideration of the Tier 1 Payment Cap issue is technically outside of the stated scope of review in Section 16.1. The Tier 1 Payment Cap issue did not require the Commission to “determine whether measurements should be added, deleted, or modified; whether the applicable benchmark standards should be modified or replaced by parity standards; and whether to move a classification of a measurement to High, Medium, or Low or Tier 1 to Tier 2.” Further, no party alleged that the Tier 1 Payment Cap issue involved a question of whether “there exists an omission or failure to capture intended performance, and whether there is duplication of another measurement.”

11 Rather, the Tier 1 Payment Cap issue was, substantively, much like the One Allowable Miss issue – a question of adjusting payment thresholds. There is no reasonable basis upon which

³ WAC 480-07-740.

⁴ WAC 480-07-750(1).

the Commission would consider this issue in the context of this six-month review docket and not consider the One Allowable Miss issue. In Qwest's view, both issues were properly before the Commission – both were properly noticed for consideration, and, even if they were technically outside of the scope of the review described by the PAP, the parties, by agreement, broadened the permissible scope of review for this particular docket.

The AFOR Does Not Require That These Issues Be Deferred

- 12 The Initial Order further concludes, at paragraphs 24 and 25, that consideration of these issues should also be deferred because the effect of the AFOR must be considered before any fundamental changes are made to the PAP. The Order finds that neither the 2007 Stipulation nor the subsequent briefing adequately addressed the impacts of these proposed QPAP changes on the AFOR's requirements.
- 13 Qwest respectfully disagrees with these conclusions. When the Commission approved the AFOR, the Commission was explicitly aware of the issues pending in this very docket. The Commission did not limit or restrict the parties' ability to propose changes such as these. Further, no party with any material interest in these issues is opposed to the changes – Staff does not stand to benefit or be harmed by the resolution of these issues, as Staff is neither subject to the PAP nor is it a PAP beneficiary. Therefore, because no CLEC is opposed to these changes, and because Qwest has shown that they are changes that make sense in the overall context of the PAP and the incentives that the PAP creates, those changes should be approved.
- 14 Furthermore, it is clear that all the parties to this docket *did* consider the changes in the context of the AFOR. Several significant components of the 2008 Settlement regard implementation of AFOR requirements, such as the requirement that the PAP terms be made available for

substitute UNEs. Qwest and the other parties negotiated to implement this requirement, and indeed Qwest conceded a significant point on that issue in these negotiations and agreed to make the PAP terms available even as to those commercial agreements where CLECs had already entered into contracts that stated the PAP would *not* apply. So, it is incorrect to assume that the impact of the AFOR has not been considered – it was a major component of the negotiations on the issues in this docket.

III. CONCLUSION

15 The Commission should reverse the findings and conclusions of Order 07 insofar as they determine that the disputed issues are outside the scope of this docket or do not appropriately take into account the provisions of the AFOR. The Commission should resolve those issues in favor of Qwest, for the reasons set forth in Qwest’s three sets of comments previously filed in this docket.

16 DATED this ___ day of June, 2008.

QWEST CORPORATION

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