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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Investigation into
U S WEST Communications, Inc.'s
Compliance with Section 271 of the
Telecommunications Act of 1996

Docket No. UT-003022

In the Matter of U S WEST Communications,
Inc.'s Statement of Generally Available Terms
Pursuant to Section 252(f) of the
Telecommunications Act of 1996

Docket No. UT-003040

**QWEST'S JUNE 25, 2002 QPAP
COMPLIANCE FILING**

Pursuant to the Commission’s direction in the 37th Supplemental Order in this proceeding, Qwest is providing its Performance Assurance Plan (“QPAP”)(“Exhibit K to the SGAT”), revised to reflect the requirements of that order, as clarified by the 38th Supplemental Order. The QPAP is provided in two formats. Consistent with how SGAT revisions have been provided in the past, there is a “redline” version that shows changes from the prior filing, with footnotes describing the change, and a “clean” version that shows all of the new language in final form.

Qwest has also provided a compliance matrix, consistent with the Commission’s requirement for provision of such a matrix for SGAT changes. The matrix identifies the applicable ordering paragraphs from either the 30th, 33rd, 37th, or 38th Orders, provides a brief narrative description of the change required, and identifies the location in the QPAP where the change has been made in compliance with the Orders. One minor change not identified in the matrix is that Qwest has simply re-numbered Sections 12.2 through 12.2.4 because prior sections have been deleted.

1 In this filing Qwest also calls to the Commission's attention an additional point of clarification that
2 Qwest has included in its compliance language for Section 16.¹ This clarification relates to the issue of the
3 Commission's authority, which was discussed at the hearing on June 5, 2002. Qwest's concerns about
4 that issue were discussed on the record, and, as Qwest will explain herein, Qwest believes that its
5 compliance language is consistent with the Commission's view of this issue as discussed on the record.

6 In the 30th Supplemental Order, in paragraphs 146 and 347, the Commission ordered Qwest to
7 amend QPAP Section 16.1. The Commission ordered Qwest to strike "Changes shall not be made
8 without Qwest's agreement," and add "After the Commission considers such changes through the six-
9 month process, it shall determine what set of changes should be embodied in an amended SGAT that
10 Qwest will file to effectuate these changes." Those aspects of the 30th Supplemental Order were not
11 changed by any subsequent orders; Qwest has included both changes in the revised SGAT.

12 However, the concern that Qwest has arises from the language "that Qwest will file to effectuate
13 these changes", coupled with the fact that this language is not simply in a Commission order, but will also
14 be in the QPAP, which is a *contract* between Qwest and a CLEC. While it is clear that parties cannot
15 confer upon the Commission jurisdiction it does not otherwise have, the issue here is that if the language is
16 included in a *contract*, a court or future Commission applying principles of contract interpretation might
17 conclude that the parties agreed to waive their right to challenge Commission action on jurisdictional or
18 other grounds. This issue is quite apart from the issue of jurisdiction and, as explained above, arises only
19 because this language will be in a contract between Qwest and another carrier, and interpretation of that
20 contract might occur long after those of us who have been close to the issues have moved on to other
21 challenges. Thus, Qwest seeks clarification language as set forth in proposed Section 16.1.2. That
22 language reads as follows:

23 16.1.2 Nothing in this QPAP precludes the Commission from modifying
24 the QPAP based upon its independent state law authority, subject to
judicial challenge. Nothing in this QPAP constitutes a grant of authority

25 ¹ Qwest did not raise this issue in its request for clarification filed yesterday, June 24, 2002, because the clarification
26 requested in that pleading had to do with clarification of specific language in the Commission's 37th Supplemental
Order that was necessary in order for Qwest to finalize the compliance QPAP – the clarification sought on this issue is
of a different nature, as explained herein.

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by either party to this agreement nor does it constitute a waiver by either party to this agreement of any claim either party may have that the Commission lacks jurisdiction to make any modifications to this QPAP, including any modifications resulting from the process described in Section 16.1.

Qwest believes that this language is consistent with the views expressed by both Chairwoman Showalter and Commissioner Hemstad during the oral argument on this issue.² Qwest respectfully requests that the Commission allow this QPAP to become a part of the Eighth Revised SGAT (also filed today).

Dated this 25th day of June, 2002.

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² UT-003022/UT-003040, Transcript Volume LVII 6/5/02
Chairwoman Showalter: And I'm really thinking out loud here, but you could reverse that too, you could say nothing in the SGAT gives the Commission jurisdiction where it doesn't have it. Tr. 7906, lines 5-8.

Commissioner Hemstad: I don't think, well, in the first place, we could not assert authority that we don't have, if we don't have the jurisdiction, the parties and we can't come to some agreement that grants us that jurisdiction, that's fundamental, and so I don't think you need to make that argument. Tr. 7932, lines 3-8.