

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of

QWEST CORPORATION

Petition for Commission Approval of
Stipulation Regarding Certain
Performance Indicator Definitions and
Qwest Performance Assurance Plan
Provisions

DOCKET NO. UT-073034

QWEST'S REPLY COMMENTS
(November 24, 2008)

- 1 On October 20, 2008, the Washington Utilities and Transportation Commission (“Commission”) requested comments on a set of three questions in connection with the issue of whether further action is necessary in a five and one-half year review proceeding. Comments were filed on November 12, 2008 by Qwest Corporation (“Qwest”), Commission Staff (“Staff”), Integra Telecom (“Integra”), and the Joint CLECs¹. In accordance with the schedule established in the October 20 Notice, Qwest hereby responds to the comments filed by the other parties.
- 2 In response to the Commission’s questions, both Integra and the Joint CLECs indicated that they generally did not see a need for a five and one-half year review at this time. This response to Question 1. appears to be based on the belief, expressed in response to Question 3., that no changes to the QPAP will take place, including those changes that are expressly

¹ The Joint CLECs are XO Communications Services, Inc., and tw telecom of washington, llc.

required to occur by the very terms of the QPAP. Qwest disagrees with Integra's and the Joint CLECs' response to Question 3.

3 Staff's comments acknowledge that the parties may have a difference of opinion with regard to whether certain measures continue beyond six years or expire at the six year mark in accordance with the terms of Section 16.3 of the QPAP. Staff's comments recite some of the history of the PAP, the purpose of the five and one-half year review and the effect of the AFOR order on existing QPAP terms. However, Staff's conclusion that the AFOR order should be interpreted to have implicitly eliminated the reduction of measures explicitly defined in Section 16.3 is flawed. In fact, much of Staff's argument about the history of the PAP supports the opposite conclusion.

4 Section 16.3 is a provision that requires retention of a subset of measures (those defined as most critical in the Colorado PAP) after the six year mark. This provision is a self-effectuating term of the PAP that has been in place since the inception of the PAP. This Commission ordered Qwest to include this Colorado PAP term in the Washington PAP. In its AFOR order, the Commission ordered that the existing version (which included the automatic reduction of measures) of the QPAP must remain in effect for the duration of the QPAP unless modified by the Commission. The Commission explicitly found that the provisions in Section 16.3 remain in effect.

5 The Colorado term adopted in the creation of the PAP is described by the Colorado Hearing Examiner as a self effectuating term. This Commission generally agreed with the Colorado Hearing Examiner's findings. The Commission, in its AFOR orders, could have explicitly modified this term, but rather explicitly cited it as remaining in effect. The Commission could have rejected the QPAP provisions that mandated the expiration of measures at the six year mark as being inconsistent with its AFOR order, or not satisfying

RCW 80.36.135(3) but it did not.

6 Thus, Qwest believes that Section 16.3 operates, without further action of the Commission, to mandate that certain measures and submeasures expire automatically. The other parties filing comments in this proceeding argue² that the Commission's orders in the AFOR somehow require the Commission to separately approve whether the provisions of Section 16.3 continue to be effective. Qwest respectfully disagrees, based on the language in Order No. 8 in the AFOR.

7 The relevant provisions of Order No. 8 are quoted in paragraph 18 of Staff's Comments. Staff emphasizes the Commission's language that requires Commission approval before any changes are made to the QPAP, and the Commission's mandate that the QPAP remain in place in its current form for the duration of the AFOR.

8 Paragraphs 22 and 23 of Order No. 8 are set forth below, with emphasis added to highlight the language that Qwest believes is relevant. Paragraph 21, quoted by Staff but not set forth here, states that changes to the QPAP must be measured against 80.36.135(3) before approval by the Commission. However, Qwest believes that this requirement applies to changes proposed by a party, not those changes that were already embedded in the QPAP and intended to be self-executing absent some action by the Commission.

22. Accordingly, we conclude that the QPAP must be modified to fulfill the requirements of RCW 80.36.135(3). Subject to the following conditions, the current provisions of the QPAP, together with other existing measures, should constitute an adequate carrier-to-carrier service quality plan within the meaning of the statute. First, the QPAP must remain in place for the full four-year term of the AFOR, unless modified by the Commission. **This condition recognizes the current provisions of the QPAP** including the requirement to review the QPAP after five and one-half years to determine whether to modify or

² See Integra Comments at page 2, paragraph 3., Joint CLEC Comments at page 1, paragraph 3., and Staff Comments at paragraphs 17 and 19.

terminate the QPAP, **remain in effect**. [footnote cite to Section 16.3 of the QPAP]. Absent modification, the QPAP will provide carrier-to-carrier service quality standards for the full term of the AFOR.

23. Second, the QPAP must remain available to all wholesale carriers **in its current form unless modified by the Commission**. This condition does not preclude Qwest, or any other party, from seeking Commission approval of changes to the QPAP, such as those changes currently under consideration in a separate proceeding. [footnote cite to this docket]. Third, the QPAP terms and conditions must apply to all wholesale services provided by Qwest as a substitute for unbundled network elements during the term of the AFOR, unless the affected parties agree otherwise.³

9 Qwest believes that the Commission *recognized* that the QPAP contained terms that would operate automatically to revise the QPAP at the six-year mark,⁴ and the Commission did not affirmatively modify those terms. As such, the Commission's requirement that the QPAP is to remain in place "in its current form" means that the "current form" includes those changes already embedded in the QPAP.

10 By the terms of the QPAP, only the submeasures identified in Attachment 3 and payments will continue beyond December 23, 2008. This provision and deadline was not changed in either the AFOR proceeding or this docket. Thus, the QPAP continues to exist and to operate in accordance with its terms. One of those terms specifies that only certain submeasures and payments, not all of them, continue beyond six years. Qwest respectfully asks the Commission to affirm this interpretation in its order addressing the parties' comments on this issue.

QWEST

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³ Docket No. UT-061625, Order No. 8, paragraphs 22 and 23.

⁴ The Commission's citation to Section 16.3 of the QPAP in the AFOR makes this clear.