

1 **BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION**  
2 **COMMISSION**

3 In the Matter of the Application of

4 U S WEST, INC., and QWEST  
5 COMMUNICATIONS  
6 INTERNATIONAL, INC.

7 For an Order Disclaiming Jurisdiction, or  
8 in the Alternative, Approving the U S  
9 WEST, INC., - QWEST  
10 COMMUNICATIONS  
11 INTERNATIONAL, INC. Merger

DOCKET NO. UT-991358

**NON-CONFIDENTIAL**  
MEMORANDUM OF PUBLIC  
COUNSEL REGARDING QWEST  
PETITION TO TERMINATE  
SERVICE QUALITY PROGRAM OR  
IN THE ALTERNATIVE, MODIFY  
THE SERVICE QUALITY  
PROGRAM

12 **I. BACKGROUND**

13 US West Inc. and Qwest Communications International Inc. sought Commission  
14 approval for their merger in a petition filed August 31, 1999. The Commission approved the  
15 merger in its Ninth Supplemental Order in this docket, and adopted two settlement agreements  
16 – a “Retail Settlement Agreement” and a “Competitive Settlement Agreement.”<sup>1</sup> The Retail  
17 Settlement Agreement included a set of conditions designed to ensure the merger did not harm  
18 customers. These included a rate freeze, a Service Quality Performance Program, and a Qwest  
19 commitment to maintain historic investment levels in Washington following the merger. The  
20 Competitive Settlement Agreement addressed carrier-to-carrier service quality issues.

21 Perhaps the most significant commitment in the Retail Settlement Agreement is the  
22 Service Quality Performance Program (SQPP), which establishes performance benchmarks and  
23 places \$20 million at risk per year should the company not meet the benchmarks. The program  
24 establishes eight performance baselines designed to provide an incentive to Qwest to provide

25 <sup>1</sup> *In re Application of US WEST, INC. and QWEST COMMUNICATIONS INTERNATIONAL INC. For*  
26 *an Order Disclaiming Jurisdiction or, in the Alternative, Approving the US WEST, INC. - QWEST*  
*COMMUNICATIONS INTERNATIONAL INC. Merger*, Docket No. UT-991358, Ninth Supplemental Order  
Approving and Adopting Settlement Agreement and Granting Application (“Merger Order”). The “Retail  
Settlement Agreement” is included as Attachment A to the Ninth Supplemental Order, and the “Competitive  
Settlement Agreement” is included as Attachment B to the Order.

1 adequate service quality. If the Company fails to meet these eight baseline performance levels,  
2 the company must provide bill credits to customers to compensate them for shortcomings. For  
3 Public Counsel, the Service Quality Performance Program is one of the primary reasons we  
4 signed the Retail Settlement Agreement.

5 Qwest has paid credits to customers every year since the plan went into effect, as  
6 follows:

- 7 • \$3,173,800 in 2001;
- 8 • \$1,895,243 in 2002;
- 9 • \$1,926,471 in 2003.<sup>2</sup>

10 Each year since the program took effect, Qwest has failed to meet five of the eight  
11 performance measures in the SQPP. Those five performance measures are as follows:

- 12 • completing 90% of orders of up to five lines within five business days in each  
13 exchange,
- 14 • completing 99% of orders of up to five lines within 90 calendar days in each exchange,
- 15 • repairing out-of-service conditions (less certain exceptions) within two working days;
- 16 • answering 80% of calls placed to Qwest's customer service centers (business offices)  
17 within 30 seconds, and
- 18 • providing a complete and detailed response to WUTC Consumer Affairs staff within  
19 two business days.

20 Under the terms of the Retail Settlement Agreement approved by the Commission, the  
21 program began January 1, 2001, and remains in effect through 2005, except Qwest can petition  
22 to terminate the Service Quality Performance Program after calendar year 2003. The  
23 settlement does not require Qwest to continue the program after calendar year 2005. Merger  
24 Order, ¶ 30.

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26 <sup>2</sup> This information is in Attachment 1 to Qwest's Termination Petition, and is also available in Qwest's  
Annual Reports on Service Quality for 2001, 2002, and 2003, which are sent to customers. (Attachment A)

1 **II. DISCUSSION**

2 On January 30, 2004, Qwest Corporation (Qwest) filed a petition to terminate the  
3 SQPP. (“Termination Petition”). Qwest’s Termination Petition cites three reasons as a basis  
4 for termination of the service quality program. First, Qwest cites the “significant competitive  
5 presence that now exists in Washington.” Termination Petition ¶ 3. Second, Qwest argues that  
6 the SQPP is no longer needed because of Qwest’s Customer Guarantee programs, which  
7 provide compensation to customers for certain service failures. *Id* at ¶ 4. Third, Qwest argues  
8 that the Commission’s recently revised telecommunications service quality rules provide  
9 “revised and/or established retail service quality standards for the same activities monitored in  
10 the SQPP.” *Id* at ¶5.

11 **A. Public Counsel Recommends that the Commission Deny Qwest’s Request for**  
12 **Early Termination of the Service Quality Program**

13 Public Counsel opposes Qwest’s petition to terminate the SQPP and respectfully  
14 recommends that the Commission deny the petition. As we discuss in more detail below, we  
15 believe the program is having its intended effect and should therefore be continued, not  
16 terminated. Qwest has responded appropriately to the incentives and has improved service in  
17 some areas, but in other areas there is still room for improvement. Each year Qwest has failed  
18 to meet five of the eight performance baselines. Those performance failures should not now be  
19 rewarded with early termination of the program.

20 **1. The public interest standard is the appropriate standard for review of**  
21 **Qwest’s Termination Petition.**

22 The Retail Settlement Agreement does not specify a standard that the Commission  
23 should employ in considering a petition to terminate the SQPP. Section II. B.(7). Public  
24 Counsel believes that the appropriate standard of review in this matter is whether granting the  
25 petition to terminate the SQPP is in the public interest. RCW 80.01.040 (3). Qwest bears the  
26 burden of proof to provide persuasive evidence in support of their petition.

1           **2.     Qwest service quality has improved in several but not all areas, showing**  
2           **that the SQPP is still needed as an incentive.**

3           In several areas Qwest's service quality has indeed improved since the merger. To the  
4 extent service has improved in certain areas, Public Counsel believes this indicates the program  
5 is working as intended, and should be continued, not terminated. For example, one area in  
6 which Qwest's performance has consistently improved since the merger is the company's  
7 response to the Commission's Consumer Affairs staff (providing a complete and detailed  
8 response within two business days). During 2001, Qwest failed to meet this performance  
9 measure every month, and thus faced a maximum credit amount of \$1M. In the following  
10 year, 2002, the Company failed to meet this standard for five months out of the year and paid  
11 \$416,667 in customer credits. In 2003, Qwest failed to meet the standard in two months and  
12 further reduced its credit obligation from the prior year to \$166,667. Qwest has clearly made  
13 an effort to improve in this area, and those efforts have resulted in fewer customer credits  
14 during the past three years. Leaving the SQPP in place will maintain the incentive Qwest has  
15 had to improve on this and other performance measures.

16           While Qwest's service quality has improved in certain areas, such as trouble reports  
17 and dial tone speed, Qwest has failed to show consistent improvement in all areas since the  
18 merger. Qwest's service quality has deteriorated in the company's answer time performance in  
19 calls to its customer service offices. On this performance measure, Qwest failed to meet the  
20 standard (answer time within 30 seconds on 80% of calls) for nine months in 2001, then  
21 improved during 2002 and failed to meet the standard for only three months, but then slid back  
22 and failed to meet the standard for eight months during 2003.

23           **3.     Qwest's customer service guarantee programs complement the service**  
24           **quality performance program, but serve a different purpose.**

25           Qwest argues that since the company offers customer-specific credits for certain service  
26 failures that are also monitored as part of the SQPP, the two programs together provide

1 “double coverage” that is no longer needed and thus the SQPP should be terminated.  
2 Termination Petition ¶ 4. The inception of the customer service guarantee program dates back  
3 to the 1995 US West rate case. In its Fifteenth Supplemental Order in that case, the  
4 Commission ordered the company to offer a held order/wireless loaner guarantee.<sup>3</sup> The  
5 program was continued and expanded as part of the 1997 “make whole” US West rate case, in  
6 which the Commission directed the company to institute a \$50 missed  
7 appointment/commitment program.<sup>4</sup> As part of the Retail Settlement Agreement in the merger,  
8 the company agreed to further expand and continue these customer service guarantee programs  
9 for a minimum of three years. Retail Settlement Agreement, Section II.A. At the time of the  
10 merger, therefore, Qwest agreed to both sets of protections and made no assertion that they  
11 were duplicative.

12 In addition, in the recent DEX Settlement Agreement adopted by the Commission,  
13 Qwest agreed to continue these programs for a minimum of two more years, through June 30,  
14 2005.<sup>5</sup> Neither the Retail Settlement Agreement in this docket, nor the Dex Settlement  
15 Agreement reflect any concern over duplicative programs or indicate that the continuation of  
16 the service guarantee programs would be considered as a factor in justifying termination of the  
17 SQPP. When Qwest agreed to continue to offer the customer guarantees as a condition of the  
18 Dex sale, it knew or should have known that the SQPP might remain in place through 2005.

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22 <sup>3</sup> *Washington Utilities and Transportation Commission v. US West Communications, Inc.*, Docket No.  
23 UT-950200, Fifteenth Supplemental Order, Commission Decision and Order Rejecting Tariff Revisions;  
24 Requiring Refiling, April 11, 1996, page 23.

25 <sup>4</sup> *Washington Utilities and Transportation Commission v. US West Communications, Inc.*, Docket No.  
26 UT-990766, Tenth Supplemental Order, Commission Decision and Order Rejecting Tariff Revisions; Requiring  
Refiling, January 15, 1998, page 27. *See also* Docket No. UT-970766, Twelfth Supplemental Order, Commission  
Order on Clarification (Service Guarantee and Missed Appointment Issues).

<sup>5</sup> *In the Matter of the Application of QWEST CORPORATION Regarding the Sale and Transfer of Qwest  
Dex to Dex Holdings, LLC, a non-affiliate*, Tenth Supplemental Order: Approving and Adopting Settlement  
Agreement; Granting Application and Accepting Notice, Subject to Conditions, UT-021120, August 1, 2003, ¶  
29.

1           Rather than providing so called “double-coverage” the customer service guarantees and  
2 the SQPP serve complementary but different purposes. The customer service guarantees are  
3 designed to provide credits to specific customers who experience inferior, inadequate service.  
4 While these credits provide compensation to those individual customers, in the aggregate, the  
5 dollar amount the company pays to customers is not necessarily large enough to provide an  
6 effective incentive to encourage high quality service. For example, in 2003 Qwest’s annual  
7 service quality report to customers indicates that 1,315 customers experienced an out-of-  
8 service condition lasting longer than two working days. If all of these customers qualified for  
9 the \$5.00 credit awarded to customers under Qwest’s out-of-service guarantee, the Company  
10 would have paid a total of \$6,575 in credits to customers. While the \$5 credit is important in  
11 that it provides some compensation to the individual customer, the approximately \$6,500  
12 Qwest pays in customer credits is small enough that most likely it is recognized by the  
13 company as merely a cost of doing business.<sup>6</sup>

14           The purpose of the Service Quality Performance Program, however, is to place enough  
15 dollars at risk in potential financial “penalties” or customer credits to function as an effective  
16 incentive for the Company to make the necessary investments in order to meet service quality  
17 performance standards. During the Commission’s March 14, 2000, hearing considering the  
18 Retail Settlement Agreement, US West witness Ms. Theresa Jensen indicated that the service  
19 quality conditions in the settlement agreement, and particularly the SQPP, would provide such  
20 an incentive. In response to a question from Chairwoman Showalter, Ms. Jensen stated:

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25           <sup>6</sup> Some of these 1,315 customers may qualify for Qwest’s \$50 missed commitment guarantee. In order to  
26 be eligible for the \$50 guarantee, Qwest would have had to make a repair service commitment to the affected  
customer. Even if all 1,315 customers contacted Qwest and arranged for a service commitment of two working  
days, which was then not met by Qwest, the company’s credit obligation would be \$65,750.

1 “We would much rather take the potential 20 million dollars and invest it in the  
2 network to provide services to the customers than to pay it as a credit to  
3 customers, so the reality of this agreement is it insents [sic] the company to look  
4 at not only it’s [sic] investment but its practices, its forecasts, its planning, to  
5 attempt to minimize what it pays in the form of service programs or credits and  
6 provide better service to the customer in the end, and everyone will benefit from  
7 that, not just consumers.”

8 Tr. 403.<sup>7</sup>

9 Finally, another way in which the customer guarantees and the SQPP complement  
10 rather than duplicate one another is that some of the performance measurements in the SQPP  
11 are not captured at all by the customer guarantee programs. This is due in part to the fact that  
12 in some circumstances it is impossible or impractical to identify and thereby compensate the  
13 affected customers. For example, with respect to the two performance standards measuring  
14 answer time in Qwest’s customer service (business) centers and repair centers, it would be  
15 impossible to locate those customers who experience long hold times, some of whom may  
16 decide to hang up in frustration. Another area not covered by the customer guarantees is  
17 Qwest’s response to WUTC Consumer Affairs complaint staff.

18 In summary, while the customer service guarantees provide at least a nominal remedy  
19 to those consumers that have already been harmed by inferior service, the SQPP is designed to  
20 provide Qwest with incentives to provide adequate service quality to all of its customers.

21 **4. Qwest investment levels in Washington are an additional justification for**  
22 **continuing the Service Quality Performance Program.**

23 As part of the Retail Settlement Agreement, the company agreed to maintain historic  
24 annual capital investment levels of \$133 per access line per year for three calendar years after  
25 the merger, from 2001 through 2003. This commitment is outlined in paragraph 31 of the  
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<sup>7</sup> Qwest’s Termination Petition suggests in footnote 5 that “using the payments to fund specified infrastructure projects would probably provide more tangible benefits to customers.” Public Counsel disagrees and opposes this request, if it is indeed a request. Ms. Jensen’s comments illustrate why placing dollars at risk in the form of bill credits to customers is necessary to provide incentives to provide adequate service, rather than financial “penalties” that are then returned to the company to fund infrastructure projects that may have occurred regardless.

1 Commission's Merger Order, and Section III. D of the Retail Settlement Agreement. The  
2 company further agreed to file quarterly investment reports with the Commission, and to meet  
3 with the Commission annually to discuss the prior year's investment and preview planned  
4 investments for the coming year.<sup>8</sup> Retail Settlement Agreement, Section III. D.

5 Public Counsel's Confidential Attachment B provides a table summarizing Qwest's  
6 capital investment in Washington since the merger. The first column indicates the company's  
7 average annual capital investment in Washington prior to the merger, of \$335M or \$133 per  
8 access line. Merger Order. Order at ¶ 31. See also Tr. 391-395.<sup>9</sup> Row A in the table indicates  
9 Qwest's capital investment in Washington during 2000 through 2003, as reported by the  
10 Company in accordance with the terms of the Retail Settlement Agreement. Row B shows  
11 Qwest's access lines as of December of each year, as reported by Qwest in their monthly  
12 service quality reports filed in this docket.<sup>10</sup> Row C then reflects Qwest's investment on a per  
13 access line basis, which shows that there has been a **[BEGIN CONFIDENTIAL]** \*\*\*\*\*  
14 **[END CONFIDENTIAL]** trend in Qwest's investment in Washington from 2000 to 2003, and  
15 that investment for 2002 and 2003 was **[BEGIN CONFIDENTIAL]** \*\*\*\*\* **[END**  
16 **CONFIDENTIAL]** pre-merger levels.

17 We encourage the Commission to consider this trend of **[BEGIN CONFIDENTIAL]**  
18 \*\*\*\*\* **[END CONFIDENTIAL]** capital investment in Washington, and believe that it  
19 represents yet another major reason to continue the Service Quality Performance Program  
20 through 2005. Prior Commission orders involving Qwest and its predecessor US West have  
21 discussed the relationship between the company's service quality and its investment in capital

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22 <sup>8</sup> On December 22, 2003, Qwest filed a revised investment report in this docket to reflect "revisions for  
23 the restatement of Qwest Corporation's financial results." The letter further explains that: "The restatement of  
24 2000 and 2001 financial results included changes to the amounts previously reported as construction expenditures  
25 during these two years." Qwest's 2003 annual investment in Washington was reported to the Commission on  
26 February 27, 2004.

<sup>9</sup> Excerpts from the transcript for the Commission's March 14, 2000 hearing on the Retail Settlement Agreement are attached hereto as Attachment D.

<sup>10</sup> To the extent that access line count is decreasing during the year, using the December line count is more conservative, and results in a slightly higher investment per access line calculation.

1 and human resources. For example, the Commission’s Tenth Supplemental Order in the 1997  
2 “make whole” US West rate case, states in part:

3           The Company must also recognize its own obligation to make investment in  
4 the State. During the period of AFOR regulation in the early 1990’s, the  
5 Company earned and kept millions of dollars more than its authorized return,  
6 yet during that period was reducing its investment in the State. Some of the  
7 Company’s present service problems appear to stem from its failure to invest  
8 sufficient capital or human resources. ...

9           One of the Commission’s greatest concerns is that the Company provide  
10 top-quality service to the residential and small business customers who  
11 presently have almost no alternative service providers. It is essential that the  
12 Company meet its obligation under the law to provide adequate service. As  
13 Staff witness Blackmon pointed out, more than anything else, that means  
14 making the investments in capital and personnel necessary to make service  
15 available. ...

16 Tenth Supplemental Order, UT-970766, January 15, 1998, page 11 (emphasis in original,  
17 footnotes omitted).<sup>11</sup>

18 The Commission raised this issue again, later in the same order, stating: “Mr. Blackmon was  
19 accurate, we believe, in noting that service quality is in large measure a function of decisions  
20 about investment and staffing that are made in the Company at the highest levels.” *Id.* at 26.

21           Over two years later, as part of the US West – Qwest merger proceeding, the  
22 Commission was once again grappling with questions regarding the company’s investment in  
23 Washington and service quality. During the Commission’s March 14, 2000, hearing  
24 considering the Retail Settlement Agreement, Commissioner Hemstad asked Staff witness Dr.  
25 Blackmon about this issue:

26 \* \* \* \*

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<sup>11</sup> See also UT-950200, Fifteenth Supplemental Order, April 11, 1996, pages 11-12.

1 Commissioner Hemstad: ... I realize this is a settlement agreement, but in the  
2 staff's filed testimony, staff was urging that increased investment of 100 million  
3 dollars per year for five years occur, the premise behind which it would have to  
4 be; that would be required to meet certain quality standards, but now that's gone  
5 in this settlement arrangement. The question generally is, will the movement  
6 for capital investment resolve the seemingly unresolvable service quality and  
7 capital shortfall investment problems that we've been struggling with for a  
8 considerable number of years?

9 Tr. 399-400.

10 Dr. Blackmon began his response by stating: "I think it's probably the single biggest question  
11 that we faced in deciding whether to sign onto this agreement was whether we could back  
12 away from those additional investment commitments that we have advocated." Tr. 400. He  
13 explained that Commission Staff's preference, as part of its work addressing investment and  
14 service issues, was to measure performance, rather than rely exclusively on specific investment  
15 requirements.

16 Dr. Blackmon: So we have believed that performance was the right  
17 place to look to try to measure the performance of the company. Where  
18 we've been stymied in that performance approach is that the tools that  
19 we had to do that didn't seem to be very workable; that if we were to  
20 take a performance approach outside of an agreement like this, we  
21 would have to do it through enforcement action with the Commission,  
22 complaints and penalties, and that process, we believed, was so  
23 cumbersome, and in many cases was insufficient, that you could end up  
24 proving multiple violations of service quality performance rules, and it  
25 still wouldn't amount to much money under our penalty provisions....

26 ...so what we were able to do through an agreement is to reach that  
result that we think is really the preferable result to let the company  
make its own decisions within some parameters about how it spends its  
money, how much it spends on investment versus maintenance, things  
like that, and then we will measure it based on its performance  
afterwards, and if their performance falls short of the standards, they  
will pay the customers up to the 20 million dollars a year for that  
inadequacy.

Tr. 400-402.

Public Counsel agrees with this analysis and recommendation. The best method for  
encouraging a dominant incumbent phone company such as Qwest to provide efficient and  
reliable service to its customers is through a self-executing incentive program that places a

1 significant amount of dollars “at risk” in potential customer credits, such as the SQPP. The  
2 investment data reflected in Public Counsel’s Confidential Attachment B shows a fairly  
3 significant [BEGIN CONFIDENTIAL] \*\*\*\*\* [END CONFIDENTIAL] trend in  
4 Qwest’s capital investment in Washington, as measured on a per-access line basis, and raises  
5 the possibility that this could lead to deterioration in Qwest’s service quality. For this reason,  
6 it would be most prudent to allow the SQPP to remain in effect for two more years, rather than  
7 granting Qwest’s petition for early termination.

8 **5. The current state of competition does not justify termination.**

9 **a. Qwest is still the dominant provider for residential customers and**  
10 **still serves a large majority of business customers.**

11 Qwest argues that the SQPP should be terminated because during the past three years  
12 there has been “significant change to the competitive environment.” Termination Petition ¶ 9.

13 While there have indeed been some changes, we do not believe that these changes have  
14 necessarily been “significant” to consumers, particularly residential consumers. Certainly,  
15 Qwest was granted Section 271 relief and allowed to re-enter the long distance market in  
16 Washington. However, a key question the Commission considered in that proceeding was  
17 whether Qwest had opened its network to competitors, not whether those competitors have a  
18 significant presence in the local market.

19 Qwest still dominates the local service market, particularly the residential market.  
20 Qwest has not requested nor been granted competitive classification in the residential local  
21 phone market. According to the Federal Communications Commission’s most recent report on  
22 the status of local competition, as of June 30, 2003, CLECs had a market share of only 10% of  
23 local end-user switched access lines in Washington, compared to the national average of  
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1 15%.<sup>12</sup> CLEC market share of residential and small business lines in Washington is even  
2 smaller, with CLECs serving only 6% of residential and small business switched access lines,  
3 compared to 94% for incumbents.<sup>13</sup> While Qwest was granted competitive classification of  
4 analog business services, the company still serves over 70% of the analog business market on  
5 average in its statewide service territory, with dramatically higher market shares in many  
6 areas.<sup>14</sup>

7 **b. Continuation of the SQPP has benefits for Qwest's wholesale service**  
8 **quality as well.**

9 The Commission's order approved the merger and adopted the SQPP four years after  
10 passage of the Telecommunications Act of 1996, at a time when there were beginnings of a  
11 competitive market in Washington. In fact, there was a separate settlement agreement dealing  
12 with wholesale issues. The "Competitive Settlement Agreement" primarily addressed carrier-  
13 to-carrier service quality issues. Thus, the SQPP was not adopted in a "pre-competitive" era.  
14 Qwest's arguments here are strained rather than compelling.

15 In conjunction with Qwest's Section 271 Petition a wholesale service quality program  
16 was established – Qwest's Performance Assurance Plan (QPAP). The QPAP is designed to  
17 help ensure that Qwest continues to provide fair and reasonable service to its wholesale  
18 customers (competitive local exchange carriers, or "CLECs") upon re-entry to the long  
19 distance market. The QPAP is composed of numerous performance measures, and like the

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21 <sup>12</sup> *Local Competition Report: Status as of June 30, 2003*, Federal Communications Commission,  
22 December 22, 2003, Table 6. The report can be downloaded from the FCC Internet site at:  
[http://www.fcc.gov/Bureaus/Common\\_Carrier/Reports/FCC-State\\_Link/IAD/lcom1203.pdf](http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/lcom1203.pdf). It can also be  
23 downloaded from the FCC-State Link Internet site at [www.fcc.gov/wcb/stats](http://www.fcc.gov/wcb/stats).

24 <sup>13</sup> This data is derived from data available in Tables 6 and 11 of the FCC report. For example, 48% of  
25 CLEC lines in WA serve residential and small businesses, compared to 79% for incumbents (Table 11), and total  
26 CLEC lines in WA is 386,104, compared to 3,452,669 for incumbents (Table 6).  $386,104 * .48 = 185,329$ . Total  
residential and small business switched access lines is 2,912,937.  $185,329/2,912,937 = 6\%$ .

<sup>14</sup> *In the Matter of the Petition QWEST CORPORATION For Competitive Classification of Basic  
Business Exchange Telecommunications Services*, Docket No. UT-030614, Order No. 17, Order Granting  
Competitive Classification, Finding of Fact No. 12, p. 51. See also Initial Brief of Public Counsel and  
Confidential Tables A and B attached thereto, UT-030614, October 28, 2003.

1 SQPP it is “self-executing.” In other words, if Qwest’s performance falls below certain levels,  
2 it must make payments to CLECs (Tier 1 payments) and/or the State of Washington (Tier 2  
3 payments). The QPAP places a cap on potential payments or penalties of 36% of Qwest’s net  
4 return, as reported to the FCC as part of Qwest’s Washington ARMIS results. At present, the  
5 cap is almost \$71 million.<sup>15</sup>

6 Many of the QPAP performance measures are ‘parity’ measures, in which Qwest’s  
7 service to its wholesale customers (CLECs) is compared to its service to retail customers. To  
8 the extent Qwest’s retail service quality declines, their service to wholesale customers may also  
9 decline, and if there are no financial incentives (potential customer credits) on the retail side,  
10 then Qwest arguably has an incentive to provide inferior service to retail customers because  
11 doing so would make it easier for them to meet QPAP performance standards. Continuation  
12 of the Retail Service Quality Performance Program would provide some mitigation against  
13 such a perverse incentive.

14 **6. The commission’s telecommunications service quality rules were never**  
15 **intended to replace the SQPP.**

16 Qwest argues in its Termination Petition that the Commission’s recently revised  
17 telecommunications service quality rules monitor the same performance areas as the SQPP,  
18 and that the existence of the service quality rules, in conjunction with Qwest’s customer  
19 service guarantee programs, warrant early termination of the SQPP. Termination Petition ¶15.  
20 The Commission adopted rules establishing minimum service quality standards to be observed  
21 by telecommunications companies operating in the state in January 1993.<sup>16</sup> These rules were  
22 therefore in existence at the time the Retail Settlement Agreement was negotiated and signed in  
23 the US West – Qwest merger proceeding. The existence of Commission rules on  
24

25 <sup>15</sup> Letter dated January 13, 2004, from Mark Reynolds of Qwest to Carole Washburn, UT-030388,  
pursuant to Section 12.1 of the QPAP.

26 <sup>16</sup> On January 27, 1993, in Docket No. UT-921192, the Commission adopted WAC 480-120-500,-505,-  
510,-515,-520,-525,-530,-535; these rules became effective March 29, 1993.

1 telecommunications service quality was never cited in the settlement agreement or the Merger  
2 Order as a possible justification for early termination of the SQPP. The fact that the  
3 Commission has such rules in place, and that they have recently been revised, is not  
4 compelling justification for early termination of the SQPP. The revised rules were never  
5 intended to replace service quality incentive plans for certain companies, such as Qwest's  
6 SQPP.

7 Qwest complains that differences between the revised rules and the SQPP standards are  
8 "creating confusion on the implementation of programs to meet the various standards."  
9 Termination Petition ¶5. However, while the SQPP standards are generally based on the rules  
10 that existed at the time, they were never intended to precisely mirror the Commission's service  
11 quality rules. For example, the trouble report and dial tone standards in the SQPP are actually  
12 less stringent than the Commission's rules. (The performance standards for trouble reports and  
13 dial tone in the existing rules are the same as the standards that existed under the  
14 Commission's prior rules). Neither US West nor Qwest raised this issue – the difference  
15 between SQPP standards and the Commission's rules – as an area of concern during the  
16 Commission's hearing on the Retail Settlement Agreement.

17 An important distinction between the Commission's service quality rules and the SQPP  
18 is that the SQPP is a "self-executing" incentive program. It was designed to provide the  
19 company with a set of incentives to make the necessary investments in capital and personnel in  
20 order to meet minimum service quality performance standards. The SQPP requires some  
21 monitoring by the Commission and Public Counsel, but not complaint or penalty action. The  
22 process of complaint and potential penalty action under the rules, as described by Staff witness  
23 Dr. Blackmon during the merger settlement hearing, is "cumbersome" and ultimately may not  
24 amount to enough money to send an appropriate incentive signal to the company to improve  
25 performance. Tr. 401.

1 **B. Public Counsel Recommends the Commission Deny Qwest's Request for**  
2 **Modification of the Service Quality Performance Program**

3 Qwest's Termination Petition requests that in the event the Commission decides not to  
4 grant early termination of the SQPP, the Commission should modify six of the eight  
5 performance measures in the SQPP. Qwest requests the following modifications:

- 6 • A more lenient, "sliding scale" method of calculating the customer credit obligation for  
7 the out-of-service repair interval standard; Termination Petition ¶14.
- 8 • A more lenient, "sliding scale" method of calculating the customer credit obligation for  
9 the response to WUTC Consumer Affairs standard; Termination Petition ¶15.
- 10 • Changing six of the eight performance standards in the SQPP to match the standards in  
11 the Commission's telecommunications service quality rules. The following six SQPP  
12 standards would be affected:
  - 13 ➤ Trouble report
  - 14 ➤ Out-of-Service repair interval
  - 15 ➤ Answer time performance in calls to customer service (business) offices
  - 16 ➤ Answer time performance in calls to repair centers
  - 17 ➤ Dial tone speed
  - 18 ➤ Response to WUTC Consumer Affairs. Termination Petition ¶12,  
19 Attachment A.

20 Public Counsel opposes Qwest's request for modification of the SQPP. Modification  
21 of the performance standards in the SQPP was not contemplated in the merger settlement  
22 agreement, or in the Commission's Merger Order approving the merger and adopting  
23 settlement agreements. As Public Counsel advocated during Qwest's prior petition to modify  
24 the Merger Order, a settlement agreement reached after extensive negotiations and efforts to  
25 balance a wide variety of considerations should not be subject to modification on the motion of  
26 one party alone.

27 In addition, Qwest's proposal is fundamentally flawed in that it is inconsistent with the  
28 Commission's Twelfth Supplemental Order in this docket because it is an imbalanced proposal  
29 that is heavily weighted in favor of Qwest's interests. In its Twelfth Supplemental Order, the  
30 Commission denied Qwest's request for mitigation of credit amount, and also denied Qwest's

1 request to modify the out-of-service repair interval standard of the SQPP. The Commission's  
2 order states in part:

3 The Ninth Supplement[al] Order adopted a Settlement Agreement negotiated by  
4 and agreed to by all parties. The Commission found in its Order that the  
5 Agreement, including the Service Quality Performance Program, is in the public  
6 interest. Absent a showing of, for example, changed circumstances or  
7 significant hardship, or other convincing reason, the argument that one of eight  
8 performance standards can be improved upon is not sufficient for the  
9 Commission now to rewrite that standard over the objections of other parties to  
10 the Settlement. We are persuaded that the equities and the public interest  
11 disfavor granting the relief Qwest has requested because it is imbalanced.  
12 Accordingly, Qwest's Petition for Modification should be, and is, denied. Any,  
13 or all parties are always free, of course to present to us a more balanced  
14 proposal to modify the Agreement.

15 Twelfth Supplemental Order: Denying Petition for Modification of Ninth Supplemental Order  
16 and Mitigation of Credit Amount, March 13, 2002, ¶26. (footnote omitted).

17 Qwest has presented a modification proposal to the Commission, but it is not a balanced  
18 proposal. Qwest's proposal would make numerous modifications to the SQPP that favor the  
19 company, as described in more detail below.

20 **1. Qwest repeats its request, already denied by the commission, for a lower  
21 standard for the out-of-service measure.**

22 Qwest proposes a more lenient, sliding scale means of calculating the customer credit  
23 obligation for the out-of-service repair standard. Under their proposal, no payment to  
24 customers would occur if on a monthly basis Qwest repairs over 99.5% of out-of-service  
25 conditions within two working days,<sup>17</sup> and only 50% of the current monthly credit obligation  
26 of \$83,333 would be assessed if Qwest repairs between 99.0% and 99.5%. The full credit  
amount of \$83,333 would be assessed if the company repaired fewer than 99.0% of out-of-  
service conditions within the interval during a month. Termination Petition ¶14. Qwest's  
petition states that during 2003, the \$1,000,000 credit obligation for this measure would have  
been reduced to \$250,000 if Qwest's proposal had been in effect. *Id* fn 8.

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<sup>17</sup> Qwest has also recommended that the interval be changed to 48 hours instead of two working days, since 48 hours is the interval applied in WAC 480-120-440.

1 In practical terms, this proposal would in effect weaken the performance standard to a  
2 99.5% standard, as compared to repairing “all” out-of-service conditions as required by the  
3 current SQPP standard and by WAC 480-120-440. Lowering this standard to 99.5% is exactly  
4 what the company sought in its prior petition to modify the SQPP, which was denied by the  
5 Commission in its Twelfth Supplemental Order in this docket.

6 **2. Qwest requests a more lenient customer credit obligation for the response**  
7 **to WUTC Consumer Affairs standard.**

8 Qwest also proposes to establish a more lenient, sliding scale means of calculating the  
9 customer credit obligation for the response to WUTC Consumer Affairs, such that no credit  
10 amount would be assessed for up to five violations per month, and 50% of the current monthly  
11 credit amount of \$83,333 would be assessed for six to ten violations per month. The full credit  
12 amount of \$83,333 would be assessed if the company had more than ten violations in a month.  
13 *Id.* at ¶15. Qwest’s petition states that during 2003, the \$166,667 credit obligation for this  
14 measure would have been reduced to zero if Qwest’s proposal had been in effect. *Id.* fn 9.  
15 Similar to the proposed modification discussed above, in practical terms the effect of this  
16 request would be to weaken the standard to allow Qwest up to five violations per month.

17 **3. Qwest requests a lower standard for the answer time performance**  
18 **measures.**

19 Qwest proposes to modify the answer time performance standards regarding access to  
20 customer service (business) offices and repair centers, from the current SQPP standard of  
21 answering 80% of calls within 30 seconds, to an average wait time of 60 seconds, as required  
22 by WAC 480-120-133.<sup>18</sup> Qwest indicates in its petition that during 2003 it would have been  
23 assessed a credit amount of \$166,667 (two months in violation) under the average wait time of  
24 60 seconds standard, as compared to the \$666,667 credit amount (eight months in violation)  
25 under the existing SQPP standard for business office access. *Id.* fn 7. An examination of

26 <sup>18</sup> “Answer time” means time from last menu selection to answer by a live representative.

1 Qwest's confidential workpapers generating that \$166,667 calculation reveals that during 2003  
2 there were [BEGIN CONFIDENTIAL] \*\*\*\*\* [END CONFIDENTIAL] where Qwest  
3 would have failed the proposed standard, but met the current standard. Qwest Response to  
4 WUTC Staff DR-151.<sup>19</sup> (Attachment C). This provides a strong indication that Qwest's  
5 proposed standard is indeed less stringent than the existing SQPP standard.

6 **4. Qwest requests lower standard for complaint response to WUTC**  
7 **Consumer Affairs.**

8 In addition to their proposal to create a more lenient, sliding scale approach to  
9 calculating the customer credit obligation for response to WUTC Consumer Affairs, Qwest  
10 also would like to lower the current SQPP standard for this measure. Qwest's proposal is to  
11 allow the company five business days to respond to Consumer Affairs if the complaint at issue  
12 is non-service affecting (instead of responding in two business days). This modification would  
13 make the SQPP standard the same as the Commission's newly revised rule, WAC 480-120-  
14 166.

15 **5. SQPP standards were never intended to exactly mirror the Commission's**  
16 **rules.**

17 As discussed previously in this memorandum, the SQPP standards, while generally  
18 based on the Commission's telecommunications service quality rules, were never intended to  
19 precisely mirror the rules. Instead, the purpose was to adopt a negotiated, custom-tailored  
20 incentive program to improve Qwest's service quality. While Qwest's proposed modifications  
21 would make two of the SQPP standards more stringent – the trouble report and dial tone  
22 standards – there is no compelling reason to now modify these standards. The dial tone and  
23 trouble report standards, as they are set forth in the Commission's existing rules, have not been

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24 <sup>19</sup> Public Counsel has attached Qwest's supplemental response to WUTC Staff DR-151 as Attachment C  
25 to this memorandum. Please note that in Qwest's confidential Attachment B to their supplemental response, the  
26 table labeled "CSG & NBA Combined Totals" reflects business office answer time performance, and the table  
labeled "NOCS Totals" reflects repair center answer time performance, as reported by Qwest in its 2003 monthly  
service quality reports filed in this docket.

1 changed from the Commission's prior rules. Thus, in these two measures, the SQPP standards  
2 did not match the Commission's rules from the inception of the SQPP.<sup>20</sup>

3 Qwest now complains that discrepancies between the SQPP standards and Commission  
4 rules are "creating confusion," but neither US West nor Qwest identified this as a concern  
5 during the Commission's merger settlement hearings. To the contrary, US West witness Ms.  
6 Theresa Jensen assured the Commission that the applicants have "stepped up to some very stiff  
7 requirements with respect to service quality and performance if the company fails to meet  
8 certain standards specified by the Commission or as part of this agreement." Tr. 371-2.  
9 Further, Qwest witness Mr. Steve Davis stated during the Commission's March 14, 2000  
10 merger settlement hearing: "I would like to assure you that Qwest has been a participant [in  
11 settlement negotiations] and stands behind this document and pledges its compliance with the  
12 terms of this document on a going-forward basis if it's adopted by the Commission." Tr. 375.

13 **6. Qwest appears to be seeking prospective "mitigation" of their customer**  
14 **credit obligation.**

15 The effect of Qwest's modification proposal is to lower Qwest's credit obligation under  
16 the SQPP, as shown in the table below.<sup>21</sup> In this regard, Qwest's petition could be viewed as a  
17 prospective "mitigation" request in the guise of a modification proposal. Had Qwest's  
18 proposal been in place last year, Qwest's credit obligation would have been significantly  
19 reduced.

20 <sup>20</sup> The dial tone speed and trouble report standards were set forth in WAC 480-120-515(1)(a)(i) and  
21 WAC 480-120-525(2)(e), respectively, in the Commission's prior rules. The dial tone speed standard is now set  
22 forth in WAC 480-120-401(2)(a)(i), and the trouble report standard is in WAC 480-120-438.

23  
24  
25 <sup>21</sup> "Actual" data from Qwest's 2003 annual service quality report to customer (Attachment A);  
26 "proposed" data for 2003 from Qwest's Termination Petition, footnotes 7, 8, and 9.

SQPP Metrics	2003	
	<u>Actual</u>	<u>Proposed</u>
5 metrics (no change in credit amount)	\$93,138	<b>\$93,138</b>
Answer time- business office	\$666,667	<b>\$166,667</b>
Out of Service Repair	\$1,000,000	<b>\$250,000</b>
Response to WUTC Consumer Affairs	\$166,667	<b>0</b>
Total	\$1,926,471	\$509,805

In its prior mitigation petition, Qwest sought mitigation of its credit obligation for the months in 2001 that it had met a lower standard as compared to the standard in the SQPP. Qwest's prior petition sought mitigation of \$667,666 in credit obligation for the eight of twelve months in 2001 that it restored at least 99.5% of out-of-service conditions within two working days. Qwest Petition for Modification of Ninth Supplemental Order and Mitigation of Credit Amount, January 30, 2002, p. 2. *See also* Tr. 1813.<sup>22</sup> The Commission denied that petition, and now Qwest is requesting similar relief, but from the other side of the argument – that various SQPP performance measures should be made less stringent, which would in turn mitigate Qwest's future customer credit obligation, should they continue to miss performance targets.

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<sup>22</sup> Excerpts from the transcript for the Commission's March 7, 2002 hearing on Qwest's Petition for Modification of Ninth Supplemental Order and Mitigation of Credit Amount are attached hereto as Attachment E.



1 potential degradation in service quality due to the removal of financial incentives. We  
2 recommend the Commission deny Qwest's petition for early termination and allow the SQPP  
3 to remain in place through 2005. In addition, the Qwest petition for modification is  
4 imbalanced and improperly seeks unilateral changes in the standards agreed to in the  
5 settlement. Qwest's modification proposal should also be denied.

6 DATED this 14<sup>th</sup> day of April, 2004.

7  
8 CHRISTINE O. GREGOIRE  
Attorney General of Washington

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11 \_\_\_\_\_  
Mary M. Kimball  
Policy Analyst  
Public Counsel

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13  
14 \_\_\_\_\_  
Simon J. ffitch  
Assistant Attorney General  
Public Counsel