

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Application of  
U S WEST, INC., and QWEST  
COMMUNICATIONS INTERNATIONAL  
INC.

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

Docket No. UT-991358

QWEST’S REPLY COMMENTS IN  
SUPPORT OF ITS PETITION TO  
TERMINATE OR, IN THE ALTERNATIVE,  
MODIFY THE SERVICE QUALITY  
PERFORMANCE PROGRAM

**I. INTRODUCTION**

- 1 Qwest Corporation (“Qwest”) files these reply comments in response to the Statement of Commission Staff (“Staff Statement”) and the Memorandum of Public Counsel (“Memorandum”).
- 2 On January 30, 2004, Qwest filed with the Washington Utilities and Transportation Commission (“Commission”) its petition to terminate or, in the alternative, modify (“Petition”), the Service Quality Performance Program (“SQPP”) previously established in this case.

QWEST’S REPLY COMMENTS IN SUPPORT OF  
ITS PETITION TO TERMINATE, OR, IN THE  
ALTERNATIVE, MODIFY, THE SERVICE  
QUALITY PERFORMANCE PROGRAM

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3 In the Ninth Supplemental Order<sup>1</sup> in this case, the Commission adopted and approved two settlement agreements that resolved all of the contested issues between the parties. Both Commission Staff (“Staff”) and the Office of Public Counsel (“Public Counsel”) oppose Qwest’s Petition, claiming that the program is working as intended and should not be terminated. However, this argument, and their other arguments as well, must fail. Staff and Public Counsel claim that Qwest cannot be released from the SQPP because it is working and producing improved service quality. *Staff Statement at ¶2; Memorandum at II.A.2.* No doubt they would also claim that Qwest could not be released if service quality had not improved, arguing that the program should continue in order to hold Qwest’s feet to the fire for two more years. Indeed, Public Counsel does take that position, arguing that Qwest’s lack of improvement in one area means the program should be continued. *Memorandum at II.A.2.* However, this interpretation of the Settlement Agreement is nonsensical and wholly ignores the provision – agreed to by all parties – that allowed for termination of the SQPP after 2003. Clearly, the inclusion of that provision and its adoption by the Commission means that there is a situation under which the program should be terminated or modified. Qwest believes that such a situation currently exists.

4 Staff and Public Counsel also seem to suggest that a request for modification of the SQPP instead of full termination is not authorized. However, there is no dispute that termination of the SQPP is expressly authorized in this proceeding. The retail settlement agreement that established the SQPP provides specifically that Qwest may petition “to terminate the [SQPP] after the year 2003, . . . .”<sup>2</sup> Qwest believes that its proposed modifications to the SQPP are permitted as a reasonably included alternative to full termination. As will be fully explained below, the standard for modification in this proceeding is not the same as that applied to the

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<sup>1</sup> Ninth Supplemental Order Adopting and Approving Settlement Agreements, Granting Application (“Ninth Supplemental Order”).

<sup>2</sup> Ninth Supplemental Order, Appendix A, Section II.B.7.

petition for modification Qwest filed in 2001.

5 Staff and Public Counsel also argue that because Qwest accepted the terms of the SQPP four years ago as being in the public interest, Qwest cannot now seek to change those terms. *Staff Statement at ¶48; Memorandum at II.B and II.B.5.* This argument is flawed. Qwest did accept the terms of the SQPP, including the right to petition to terminate it after December 31, 2003, as it has done in this case. It is Staff and Public Counsel who seem to be unable to come to terms with the fact that the program will not continue forever, and in fact may be terminated at this point – a provision to which both Staff and Public Counsel expressly agreed. Further, Qwest’s acceptance of the SQPP in 2000 does not constitute an agreement that the terms are still appropriate in the current environment. Nor does it prohibit Qwest from pointing out, as it does here, that experience with certain metrics has shown them to be flawed and improperly designed as incentive mechanisms.

6 As will be shown in these comments, there is ample evidence that Qwest’s service has improved to a level that warrants termination or modification of the SQPP. On an objective basis, and in comparison with other companies, Qwest provides excellent service. In addition, there are ample protections in place already to ensure that good service quality will continue. The competitive environment in which Qwest operates simply requires Qwest to provide excellent customer service. In addition, the Commission’s service quality rules, and the other provisions of the Merger Settlement Agreement, combine to give sufficient customer service quality protections. Finally, concerns that service quality will decline without the SQPP are purely speculative, are unsupported by the record in this case, and should not form a basis for denying Qwest the relief it seeks.

## II. DISCUSSION

### A. The SQPP Should be Terminated as No Longer Consistent with the Public Interest

7 While both Staff and Public Counsel argue adamantly against the relief Qwest seeks, neither presents a clearly articulated standard by which the Commission should judge whether termination is justified. Qwest proposes that the Commission can apply a public interest test, and should use as the standard the criteria by which regulatory agencies generally judge whether a rule or requirement should be waived. Under WAC 480-120-015 and 480-07-110 the Commission may grant an exemption from the provisions of any rule if consistent with the public interest, the purposes underlying the regulation, and applicable statutes. The FCC standard for a waiver is similar. That standard requires that an entity requesting a waiver must demonstrate either that: (1) "the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest" or (2) "In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative."<sup>3</sup> Qwest submits that under this test, the SQPP should be terminated because the underlying purpose of the SQPP is no longer served given Qwest's improved service quality, the change in the competitive landscape, the protections already available to consumers through the new rules and the Customer Service Guarantee Program, along with other factors discussed in the Petition.

8 Both Staff and Public Counsel oppose termination of the SQPP, claiming that because Qwest's service quality has improved, that proves the program is working and should not be terminated. *Staff Statement at ¶2; Memorandum at II.A.2.* As noted above though, this puts

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<sup>3</sup> See 47 C.F.R. § 1.925.

Qwest in the impossible position of not being able to terminate based on good service, and most certainly not being able to terminate based on bad service. This is an absurd standard and should be rejected as it essentially writes out of existence the provision of the agreement permitting termination after 2003. Of course Qwest's service quality has improved – Qwest committed that it would and has worked hard to fulfill that commitment. However, that success should not be used against Qwest to defeat the Petition.

9 Both Staff and Public Counsel argue that there is no change in the competitive landscape that justifies termination. *Staff Statement ¶¶4-10; Memorandum II.A.5*. Public Counsel maintains that Qwest still dominates the residential market – claiming that CLECs have a market share of only 10% of local end user lines while the national average is 15%, and further claiming that the CLEC market share of residential and small business customers is 6%. However, both Staff and Public Counsel neglect to mention that the number of CLEC lines in service in Washington has more than doubled since June 2000, when the SQPP became effective, to 386,104 in June 2003. Neither do they mention that the FCC's Local Competition report encompasses the entire state (not just Qwest service territory) and that the "share" values reported are based on a denominator that includes both Qwest and Independent Telephone Company access lines, which tends to dilute the "share" value with respect to Qwest service territory. Reliance on the broad FCC data also entirely ignores the effects of intermodal competition, such as wireless and Voice over Internet Protocol (VoIP) telephony, on Qwest's access line base as discussed in detail in Exhibit DLT-1.

10 Staff and Public Counsel seriously understate both the amount of competition and the effect that competition has on service quality. Indeed, though Staff goes so far as to suggest that competition might in fact drive lower service quality, Staff was unable to provide even one “real world” example where that had happened<sup>4</sup>, and was unable to establish that such an

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<sup>4</sup> See Staff Response to Qwest Data Request 145, attached hereto as Exhibit 2.

outcome was a reality in the provision of telecommunications services in Washington. Nor is there support for Staff's contention that Qwest might sacrifice customer service to residential customers to provide better service to the more competitive business market. *Staff Statement at ¶9*. The simple fact of the matter is that virtually all of Qwest's process improvements and investment serve to benefit both classes of customers equally. Indeed, as discussed in Exhibit DP-9, Qwest cannot and does not prioritize repair orders by class of customer.

11 Since the SQPP became effective in June 2000, the competitive environment has changed significantly in the Washington local exchange market. In 2000, Qwest's primary local exchange competition was represented by CLECs, with a significant proportion of CLEC competition comprised by resale of Qwest's retail services. The local exchange market in 2004 has changed dramatically, with CLEC competition largely moving away from resold services and toward services provided via CLEC-owned facilities or via wholesale unbundled network elements (UNEs). Additionally, intermodal competition now has a significant presence in the local exchange market in the form of cable telephony, wireless services and VoIP telephony. While Qwest's local exchange access line base has declined by over 19% from June 2000 to March 2004,<sup>5</sup> CLEC lines and the number of wireless subscribers have increased very significantly, and VoIP is now a viable local service alternative for any customer with access to a broadband internet connection.

12 The full range of competitive alternatives now available to Washington customers was not contemplated when the Qwest merger was finalized, and the service quality requirements associated with the merger agreement are no longer necessary to ensure Qwest's continued focus on delivery of high quality services. In fact, Qwest is fully committed to providing superior service to its customers and must continue to do so to attract and retain customers in

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<sup>5</sup> This percentage does not account for new customers who subscribe immediately to the service of a CLEC, wireless carrier, or VoIP provider without becoming a Qwest customer in the first instance.

the dynamic Washington local exchange market. More detail with regard to the level of competition that Qwest faces in Washington is contained in Exhibit DLT-1.

- 13 Staff argues that the Commission should reject Qwest’s parity argument, stating that Qwest is not just another telephone company but rather the incumbent who is treated differently on multiple fronts (i.e., federal law, etc.). This is simply a red herring that has nothing to do with why the SQPP was developed in the first place and why it should be terminated now. As the Commission’s order in Qwest’s recent competitive classification case confirms, Qwest is no longer the dominant, monopoly telephone provider. Consumers have and readily exercise choices in carriers and technology to meet their telephony needs. It is now more than three, almost four, years after the merger – the SQPP is simply no longer warranted in light of Qwest’s exceptional performance and increasing competition.
- 14 Staff and Public Counsel also argue that neither the Customer Service Guarantee Program (“CSGP”) nor the Commission’s new rules justify a change to the SQPP. *Staff Statement ¶¶ 11-25; Memorandum II.A.3. and II.A.6.* Staff and Public Counsel misunderstand Qwest’s arguments. Qwest does not contend that either the CSGP or the new rules, by themselves, warrant a change to the SQPP. Rather, it is Qwest’s position that those two factors together, in combination, provide ample protections to consumers and assurances of good service quality in the future. *Petition at 5.*
- 15 Staff seems to suggest that neither the CSGP nor the SQPP offers much in the way of customer compensation. *Staff Statement ¶ 14.* If true, it is hard to understand why there is value to customers in continuing a merely punitive credit when service quality is already high. However, Qwest disagrees that the CSGP does not offer significant compensation. It does, and it does so in a way that is targeted to the affected customer, thus making it a superior

mechanism.<sup>6</sup>

16 Staff argues that Qwest’s “double coverage” argument is incorrect and that the CSGP does not cover all of the metrics that the SQPP does. *Staff Statement* ¶ 15-16. Qwest disagrees. It is important to note here that Qwest had argued that there is “double coverage” between the SQPP and a *combination* of the standards in the CSGP *and* the rules, not simply one or the other. Staff’s claim that half the measures in the SQPP do not overlap the CSGP is not accurate – there are parallel measures for five of the eight SQPP metrics in the CSGP. And, the CSGP in combination with the requirements in the Commission’s rules completely overlap the SQPP. For example, the 90-day installation interval is merely an extension of the 5-day interval. The CSGP offers customers extensive relief for delayed primary basic exchange service, including waiver of installation charges, credits for each month that service is delayed, voice messaging service, remote call forwarding, or cellular loaners. For the business office and repair center answer time measures and complaint process, WAC 480-120-133 and -166 address these metrics. Attached as Exhibit MSR-3 is a table detailing the double coverage that the SQPP provides to customers for each of the various metrics.

17 Staff claims that the customers of Qwest receive a valuable benefit from having the company operate under the SQPP. *Staff Statement* at ¶ 19. Staff contends that the monetary payment constitutes a valuable benefit to customers. However, while the penalties are significant in the aggregate to Qwest, it is difficult to believe that Staff is seriously advancing the argument that \$0.81 per year per customer (as paid based on Qwest’s 2003 retail performance) constitutes a valuable benefit to customers.

18 Staff next argues that the SQPP should also be retained because it established a service quality benchmark for the industry. *Staff Statement* at ¶21. First, this contention seems to be at odds

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<sup>6</sup> See footnote 3 of Qwest’s Petition, showing payments and credits to customers of nearly \$12 million over the past three years under the CSGP.



with Staff's earlier argument that companies do not necessarily compete on service quality. However, Staff has been unable to provide support for its earlier argument, so perhaps the conflict is of no consequence. In any event, even if we accept Staff's argument that it is valuable to have a service quality benchmark for the industry, it is also true that the Commission's rules on service quality, properly administered, can serve the same function. Clearly the only fair path for all companies is parity of regulation.

19 Next, Staff argues that Qwest is placing too much importance on the Commission's rules and that Qwest incorrectly presumes that those rules are superior to the SQPP. *Staff Statement at ¶23.* Staff's arguments here are perplexing. In the rulemakings that established the current rules, Staff and the industry had the opportunity to either adopt the standards in the SQPP as industry standards, or to change them. The decision was to change them. Thus, the evolutionary process that Staff discusses has already taken place and the SQPP is clearly lower on the evolutionary ladder. The simple point is that the rules *are* superior to the SQPP standards or the Commission would not have adopted them subsequent to the SQPP.

20 Staff also argues that the evidence presented by Qwest showing that it can meet the 60 second average wait time metric more consistently than the 80% of calls answered in 30 seconds metric suggests that the new standard is weaker than the old standard. This is incorrect and pure speculation by Staff. The new standard is a more meaningful performance measurement, not a weaker one. The new standard does a far better job of measuring the customer's experience in accessing the business office or repair center than does the SQPP standard. It is also far more meaningful as an incentive mechanism because it provides a continuing incentive throughout the month to meet the standard. This issue is discussed in more detail in the attached Exhibit MSR-4.

21 Staff's position is revealing in that it reflects Staff's apparent belief that the value – or

customer benefit – from a particular metric is ascertained solely by viewing the number of dollars Qwest is forced to pay out. This analysis is simplistic and, in many cases, absolutely false. As Qwest pointed out in its petition, at least one metric under the SQPP has an all-or-nothing standard that, because it is impossible to satisfy, provides Qwest no incentive to improve service quality. Because 99.5% compliance is penalized as harshly as 25% compliance under all or nothing standards, these metrics do not drive service quality in any meaningful way. These metrics are simply poorly designed and offer no meaningful performance incentive. The Out of Service metric, as it is currently designed, requires Qwest to pay \$1,000,000 per year even if its performance is 99.9999% each month.

22 Staff and Public Counsel also argue that the Commission should consider Qwest’s investment levels in the state and continue the SQPP on the basis that declining investment levels may mean declining service quality. *Staff Statement* ¶¶26-29; *Memorandum II.A.4*. This argument fails to recognize two critical points. First, good service quality is not necessarily tied to the level of capital investment in infrastructure. Nevertheless, Qwest believes that it is investing at appropriate levels in Washington, and that it would not have been appropriate to maintain investment at 2001 levels. Second, as demonstrated in Exhibit DLT-1, and as the Commission well knows from other proceedings, Qwest is experiencing a steady decline in customers and lines. Yet, despite the line loss, Qwest still manage to exceed its obligation in the merger settlement to maintain its historic investment in infrastructure per line for the three years following the merger closing. However, it is simply unrealistic and imprudent to expect that investment could or should be continued at historic levels going forward, when customer base and revenues continue to decline precipitously.

23 One of the reasons that Qwest is able to continually provide a high standard of service quality in Washington is due to the appropriate level of installation and maintenance personnel that Qwest has staffed across the state. Current network staffing levels in Washington for

occupational employees exceeds 2,200, which include a combination of central office technicians and network technicians.<sup>7</sup> On most days, personnel levels are appropriate to handle retail and wholesale (CLEC) residential and business installation and repair volumes. However, it is unrealistic to believe that any utility company would or should staff to a level that conforms more to the occasional spike than the normal loads.<sup>8</sup> Furthermore, during this time of declining investment, so criticized by Staff and Public Counsel, Qwest's service quality has been steadily improving.

24 Staff also argues that the SQPP payments are not a burden on Qwest and that while Qwest's service quality has improved, it is not "exemplary". *Staff Statement at ¶¶30-32*. As "proof" of this contention, Staff offers evidence of the number of complaints the Commission received about Qwest, compared to the number received about other companies. *Id. at ¶¶33-39*. However, as the Commission can surely recognize, allegations of wrongdoing (i.e., complaints) are not proof that anything is wrong.

25 Indeed, Qwest stands by its contention that its performance is exemplary. If Staff would like to compare Qwest to other companies, Qwest believes the more reasonable comparison is to compare actual performance for the metrics at issue in this proceeding. Qwest has prepared and attached comparison tables to illustrate its service quality performance compared to the performance of the other Class A companies who report under WAC 480-120-439. See, Exhibits MSR-5 through MSR-7, attached hereto.

26 These exhibits show with absolute clarity that the SQPP is no longer necessary, and works an undue hardship on Qwest. For example, a comparison of Qwest's performance under WAC 480-120-439(9) with the performance of other companies shows that for the last six months of

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<sup>7</sup> Included in this title are employees working POTs Installation and Maintenance, Design Services, Customer Data Technicians, Construction and Cable Splicing, Maintenance and Repair.

<sup>8</sup> This issue is discussed in more detail below at ¶39.

2003, Qwest performed better than the other companies for five out of six months. (See Exhibit MSR-5.) This establishes two important points for this proceeding. First, the other Class A companies do not operate under an SQPP and their relatively high levels of performance establish that an SQPP is not necessary to drive good service. Second, the comparative performance of Qwest and the other Class A companies establishes that the SQPP works an undue hardship on Qwest. While all other companies provide good service without paying penalties or credits, Qwest is inappropriately paying credits for service that *exceeds* (for most months) the service provided by other large companies, or on metrics that the Commission does not even care to measure for any other company.

27 These points are clearly illustrated by Exhibits MSR-6 and MSR-7. These exhibits are constructed in the same way as Exhibit MSR-5, and attempt to illustrate Qwest's performance compared with other companies' performance on two metrics that Qwest seeks to eliminate or modify. These metrics are the Business Office Access metric and the Complaint Response metric. These two metrics, combined with the Out of Service Repaired within 2 Business Days metric, are the ones under which Qwest pays the largest credits each year. However, *no other company is even required to report under these metrics*, much less pay penalties. Thus, any contention by Staff that these metrics are important to customers or warrant the penalties paid by Qwest rings hollow.

28 With regard to the other metrics, Qwest's performance is similarly exemplary, regardless of the payments made. For example, in 2003, even though Qwest made payments for the 5- and 90-day interval metrics totaling \$49,020 and \$44,118, respectively, its average performance percentages were 98.98% for the 5-day metric and 99.98% for the 90 day metric. This is impressive in light of the fact that the 5-day standard is 90% and the 90-day standard is 99%.

29 The reason that Qwest made payments has to do with the fact that the metrics are applied on an

exchange basis. More specifically, due to the small number of orders in some exchanges, even a single miss can result in payment liability. For example, Qwest processes approximately 40,000 orders per month which are subject to the installation interval metrics. In many of its smaller exchanges (e.g., Crystal Mountain, Northport, Waitsburg), the order volume can be less than 10 orders per month. For the 5-day installation metric this means that if Qwest misses only one order, it makes a payment. This situation is even more magnified with the 99% standard for the 90-day metric. In fact, in 2003, Qwest rarely missed more than one order in its exchanges for the 90-day installation metric and still paid \$44,118. This is because in each missed wire center, the total number of orders was less than 100, resulting in a percentage of orders completed within the 90-day interval that was less than the 99% standard.

30 In addition, Qwest has consistently performed above the minimum requirements for Trouble Reports, Dial Tone Speed, and Repair Center Access.

31 Finally, Staff argues that termination of the SQPP would harm customers because they would lose the potential credits over the next two years. *Staff Statement at ¶¶33-45*. Ironically, these are the same credits that Staff has previously characterized as not substantial (*id at ¶14*) and small (*id at ¶30*). Yet Staff would have the Commission believe that loss of these inconsequential (from a customer standpoint) credits would somehow work an actual harm. Seeming to recognize the frailty of that argument, Staff goes on to argue that the more significant harm to customers is that absent the SQPP, service quality would slide. However, when asked to produce support for the contention that the SQPP had improved Qwest's service quality in the first instance, Staff was unable to do so.<sup>9</sup> Thus, the proposition that service quality would slide absent the SQPP is conjecture at best, and is called into doubt based on the performance levels of companies that are not subject to SQPP payments.

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<sup>9</sup> See Staff Response to Qwest Data Request 144, attached hereto as Exhibit 8.

32 Furthermore, Staff’s calculation of the “cost” to customers of poor service is deeply flawed. At ¶42, footnote 10 of its Statement, Staff attempts to calculate what it characterizes as the “cost” to customers of poor customer service. This calculation, showing an alleged cost of more than \$1,000,000 attributable to customer time spent “on hold” has no basis in reality whatsoever. First of all, Staff took all of the “hold time” and considered to be lost time to which a cost should be attributable as due to poor customer service. This is plainly a fallacy. Even the Commission’s most stringent requirements contemplate that there will be a reasonable amount of time on hold before a call is answered. It also ignores the fact that many efficient, multi-tasking individuals will simply do other things while on hold, thus losing no time at all in the process. Finally, this measure does not take into account the fact that Qwest has changed its business office practices to enable one customer service representative to help a customer with all of his or her issues, instead of having to transfer the customer to multiple representatives. This change has increased the length of time to respond to each call, and has naturally made it more difficult for Qwest to meet the SQPP metric, but has improved the overall customer experience, and may well be saving customers time in the long run.

**B. In the Alternative, the Commission Should Modify the SQPP**

33 Staff and Public Counsel also recommend that the Commission deny Qwest’s alternative request for modification of the SQPP. *Staff Statement ¶¶46-53; Memorandum II.B.*

34 Staff applies the test from 12<sup>th</sup> Supplemental Order inappropriately to Qwest’s recommended modifications. *Staff Statement ¶¶47.* Qwest disagrees that the standard articulated in the 12<sup>th</sup> Supplemental Order is applicable to its request for modification in this Petition. In its earlier petition to modify, Qwest was asking for a change to the SQPP that was not contemplated by the Settlement Agreement. Thus, Qwest agreed that the reasons to do so should be compelling. Here, however, Qwest submits that because termination of the SQPP is specifically authorized by the Settlement Agreement, the Commission need only find that

Qwest's proposal is an improvement over what currently exists in order to adopt it. Qwest's proposed modifications should be thought of as a substitute for total termination of the plan and not stand alone 'unilateral' modifications of the provisions. Public Counsel also argues that modification was not contemplated in the settlement agreement. However, it seems clear that under the right to terminate the program, Qwest is also entitled to seek modifications to the program.

35 One thing on which Qwest and Staff agree is that the "all-or-nothing nature of the out-of-service repair measure and the complaint response measure was an obvious weakness." *Staff Statement at ¶ 48*. However, rather than take this opportunity to correct that obvious weakness, Staff seems to be content to say, well, Qwest sponsored and accepted these mechanisms, so Qwest should simply have to live with them. True, Qwest did accept these metrics at the time of the merger, but that should not trump a reasonable request to correct bad metrics now that it is clear how they could be significantly improved. This, together with Qwest's right to request complete termination of the SQPP, is more than adequate rationale for not perpetuating the use of the bad metrics for two more years.

36 Nor is it enough to suggest, as Staff does in ¶ 49, that Qwest should have accepted Staff's proposed modification to the SQPP in 2002. While Staff's proposal would have reduced Qwest's payment under the plan, the modifications were flawed in that they continued to require Qwest to make payments for exceptional performance.

37 Staff and Public Counsel oppose any modification to the metrics, arguing that Qwest's proposal is "unbalanced" and simply results in lowering the standards. *Staff Statement at ¶¶ 50-52. Memorandum at II.B*. This is incorrect. First of all, by recommending that the SQPP metrics move to the standards already established in rules, Qwest is even recommending that some of the standards under which it is measured become more stringent. For example, the

Dial Tone standard in the SQPP requires dial tone within 3 seconds on 90% of all calls – in the rule, the standard is 98% of all calls. Second, as explained above, changes to the metrics to make them operate more truly as incentives rather than penalties should not be characterized as weakening the standards, but rather as strengthening them.

38 Staff also criticizes Qwest’s request to modify the standard for business office access, claiming that the new proposal is unbalanced and that a truly balanced proposal would continue to show an equal number of violations as the existing standard. This contention simply illustrates Staff’s lack of understanding of how either the old metric or the new metric work to provide performance incentives. As set forth in Exhibit MSR-4, there is no question that the new metric provides more meaningful information to Qwest and provides a better incentive by virtue of not being subject to weekly calling spikes. Because Qwest has a realistic opportunity to meet this metric each day, it provides a better incentive for good performance. The existing metric provides no such incentive since it does not provide meaningful information about how to improve performance and virtually guarantees that it cannot be met because of unavoidable calling surges.

39 Staff minimizes the “all or nothing” requirement for the Out of Service metric by claiming that Qwest does not have to be “perfect” to meet the metric and that in fact Qwest is permitted to exclude service outages associated with a number of different events. *Staff Statement at ¶53*. This is misleading. The events that Qwest is allowed to exclude are all ones that are fairly described as outside of Qwest’s control. However, there are many events that do not qualify as exclusions that are also outside of Qwest’s control that do impact the repair interval.<sup>10</sup> Thus, with regard to all of those that are not outside of Qwest’s control, and many that are, Qwest must be perfect in meeting the metric.

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<sup>10</sup> For example, repairs may be complex and simply require more than two days to perform. In addition, if a technician needs access to the customer’s yard and encounters a locked gate, the repair may take longer than two days as well. Both of these events are outside of Qwest’s control, yet neither may be excluded.



40 In this regard, performance at the 100% level *every* day just to stay ahead of service credits is unrealistic - especially in an environment where the daily load changes as often as the weather. For a more detailed discussion of why it is impossible to meet repair and installation commitments 100% of the time, please see Exhibit DP-9, which illustrates that fact, and further illustrates why the exceptions built in to the SQPP do not appreciably mitigate this problem.

41 In addition, Qwest disagrees with Staff's claim that Qwest's modified proposal only benefits Qwest. A specified reasonable percentage benchmark below 100% will allow the company to manage its processes to meet the benchmark, thus benefiting Qwest and its customers. The current standard provides no incentive after Qwest incurs even one miss.

42 Public Counsel also claims that Qwest's proposal is unbalanced. Public Counsel discusses each of Qwest's proposed modifications and points out the decreased payment under the new proposal to prove the imbalance of the proposal. However, that does not prove the modifications are unbalanced. Rather, it shows that Qwest has made an effort in redesigning the metrics to tie its current level of good performance to reasonable metrics and incentive payments. A specified reasonable percentage benchmark below 100% will allow the company to manage its processes to meet the benchmark. The current standard provides no incentive after Qwest incurs one miss.

### **III. PUBLIC COMMENT**

43 On May 5, 2004 Public Counsel and the Citizens Utility Alliance ("CUA") filed Comments from members of the public. CUA filed comments from Dale Miller and Amy Hagin. Public Counsel filed comments from Ron Pregulman of WashPIRG, Derek Dexheimer, and Sergio Salinas. None of these comments offers any reason for the Commission to reject Qwest's request for relief. The situation described by Mr. Miller is not a service quality failure by

Qwest at all, but rather a failure of planning by the general contractor of an apartment building, who did not contact Qwest to arrange for service in a timely way. See, Exhibit DP-10 for a full description of what occurred. Nor do any of the other public comments offer any legitimate criticism of Qwest's customer service. CUA refused to provide customer information to enable Qwest to research the statements in Ms. Hagin's letter. Mr. Dexheimer simply repeats the current metrics and urges that they be retained. The other comments are only non-specific allegations about customer service in general, with no linkage to the metrics or any rationale as to why the metrics should be retained unchanged. Thus, this public input does not provide any helpful guidance to the Commission in its consideration of the issues in this case.

#### IV. CONCLUSION

44 For all of the reasons set forth herein, the SQPP should be terminated as it is no longer necessary or in the public interest. The Commission's rules, coupled with the CSGP, are adequate incentives and remedies to ensure good performance. In addition, increased competition simply prevents Qwest from backsliding in terms of service quality – the incentive to provide high quality service in order to win and retain customers is the competitive market place at work. The Commission has been successful in ensuring that competition took hold and is thriving in Washington, but the corollary to that is that the regulatory schemes in place from an earlier day must give way to competition and allow the market to work.

45 In the alternative, the Commission should modify the SQPP in order to incorporate the Commission's service quality rules in place of the existing SQPP metrics and to adjust the payment schedule so that the SQPP functions more properly as an incentive mechanism and not as a pure penalty on certain metrics.

DATED this 19th day of May, 2004.

QWEST

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I hereby declare, under penalty of perjury of the laws of the State of Washington, that the facts contained in these comments are true and correct to the best of my knowledge.

Dated and signed at Seattle, Washington, this \_\_\_\_\_ day of May, 2004.

\_\_\_\_\_  
Mark S. Reynolds

Dated and signed at Seattle, Washington, this \_\_\_\_\_ day of May, 2004.

\_\_\_\_\_  
David L. Teitzel

Dated and signed at \_\_\_\_\_, Colorado, this \_\_\_\_\_ day of May, 2004.

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Dennis Pappas