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 BRIEF OF WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF

I. STANDARD OF PROOF

1 The proper standard of proof in this proceeding is the public interest standard. The service quality performance program (SQPP) resulted from a negotiated settlement of the parties. Order No. 9. In the settlement, the parties agreed that Qwest could petition for termination of the SQPP after 2003. Order No. 9, paragraph 30. The parties could have proposed a standard to judge termination. They did not. In failing to specify a standard, the parties agreed, and the

Commission accepted, that termination would be judged by the "public interest standard" and that Qwest would have the burden of proof on termination. In examining the public interest standard Qwest must be required to apply the proper criteria and make a showing that the public interest standard has been met.

II. QUESTION PRESENTED

2 The question before the Commission is whether, in the context of this proceeding, taking into account any changed circumstances, significant hardship, or other convincing reasons, has Qwest shown that termination or modification is in the public interest, as the term has historically been interpreted.

III. FACTORS

A. Improper Factors.

3 Although Qwest acknowledges that "public interest" is the appropriate standard, it erroneously attempts to shift the criteria upon which to judge the standard. Qwest argues that the Commission should apply the rule waiver provisions to determine whether or not the SQPP should be terminated. *Qwest Reply*, paragraph 7. As Qwest concedes, however, the formation and application of a rule is qualitatively different than the formation and application of the terms of a voluntary settlement. Transcript, page 1914, line 9 through page 1916 line 2.

4 Furthermore, as will be discussed below, the SQPP was part of a larger settlement and therefore must be analyzed in the context of the entire agreement not in isolation as Qwest suggests. Certainly there may be situations where it is appropriate to view rules or particular provisions of rules in isolation when determining whether a waiver is warranted. The same cannot be said for the SQPP which resulted from a negotiated settlement and approval of the merger between Qwest and US WEST. Order No. 12.

5 In attempting to further shift the public interest standard in its favor, Qwest argues that it "is 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." *Qwest Reply*, paragraph 8. Qwest then says, "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." [1] *Id.* It may be inferred from the preceding quotes that Qwest views the existence of termination clause as evidencing the parties' substantive intent that the program is to be terminated if Qwest is able to

[1] Staff agrees that, if this were the standard, it would be absurd. Staff has not advocated such, and the only actual absurdity present (with regard to this issue, at least) is Qwest's attempt to pin this caricature on Staff. Exhibit 17, which Qwest had when it filed its reply comments, demonstrates that Staff is not holding termination between two mutually exclusive service performance outcomes. Transcript, page 1911, lines 1 – 5. The circumstances listed in Staff's exhibit are neither contradictory nor absurd. Moreover, they are circumstances that simply are not present today.

show apparent improvements in service quality at the time of its petition. *See also, Qwest Reply*, paragraph 3.

6 The termination clause is almost exclusively procedural in nature. The only portion of the termination clause having a substantive meaning, albeit implied, is the clause's use of the word "petition" in reference to the Commission. The presence of this portion of the clause demonstrates the parties' intent that Qwest have the burden of proof in such a proceeding and that termination be judged by the Commission using the public interest standard.

7 Qwest provides no support for interpretation of the provision in the way it proposes (apparent improvements in service = right to terminate) and concedes, following cross-examination, that there could be various ways the parties thought about this provision at the time the settlement agreement was entered into. Transcript, page 1913, lines 11 through page 1914, line 3. In fact, Staff testified to a number of other possible, but certainly not exclusive, situations where termination might be appropriate. Transcript, page 2074, line 2 through page 2075, line 4. The Commission should not accept Qwest's invitation to engage in a debate about the parties' subjective intent. Instead, the Commission should analyze Qwest's proposal in the proper context and using the proper factors, taking into account the respective interests of the parties where appropriate.

8 In analyzing the issue of modification, Qwest argues that the standards from Order No. 12 should not apply because in its earlier petition for modification, it "was asking for a change to the SQPP that was not contemplated by the SQPP."[2] *Qwest Reply*, paragraph 34. Essentially, Qwest is asking to be rewarded with a lower standard in this proceeding based on its failure to abide by the strict terms of the settlement agreement in filing its petition the last time. The standard is the same in both proceedings, although the factors may be slightly different.

9 The fact that the Commission considered the prior petition at all only speaks to the broad discretion of the Commission to consider the granting of relief, even when such relief is not contemplated by the parties. It does not lower the standard in this proceeding. Furthermore, as discussed above, the existence of a primarily procedural termination clause should not be interpreted as anything more than an agreement that after 2003 Qwest is permitted petition the Commission to terminate the SQPP and that if it does so, Qwest will be required to show termination (or modification) is in the public interest. It may be true that Qwest failed to make a

[2] Qwest states that it now agrees that in the prior proceeding, its reasons for termination were required to be "compelling", but believes the Commission need only find that the current proposed modification is an improvement over what currently exists. *Qwest Reply*, paragraph 34. The statement, however, begs the question "an improvement for whom?" The SQPP is a result of a multilateral settlement agreement arrived out through negotiation. When the proper factors are examined it is clear that Qwest's proposal is not an improvement that is in the public interest (although, it may be an improvement that in its interest).

compelling case in its prior petition, but that fact does not water down the public interest standard in this case.

10 If the Commission accepts Qwest's proposition that its proposed modification need only show an "improvement" over what currently exists in order to be adopted, the Commission should approve a modification only if it is an improvement taking into account the broad interests of all parties, not just the interests of Qwest. To determine otherwise would result in parties either racing to file modifications that improve the SQPP in a way that solely or primarily benefits the particular party or trading petitions for modification. The more reasoned approach, and the approach that is consistent with the give and take nature of the settlement agreement, is to consider whether any modification is an improvement for all parties.

11 In summary, the Commission should not adopt Qwest's erroneous and skewed criteria for examining its proposals for termination and modification. Instead, it should apply the factors described below which are based on the historical interpretation of the public interest standard, the terms and context in which to original settlement was entered into, and the Commission's suggested factors as described in Order No. 12.

B. Proper Factors.

1. Balancing company interests and consumer interests.

12 In *US West Communications, Inc. v. WUTC*, 134 Wn.2d 74, 121 (1997), citing *POWER v. UTC,* 104 Wn.2d 798, 819 (1985), the court said that in setting utility rates, the Commission is obligated to balance investor and consumer interests. Similarly, in determining whether termination is in the public interest, the Commission should balance company interests with consumer interests. This standard is consistent with the approach that the Commission suggested the parties take in Qwest's prior modification proposal relying in part on RCW 80.010.040, the identical provision the court referred to in the US West case. *POWER,* 104 Wn.2d at 117 – 118, Order No. 12, paragraph 26.

2. A multilateral settlement agreement arrived at through negotiation.

13 The SQPP was the result of a settlement agreement. A proper examination of the public interest standard must also examine the public interest standard and termination in this context. The U.S. Supreme Court captured the essence of this issue in describing a similar type of settlement, a consent decree. Although, the Supreme Court case is not binding, Staff does believe it provides a principled discussion of the nature of the original settlement in this case. The Court said:

> Consent decrees are entered into by parties to a case after careful negotiation has produced agreement on their precise terms. The parties waive their right

> to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies compromises; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with litigation. Thus the decree itself cannot be said to have a purpose; rather the parties have purposes, generally opposed to each other, and the resultant decree embodies as much of those opposing purposes as the respective parties have the bargaining power and skill to achieve. For these reasons, the scope of a consent decree must be discerned with its four corners, and not by reference to what satisfy the purposes of one party to it.
>
> *United States v. Armour & Co.*, 402 U.S. 673, 681-682 (1971).

14 The case also provides, that looking to the original purpose of the agreement is useful in determining whether or not unforeseen circumstances, or "changed circumstances" as the Commission describes them in Order No. 12, make additional relief desirable to prevent the evils aimed at by the settlement. *Id*. This factor is described below. However, Staff also believes it is important in evaluating the public interest standard in this case to recognize that the SQPP was born of a negotiation and its apparent purpose, to improve service quality, is not the only point of analysis. It must also be recognized, that in evaluating any potential relief, the Commission should not, without sufficient justification, unbalance the terms of the agreement to provide one party relief at the expense of another.

15 In fact, in the agreement, the parties specifically acknowledged that it was the product of negotiations and compromise and reserved the right to withdraw

from the agreement should the Commission reject all or any portion of the agreement. Order No. 12, Retail Settlement Agreement, Appendices A, VI, B, D. The parties also agreed the agreement would be null and void if it did not become effective according to its terms. *Id.* The parties' intention that the agreement was to be viewed as a whole and a product of compromise was clearly expressed. Therefore, the public interest standard must be analyzed in light of the multilateral nature of the settlement agreement, as a compromise, and in light of the agreement as a whole. Neither it, nor the particular measures within it, should be viewed in isolation as Qwest suggests. Nor should the termination of the SQPP be viewed solely with Qwest's purposes in mind.

3. Changed circumstances, significant hardship, or other convincing reasons.

16 Consistent with Order No. 12, the public interest must also be examined in light of any changed circumstances, significant hardship, or other convincing reasons. *See* Order No. 12, paragraph 26. Qwest implies, in its Reply, that these standards are not applicable to this proceeding. *Qwest Reply*, paragraph 34. However, it appears that Qwest applies all of these factors in seeking termination or modification. To the extent that Qwest's actions in applying the terms of the order speak louder than its words, it appears that Qwest concedes that these are

appropriate factors to be examined. Staff agrees that the Commission should apply these factors along with the other factors.

17 As discussed above, in analyzing changed circumstances, it may be important to analyze the original purposes of the SQPP to evaluate whether changed circumstances make the SQPP no longer necessary. Again, however, the purpose must viewed in light of the interests of all parties. Dr. Blackmon testified that:

> I think the SQPP had different purposes for different parties. I think that for Qwest the purpose was to get the merger approved but also to demonstrate its commitment to the proposition that that merger was in the public interest. For the Commission, and for the customers of that company, I think the purpose of it was to allay some of the concerns about a new untested company[.] We needed to see a commitment that the new owners would take service quality seriously, and indeed we wanted to see a commitment that exceeded what . . . at that time existing owners had demonstrated.
>
> Transcript, page 2066, line 5 – 18.

18 In evaluating this factor, therefore, it must be determined whether the original purposes have been met. As Dr. Blackmon testified, this is a difficult determination:

> In terms of how we know when it succeeded, I mean there are too many factors that go into the service performance of a telephone company to ever be able to identify with precision that a particular thing like this incentive mechanism has made a difference. I mean by the way the question is phrased, it sound like maybe we could at some point call it good and say we don't need that anymore and be done with it, and I don't really think that that's the case. I mean I think that in general utility regulators have seen that

> performance mechanisms are a superior way of regulating the service aspects of telecom companies and for that matter utilities generally, and so I think it's an important part of the set of tools that regulators have available to them, and I would expect it to exist in some form as long as we are regulating utilities.
>
> Transcript, page 2066, line 19 through page 2067, line 9.[3]

Although a difficult analysis, Staff believes that when the SQPP is evaluated under all the public interest factors, Qwest's proposals fail. Furthermore, Staff believes that Qwest received its benefit upfront – merger approval – and that any proposals for modification should be scrutinized thoroughly to assure the proposals are balanced, fair to all parties, and represent significant justifications for termination.

IV. DISCUSSION

A. Qwest's Proposal for Termination.

19 Qwest provided three reasons why termination is appropriate: 1. the competitive landscape in Washington has changed since the agreement became effective, 2. the existence of the Customer Service Guarantee Program, and 3. the existence of the telecommunication service quality rules. *Qwest Petition*, paragraphs 3, 4, and 5. When each of these reasons are examined under the public interest test,

[3] Dr. Blackmon expressed his opinion that perhaps it would be appropriate for such programs (though not necessarily this particular program) to continue indefinitely. However, as discussed above, the settlement agreement represents "as much of [the parties'] opposing interests as the parties have the bargaining power and skill to achieve." Armour & Co., 402 U.S. 673, 679. At this point, recognizing the terms of the SQPP, Staff would merely like to see the SQPP extended to its natural end and not terminated at this early date.

it is clear that Qwest has not met its burden. Staff's Statement adequately addresses many of the reasons why termination is not appropriate. However, to the extent additional information is important to apply the public interest factors, the additional information is provided below.

20 Qwest argues that "changed circumstances" in the area of competition necessitate termination of the SQPP. The competitive landscape has not changed "dramatically" as Qwest asserts. *Qwest Petition*, paragraph 3. As Dr. Blackmon noted, most of Qwest's customers are residential customers. *Staff Statement*, paragraph 9. If competition had truly taken hold in Washington Qwest would be petitioning the commission for classification of residential services as competitive. As Qwest testified, however, it has not. Transcript, page 1928, lines 5 – 6. The most Mr. Tietzel, Qwest's competition witness, can say is "I *strongly suspect* [emphasis added] that Qwest will be in front of the commission very soon with a request of that nature for residence service." Transcript, page 1928, lines 10 – 12. In addition to the fact that residential services are not currently classified as competitive, there is absolutely no basis to conclude that a competitive classification petition, should it be made by Qwest, would actually demonstrate the existence of effective competition in the residential market.

21 When asked whether retaining the SQPP would be more protective of service quality until competitive classification actually occurs, Mr. Tietzel's response was "that the measures must be of a sort that would promote excellent service and give Qwest an incentive to provide excellent service" and "if a measure required 100% performance in all instances and Qwest can not realistically meet that in all instances, that's not an incentive in my mind." Transcript, page 1928, lines 16 – 25. What Mr. Tietzel does not say is more revealing than what he does say. He does not address the issue of whether or not it would be more protective of service quality to hold off on *termination* until Qwest petitions, and the Commission finds, competition in the residential market. Instead, his response goes solely to the "unfair" performance measures Qwest addresses as part of *modification* proposal. It is significant that Qwest has not established that termination is more protective of service quality.

22 Mr. Tietzel does state his opinion is that competition exists in the residential marketplace. Transcript, pages 1929, lines 5 – 6. However, Mr. Tietzel's testimony about the nature of that competition is, again, revealing. He says "[C]ustomers do have choices, and those choices are growing by the day" and calls the competitive market in Washington a "changing paradigm." Transcript, page 1929, lines 9 – 11. Mr. Tietzel also refers to voice over internet telephony as an example of a service

not contemplated at the time of the merger. Transcript, page 1929, lines 14 – 15. The problem with Qwest's argument is that although the paradigm may be in the process of changing, like the use of voice over internet technology, the transformation to a truly competitive local market has not yet occurred. What Qwest seeks is for the Commission to find a change in circumstances based on it suspicion about future events.

23 Qwest also argues that competition is "moving away" from resold services to CLEC owned facilities or via unbundled network elements. *Qwest Reply*, paragraph 11. However, Qwest has not established that the movement is complete or that it has negated the need for the SQPP. As Dr. Blackmon stated, it is not clear that the change in the competitive landscape that has occurred has a direct relationship to the need to terminate the SQPP. *Staff Statement*, paragraph 10. In fact, both Dr. Blackmon and Mr. Tietzel agreed that to the extent a wholesale or unbundled service is within Qwest's control, the service quality of a competitor's retail service is affected.[4] *Staff Statement*, paragraph 10, Transcript, page 1930, lines 13 – 18.

24 In summary, Qwest argues that the present state of competition in Washington represents a change in circumstances not contemplated when the

[4] As Staff noted in footnote 3 of its statement the Commission found in Docket UT-030614, Order No. 17, para. 26, competitive local exchange companies used their own facilities to provide 20 percent of their analog business lines and used Qwest's network to serve the remaining 80 percent of their analog business lines.

settlement agreement was entered into. *Qwest Reply*, paragraph 12. However, Qwest has only established that the landscape is in the process of changing. Someday, it may reach a state of true competition where the SQPP is no longer necessary, but as Dr. Blackmon stated "we are not there yet." *Staff Statement*, paragraph 21.

25 The next reason Qwest provides for termination is the existence of the customer service guarantee program (CSGP). The CSGP, like the SQPP, was a result of the merger settlement agreement. Order No. 9. As Mr. Reynolds acknowledged, it is fair to infer that a settlement agreement, such as the merger settlement agreement, involves a give and take exchange; parties may give on one term and let go of their position on another term in order to come to a settlement. Transcript page 1918, lines 20 – 25 through page 1919, lines 1 – 6. Therefore, the SQPP and CSGP should not be evaluated solely by determining whether the programs are consistent with each other or protect the same things. Also, since the service the service quality protections contained in both program came about at the same time, it is clear that the CSGP is not a "changed circumstance" justifying termination. Furthermore, it is difficult to say see how the two programs create a

"significant hardship" since Qwest freely entered into the programs knowing that they contained some overlap. As Dr. Blackmon stated:

> It is fair to assume that, had the company expressed a concern about double coverage in 2000 when it was negotiating the service quality commitments associated with the merger, it could have developed a set of micro-level and macro-level measures with absolutely no overlap. Had it done so, the overall scope of the two programs would be substantially broader than what was actually approved by the Commission. That, however, is not the outcome that Qwest seeks here; rather, it would simply take away an important consumer protection program with no compensating increase in any other mechanism.
>
> *Staff Statement*, paragraph 15.

26 Certainly, the program could be altered in a way that balances company and consumer interests. However, Qwest has chosen instead to bring a one sided petition for termination. For all of the above reasons, termination based on the existence of the CSGP is not in the public interest.

27 Finally, Qwest argues that termination of the SQPP is in the public interest in light of the service quality rules. The new service quality rules are not "changed circumstances" sufficient to justify termination. The Commission had service quality rules in place when it approved the merger settlement and SQPP in 2000, so the mere enactment of "new rules" – more accurately described as revised rules – should not be a reason to abandon the customer benefits flowing from the SQPP. If the revised rules were stricter than the SQPP and Qwest were strictly complying

with the rules, the SQPP might be scrapped as irrelevant. That, however, is hardly the circumstance here. Nor does the requirement that Qwest comply with both the SQPP and the service quality rules constitute significant hardship. As discussed in Staff's Statement and testimony, under present circumstances, Qwest is not the same as every other phone company and it should not be treated the same way. *Staff Statement*, paragraph 20, Transcript, page 2067, line 21 through page 2068, line 15. Furthermore, the SQPP was agreed to at the time of the merger because each side received a valuable benefit: Qwest received approval of its merger and consumers, Staff and the other partiers to the settlement received a benefit in the way of service guarantees and credits. *Staff Statement*, paragraph 21. Dropping the SQPP now only dilutes service quality for the entire industry and results in a loss to consumers, and the other parties to the agreement without a corresponding benefit. *Staff Statement*, paragraph 19.

B. Qwest's Proposal for Modification.

28 Qwest proposes to terminate the SQPP entirely or, in the alternative, make three modifications: (1) Replace the existing SQPP standards with the standards from the Commission's service quality rules, but leave the existing SQPP payment structure in place, (2) Modify the "Out-of-Service Repair Interval" metric such that 100% performance is not required to meet the standard, and (3) Modify the

"Complaint Response" metric such that 100% performance is not required to meet the standard. Like the issue of termination, Staff's Statement adequately addresses the issue of modification. However, to the extent that additional information is important it will be provided below.

29 Qwest's proposals are not in the public interest because they do not balance company interests with consumer interests. Staff has shown that the Qwest proposals benefit the company at the expense of consumers, and Qwest has not proven otherwise. Qwest indicated during cross-examination that it did not feel it had an obligation to identify all possible problems with the SQPP in making its modification proposal. Transcript, page 1916, line 24 through page 1917, line 2. This may be true to the extent that problems are too difficult to identify or correct, but it does not obviate the need for Qwest to make a good faith attempt to correct the SQPP in a way that balances company interests with consumer interests. In fact, Qwest provides little evidence to show that modification of the program benefits consumer interests in any way. Likewise, Qwest has made little attempt to show that the proposal balances the interests of all the parties. The most Qwest is willing to commit on the issue of benefit to consumers from its proposals is to say that it believes "*it stands a chance* [emphasis added] of creating better service quality". Transcript, page 1910, lines 12 –15. Even if it stands a chance of being an

improvement for one or two particular measures, due to its unbalanced nature, it does not stand a chance of being an improvement for all parties consistent with public interest standard. Furthermore, Qwest's proposal is, by no means, the best alternative to fix the problem.

C. What type of modification proposal is in the public interest?

30 Qwest has not established that its termination or modification proposals are in the public interest. However, even if Qwest had shown that its modification proposal were more in the public interest than the original mechanism, the commission should not adopt it, because there are other, even better modifications that could be made. Staff recognizes that the Commission has broad discretion to fashion a remedy that is in the public interest. An appropriate proposal would balance company interests with consumer interests, take into account the interests of all parties to the settlement agreement and attempt to account for any changed circumstances or significant hardship that was not anticipated by the parties.

31 Any proposal must be balanced in that the proposal "benefits both the company and the customers" and "doesn't harm one side to the gain of the other side." Transcript, page 2073, line 24 through page 2074, line 1. It also must not result in the "the loss of consumer benefit" without some sort of compensation for

that loss. Transcript, page 2067, line 16 – 19. Dr. Blackmon testified the Commission should also look at the entire mechanism in evaluating proposals:

> If there is a window for modification, it exists because of the termination alternative. As I understand Qwest's argument is that since they have the right to ask for termination, it's fair game to ask for modification. Given that that's the window, I think that any modification needs to be looked at with the whole mechanism in mind and not individual pieces of it since the proposition, the alternative proposition, is that the entire thing is terminated.
>
> Transcript, page 2073, lines 7 – 16.

32 Staff made just such a proposal in 2002 relating to out-of-service-repair intervals. Staff has been aware for some time that there were problems with this mechanism. *Staff Statement*, paragraph 48, Testimony of Glenn Blackmon, Exhibit 274-T, page 6, lines 12-17. In 2002, Staff proposed to convert the mechanism from an all or nothing structure to payment per out-of-service trouble report. Testimony of Glenn Blackmon, Exhibit 274-T, page 9, lines 3-6. Specifically, Qwest would pay $500.00 per out-of-service trouble report not restored within two working days. *Id.*

33 In contrast to Qwest's current proposal, Staff's proposal is a far better measure and operates as a better incentive. Qwest proposes substituting three steps for one. *Qwest Petition*, Paragraph 14. Staff and the Commission itself have acknowledged the weakness of having an all-or-nothing standard, analogizing it to a sheer cliff at the top of a canyon. It is a puny improvement to take what is today a sheer cliff and insert a ledge part-way down the canyon. Staff's proposal, on the

other hand, creates hundreds of steps, one for each missed repair. The payments are likewise divided into much smaller increments by Staff and are therefore create a better measure and ultimately a better incentive. To whatever extent Qwest's two-step proposal would contribute to better incentives and better service performance, it is exceeded by the Staff proposal.

34 The Staff proposal is also much more balanced. It benefits Qwest, because the company would pay about 20 percent less than it would under the current structure at the current level of performance. However, unlike the Qwest proposal, it does not *solely* benefit Qwest. Customers also are better off because of the greater incentives for service improvements and because of the potential for higher payments should performance slip significantly. Under the Qwest proposal, the company usually pays less and can never pay more.

35 Although, this is one example of a balanced proposal for modification that is in the public interest, it is by no means the only one. If the Commission thinks it appropriate to fashion appropriate remedies, Staff suggests the Commission apply the criteria described above.

V. CONCLUSION

36 Qwest has the burden of proof in this proceeding. In determining whether Qwest has met its burden the proper public interest criteria must be applied. Those

criteria are: (1) do the proposals balance company interests and consumer interests, (2) do the proposals account for the negotiated, give and take, nature of the settlement agreement and take into account all parties' interests, and (3) are the proposals proper remedies in light of changed circumstances, significant hardship, or other convincing reasons. Qwest's current proposals are unbalanced, fail to provide any compensation for loss of customer benefit, and do not establish changed circumstances, significant hardship, or other factors sufficient to warrant the change requested. Staff believes that maintaining the mechanism in its present form is the most appropriate course of action, given the Commission's previous order and the relatively short time over which any changes would be applied. However, Staff also recognizes that the Commission has broad discretionary authority to fashion an appropriate remedy through modification of the SQPP and suggests how the public interest criteria could be applied to tailor changes to the SQPP to any perceived shortcomings. Should the Commission wish to modify the SQPP, it should do so using the balanced method proposed by Staff in 2002. For all of the above reasons, Staff requests that Qwest's Petition to terminate or Modify the Service Quality Performance Program be denied, but if it is granted in part, Staff

requests that the Commission fashion a remedy consistent with the public interest standard.

DATED this 18th day of June, 2004.

CHRISTINE O. GREGOIRE
Attorney General

_____

CHRISTOPHER G. SWANSON
Assistant Attorney General
Washington Utilities and
Transportation Commission
(360) 664-1220