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 STATEMENT OF POSITION AND AUTHORITIES

CONFIDENTIAL PURSUANT TO THE PROTECTIVE ORDER IN DOCKET NO. UT-991358

REDACTED VERSION

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I. INTRODUCTION

1 In accordance with the Thirteenth Supplemental Order in this docket, Qwest Corporation ("Qwest") files this statement of position and authorities. Qwest respectfully requests that the Commission grant Qwest's petition for termination or, in the alternative, modification, of the Service Quality Performance Program ("SQPP") previously established in this case.

2 The Commission order approving the merger of Qwest and U S WEST[1] established the SQPP and, by the agreement of all parties, explicitly provided that Qwest may seek the SQPP's termination. Notwithstanding the opponents' rhetoric that Qwest is seeking to "abandon" the SQPP prematurely, Qwest has every right to seek termination and/or modification of the SQPP.

3 Also apparently lost on the opponents is that the purpose of the SQPP is to drive high service quality. It is not, as the opponents' positions connote, a money making mechanism, the value of which is judged solely by the dollars extracted from Qwest, as opposed to the positive impact it has on Qwest's service quality. Despite admissions by Staff that Qwest is paying SQPP credits despite providing good service and that certain metrics are indeed flawed and counterproductive, Staff (joined by Public Counsel and the Citizens Utility Alliance ("CUA")) insists that the SQPP should remain unaltered. The opponents' position is neither logical nor equitable.

4 The record in this case demonstrates that the SQPP should be terminated. Qwest's service quality is significantly better than it was in June 2000. Since that time, the competitive landscape has dramatically changed, as Qwest's market position has been eroded by wireline,

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[1] *Ninth Supplemental Order Adopting and Approving Settlement Agreements, Granting Application ("Ninth Supplemental Order")*

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wireless, cable and VOIP competitors. Qwest has responded to the new market realities through a company-wide dedication to the Spirit of Service, a focus on improving the customer service experience at every level. Providing improved service quality is no longer something that needs to be compelled; it is a business necessity and a condition of employment at Qwest.

5 Furthermore, even absent the SQPP, multiple other protections will remain. The Commission has recently adopted new service quality standards and reporting requirements that apply to Qwest, as well as many other carriers in Washington. In addition, the Customer Service Guarantee Program ("CSGP") will remain in effect even if the SQPP is terminated.

6 If the Commission opts not to terminate the SQPP, Qwest has proposed three sensible modifications to the SQPP. The modifications are balanced and appropriate, as they would reduce the undue burden on Qwest, rationalize the SQPP with the Commission's oversight of similarly-situated carriers in Washington *and* bolster the incentives to Qwest to continue to provide high service quality. The opponents' stubborn dismissal of the proposed modifications, notwithstanding Staff's admission about the flawed nature of the relevant metrics, reflects a belief on the part of the opponents that the number of dollars paid by Qwest is more important than treating Qwest fairly or motivating Qwest to improve certain aspects of its service quality. It also reflects an apparent belief that Washington customers subscribing to CenturyTel, MCI or Verizon services deserve lower (or different) service quality than do Qwest customers. Such a view is flawed and should be given little weight.

II. BACKGROUND

A. The SQPP

7 The SQPP was a component of the parties' settlement in this docket. The settlement, as adopted and approved by the Commission, resolved all contested issues with regard to the Qwest-US WEST merger. The SQPP is described at section II.B of and Attachment B to the

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settlement agreement.[2] It sets baseline levels of performance for eight (8) service quality measures. It also imposes self-executing penalties for non-compliance. The SQPP metrics and penalties are summarized in Table 1. The parties agree that the original purpose of the SQPP was to provide Qwest financial incentive to improve eight areas of service quality. *Ex. 40, ¶¶2 42; Ex. 56, at 6; Tr. 2066.*

TABLE 1 – SQPP Metrics

	1	2	3
	Metric	**Merger Related Benchmark**	**Monthly Payment for Non-Compliance**
A	Orders completed < 5 Business Days	90% in each exchange for each month	$4,902 per exchange
B	Order Completed < 90 Calendar Days	99% in each exchange for each month	$4,902 per exchange
C	Trouble Reports	No more than 4 per 100 lines for 3 consecutive months or 4 of 12 months in each exchange	$4,902 per exchange
D	Dial Tone Speed	Dial tone w/in 3 sec. on 90% of calls placed in each central office switch for each month	$2,976 per switch
E	Out-of Service - Repair Interval	All reported interruptions shall be restored within two business days less exceptions – for each month	$83,333 per month
F	Repair Center Access	Except during periods of emergency operation - 80% within 30 seconds for each month	$83,333 per month
G	Business Office Access	Except during periods of emergency operation - 80% within 30 seconds for each month	$83,333 per month
H	Complaint Response	Complete and detailed response within two business days for each month	$83,333 per month

8 *Ex. 1, Attach. 1.*[3] Note that two of the SQPP metrics – out-of-service repair (Table 1, row E) and complaint response (Table 1, row H) impose 100%, all-or-nothing payment standards. If

[2] *Ninth Supplemental Order, App. A.*

[3] *See also Ninth Supplemental Order, App. A, Att. B.*

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Qwest misses on a single out-of-service repair order, for example, it pays $83,333 for that month, regardless of whether it successfully met the two business day benchmark for every other repair order in the month or for no other repair order in the month. To provide perspective on the rigidity of this standard, in 2003, Qwest cleared a total of XXX out-of-service trouble reports.[4] Qwest missed the two working day SQPP benchmark on only XXX of those. *Ex. 24, at 3 (upper chart, second row).* This equates to a 99.26% success rate. When excludable "misses" (of which there were XXX in 2003)[5] are removed, Qwest's performance goes up to a 99.39% success rate.[6] Qwest paid the maximum payment for this metric in 2003, which is exactly the same payment it would have paid had it missed on 99% of the repair tickets. In fact, Qwest has missed on this metric in every month the SQPP has been in effect. *Ex. 24;*[7] *Tr. 2064.*

9 Notwithstanding the opponents' desire for the SQPP to be perpetual, the parties, including Staff and Public Counsel, agreed to a finite duration and explicitly agreed that Qwest had the right to petition the Commission to terminate the SQPP after 2003.[8] The parties also agreed to a provision permitting Qwest to petition for mitigation of credit amounts,[9] although Qwest is not seeking mitigation in this proceeding.

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[4] The total number (XXXXXX) can be approximately calculated by use of the following formula: x =xxxx/(1 - .9926). The 99.26% figure (or .9926) is the percentage of out-of-service repair tickets cleared within two business days by Qwest in 2003. *See Table 2 below, cell E-5.* There is a slight deviation in the resulting figure due to rounding that was done in calculating 99.26%. The total number (XXXXXX) is also displayed on Qwest's Washington Out-of-Service Summary (December 2003), as filed with the Commission on January 29, 2004 in Docket Nos. UT-921192, UT-950200, UT-991358.

[5] *Ex. 24, at 3 (upper chart, second row).* To calculate the number of excludable misses, subtract XXXX from XXXX.

[6] The resulting percentage (99.39%) is calculated in the same manner as 99.26% was previously calculated, except that the total number of misses (xxxx) should be replaced by the number of non-excludable misses (xxxx).

[7] The spreadsheets contained in Exhibit 24 relate to the CGSP, not the SQPP, but show that Qwest has had misses (albeit very few relative the total number of out-of-service conditions remedied each month) in every single month between 2001 and 2003. By virtue of the 100% standard under the SQPP, Qwest has paid the maximum payment each month as a result.

[8] *Ninth Supplemental Order, App. A., at 7 (sec. II.B.7).* That section provides in relevant part, "The Service Quality Performance Program shall continue for no fewer than three (3) calendar years, through December 31, 2003. The Company may petition the Commission to terminate the Service Quality Performance Program after the year 2003, and in any event will not be obligated to continue the Program after December 31, 2005."

[9] *Ninth Supplemental Order, App. A., at 7 (sec. II.B.5).*

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B. The CSGP

10 The merger settlement agreement also created the CSGP,[10] a set of customer-specific remedies paid by Qwest in the event Qwest does not meet a particular customer service obligation. More specifically, the CSGP provides overlapping customer credits for missed appointments and commitments, delayed primary basic exchange service, out-of-service conditions, dial tone within 3 seconds, and trouble report rate. The CSGP credits can be significant and have the advantage over the SQPP of being targeted to the specific customers affected by Qwest's non-performance.[11] *Ex. 5.* For example, a customer receives a $50 credit if Qwest fails to keep a guaranteed appointment or guaranteed commitment. *Ex. 23, at 3 (sec. 2.2.2.B.1.e.).*

11 In this proceeding, Qwest is not requesting or recommending termination of or modification to the CSGP. In fact, in its settlement agreement with Public Counsel and other parties in the most recent Dex proceeding,[12] Qwest (despite the right under the merger settlement agreement to seek termination as of July 1, 2003) agreed not to seek the termination of the CSGP prior to June 30, 2005.[13] The Dex settlement agreement was adopted and approved by the Commission, and is in effect.[14] Thus, the Commission can be assured that the CSGP will remain in effect for some time to come regardless of the disposition of this case.

C. Dramatic Changes Since 2000

12 Circumstances have changed dramatically since the SQPP was adopted in June 2000. Qwest's service quality has improved significantly. The competitive environment has shifted, and Qwest is facing fierce competition for local exchange customers from intramodal and

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[10] The CSGP is set out in the Ninth Supplemental Order, App. A, sec. II.A and in Qwest's Exchange and Network Services Tariff, WN U-40, sec. 2.2.2.B. *Ex. 23.*

[11] In total, Qwest has paid or credited the following amounts to affected customers over the life of the CSGP: $5.7M in 2001; $3.9M in 2002; and $2.2M. *Ex. 1,* ¶*7.*

[12] *In the Matter of the Application of Qwest Corporation Regarding the Sale and Transfer of Qwest Dex to Dex Holdings, LLC, Docket No. UT-021120.*

[13] *Docket No. UT-021120, Tenth Supplemental Order, App. B, sec. III.C.3.*

[14] *Docket No. UT-021120, Tenth Supplemental Order.*

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intermodal competitors. And, the Commission has adopted a robust set of service quality metrics and reporting rules applicable to all carriers. Each of these developments is discussed below.

1. Improvements in Qwest's service quality

13 Qwest has significantly improved in service quality since June 2000. This improvement can be viewed in absolute terms (e.g., performance under the objective SQPP metrics), in relative terms (e.g., in comparison to the performance of other LECs) and in more subjective/qualitative terms (e.g., customer satisfaction surveys).

14 Since the company changed leadership in June 2002, Qwest has very publicly centered its focus on improving customer satisfaction through its Spirit of Service campaign. Qwest's dedication to providing superior customer service is readily apparent in everything from Qwest's public website[15] to the public pronouncements of its leadership. In fact, Qwest has publicly declared a goal to move up to first in the J.D. Power Customer Satisfaction Survey. *Tr. 2002.* As Mr. Reynolds explained at hearing, dedication to providing excellent customer service is now "more or less a condition of employment" at Qwest. *Tr. 2003.*

15 Since the merger, Qwest has also expended significant sums of money in order to expand and upgrade its infrastructure and to improve service. In addition to agreeing to the SQPP and the CGSP, Qwest committed to maintaining its average historic capital investment levels for three years following the closing of the merger.[16] The average historic investment level had been $133 per access line prior to the merger. *Ex. 56, Conf. Att. B.* As Public Counsel's own evidence shows, between 2001 and 2003, Qwest invested xxxx per access line, on average. *Id.* This significant investment, amounting to XXXXXXXX in Washington alone,[17] without a

[15] *Ex. 22 (website displaying "Spirit of Service" corporate motto).*

[16] *Ninth Supplemental Order, App. A, at 8 (sec. III.D).*

[17] *Id.*

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doubt improved service quality in Washington. As mentioned above, these improvements are evident in absolute, relative and subjective terms.

a) Improvement of service quality in absolute terms

16 As the opponents acknowledge,[18] Qwest has significantly improved its service quality, as evaluated by reference to the eight SQPP metrics. In the aggregate, Qwest's SQPP credit liability has dropped 39%, from roughly $3.2 million for 2001 to roughly $1.9 million for 2003. *Ex. 1, Att. 1.* That significant reduction does not, alone, fully depict just how outstanding Qwest's service has become. As discussed elsewhere, the design of the SQPP metrics is such that, as Staff witness Blackmon acknowledged on cross examination, Qwest is sometimes penalized despite providing good service. *Tr. 2019.*

17 Looking more closely at each of the metrics, Qwest's performance has been outstanding. Qwest's three year performance is summarized in Table 2, immediately below.

Table 2 – Summary of Qwest's Performance under the SQPP (2001-2003)

	1	2	3	4	5
	Metric	**Merger Related Benchmark**	**2001 Avg Performance**	**2002 Avg Performance**	**2003 Avg Performance**
A	Orders completed < 5 Business Days	90% in each exchange for each month	97.79%	97.70%	98.99%
B	Order Completed < 90 Calendar Days	99% in each exchange for each month	99.89%	99.97%	99.99%
C	Trouble Reports	No more than 4 per 100 lines for 3 consecutive months or 4 of 12 months in each exchange	98.80%	99.06%	98.99%
D	Dial Tone Speed	Dial tone w/in 3 sec. on 90% of calls placed in each central office switch for each month	99.90%	99.95%	99.97%
E	Out-of Service - Repair Interval	All reported interruptions shall be restored within two business days less exceptions – for each month	99.38%	98.87%	99.26%

[18] *Ex. 40 ¶¶27, 54; Ex. 56, at 3, 4; Tr. 2057.*

F	Repair Center Access	Except during periods of emergency operation - 80% within 30 seconds for each month	90.01%	85.80%	86.50%
G	Business Office Access	Except during periods of emergency operation - 80% within 30 seconds for each month	59.98%	82.60%	75.60%
H	Complaint Response	Complete and detailed response within two business days for each month	794 misses	20 misses	2 misses

18 *Ex. 1, Att. 1.* As can be seen, for each SQPP metric with the exception of business office access, Qwest's performance has on average been far above the benchmark level and/or has improved significantly over the three years that the SQPP has been in effect.

b) <u>Improvement of service in relative terms</u>

19 The evidence in the record reveals that Qwest's performance is on par or superior to that of other Washington carriers. For example, with regard to the out-of-service repair metric (Table 1, row E), Qwest had better performance than Verizon in each month from July 2003 through December 2003 and better performance than Sprint in five of those six months. *Ex. 7.* Unfortunately, it is impossible to provide a side-by-side comparison for each SQPP metric because either the Commission's service quality reporting rules do not require reporting or Staff has not requested such information from other carriers, despite the explicit authority to do so under WAC 480-120-439(10). *See exs. 8-9; Tr. 2021-22.* Based on the information available, Qwest's performance is excellent on a relative basis.

c) <u>Improvement in service in subjective terms</u>

20 While it is difficult to quantify and measure Qwest's performance on a more subjective level, the record evidence shows that Qwest's customers and firms that collect customer satisfaction data view Qwest's service as significantly improved. Qwest would be the first to admit that customer satisfaction surveys are lagging indicators,[19] and thus in this case measures that may

[19] *Tr. 1999-2000.*

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not accurately reflect the current state of Qwest's service quality performance. That inherent limitation notwithstanding, the customer satisfaction data in the record is revealing. It shows that between the first quarter of 2002 and the first quarter of 2004, Qwest's American Customer Satisfaction Index ("ACSI") customer satisfaction score has improved 14.2%. *Ex. 34, at 2.* No other carrier tracked by ACSI has seen improvements nearly as impressive as Qwest's. During that same time period, AT&T's score has increased only 4.1%, Verizon's score has increased only 2.8%, SBC's score has increased only 1.5%, MCI's score has remained the same, Bell South's score has decreased 1.4% and Sprint's score has decreased 12.2%. *Id.* In its commentary, ACSI notes that "Qwest's performance has improved dramatically." *Ex. 28, at 8.* After describing some of Qwest's remaining customer perception challenges, ACSI concludes its discussion of Qwest, as follows.

> What is clear, however, is that the efforts in improving customer service are having an effect. Specifically, it seems better availability of service (hours open, expansion of internet service) is having the desired effect.

21 *Id.* Clearly, customers are recognizing that Qwest's commitment to providing the industry's best customer service and service quality is bearing fruit.

2. Change in competitive paradigm

22 Equally as important is the change in the competitive landscape since 2000. *Ex. 3.* Qwest applied for and received Section 271 relief on the basis that the local market is open to competition. Qwest has consummated hundreds of interconnection agreements with its competitors, and over 85 CLECs submitted Local Service Requests to Qwest to purchase thousands of network components in order to provide competing local services in Washington during 2002 and 2003. *Ex. 1, ¶9.* In total, 139 CLECs are now listed as competitive providers regulated by the Commission. *Ex. 3, at 1-2.* Since June 2000, the number of CLEC lines in service in Washington has more than doubled to 386,104. *Ex. 2, at ¶9.* During that same period, Qwest's retail access line count has dropped by 14.2% and 25.4% for

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residential customers and business customers, respectively. *Ex. 3, at 1.* Overall, Qwest has experienced a 19% access line decline in Washington. *Id.* During that period, the nature of CLEC competition has changed significantly, with CLECs becoming much more independent of Qwest in terms of the form of competition they have chosen to pursue.[20] This evolution in CLEC competition led to the Commission's recent approval of Qwest's petition for competitive classification of all analog business services in Washington.[21]

23 In addition to the competition Qwest faces from wireline competitors such as MCI and AT&T, Qwest faces ever-increasing competition for consumer and large business customers from intermodal competitors. This includes competition from wireless providers,[22] VOIP providers[23] and cable companies.[24] As but one example of the magnitude and impact of intermodal competition, there were (as of June 2003) virtually as many wireless phones in Washington (3,102,750) as there are ILEC access lines in service in Washington (3,452,669). *Ex. 3, at 5.* Clearly, the competitive landscape has shifted dramatically since the SQPP was adopted four years ago.

3. Adoption of service quality rules

24 Just as the competitive environment has fundamentally changed since June 2000, so has the face of service quality regulation in this state. Effective July 2003, the Commission put in place a robust set of service quality metrics and reporting standards applicable to many or all LECs in Washington. In terms of coverage, the Commission rules wholly overlap the SQPP

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[20] For example, the use of total service resale has decreased 13.9% for residential lines and 81.6% for business lines, while CLEC use of unbundled loops has increased 733.7%. *Ex. 3, at 2.* Trends in CLEC-based competition are more fully discussed at *ex. 3, at 1-5*.

[21] *In the Matter of the Petition of Qwest Corporation for Competitive Classification of Basic Business Exchange Telecommunications Services, Docket No. UT-030614, Order No. 17 -- Order Granting Competitive Classification (December 22, 2003) ("2003 Competitive Classification Order").*

[22] *Ex. 3, at 5-8.*

[23] *Id., at 8-11.*

[24] *Ex. 2, ¶11; Ex. 3, at 1, 2.*

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categories. See Table 3, immediately below.

Table 3 – Comparison of SQPP Metrics with Commission Rules

	1	2
	Measure	**Merger/Rule Standards**
A	**Orders Completed < 5 Business Days** - SQPP	90% per exchange
B	New Rule 480-120-105	Same as SQPP
C	**Orders Completed < 90 Calendar Days** - SQPP	99% per exchange
D	New Rule 480-120-105	Same as SQPP
E	**Trouble Reports** - SQPP	Shall not exceed 4 reports per 100 access lines per month for 3 consecutive months or 4 out of 12 months
F	New Rule 480-120-438	4 / 100 lines / mo. for <u>2 mos</u>. or 4 out of 12 mos.
G	**Out-of –Service Repair** - SQPP	100% within 2 business days
H	New Rule 480-120-440	100% within <u>48 hrs.</u>
I	**Business Office Access** - SQPP	Answer 80% of calls in 30 seconds
J	New Rule 480-120-133	<u>60 sec. avg. wait time for svc. representative</u>
K	**Repair Center Access** - SQPP	Answer 80% of calls in 30 seconds
L	New Rule 480-120-133	<u>60 sec. avg. wait time for svc. representative</u>
M	**Dial Tone Speed** - SQPP	Dial tone in 3 seconds for 90% of calls
N	New Rule 480-120-401	Dial tone in 3 seconds for <u>98%</u> of calls
O	**Complaint Response** - SQPP	Complete and detailed response within 2 bus. days

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P	New Rule 480-120-166	Response w/in 2 bus. days svc. affecting / 5 bus. days non-svc. Affecting

25 *Ex. 1, Att. 2.* While the categories overlap precisely, the benchmarks vary for several of the measures. Some standards are more stringent under the Commission's rules. Others (orders completed <5 days and <90 days) are identical. Still others are simply different. The most notable example is the migration in the rules for business office and repair center access from "80/30" standards (meaning 80% of calls being answered within 30 seconds) to an average wait time of 60 seconds.

26 One notable difference between the SQPP and the Commission rules is that, whereas the SQPP includes a set of draconian, self-executing penalties, the Commission did not include self-executing penalties in the rules. Instead, parties that violate the Commission's rules are subject to penalties under the Commission's general fining authority. To date, Qwest does not believe that the Commission (with the exception of a small fine levied and since fully mitigated against Comcast for refusing to report under WAC 480-120-439) has taken any enforcement action against any other company.[25]

27 In addition to adopting broader service quality performance standards, the Commission also significantly revamped its service quality reporting requirements. Under WAC 480-120-439, all Class A companies[26] in Washington must file monthly missed appointment reports, installation/activation of basic service reports, summary trouble reports, switching reports,

[25] On cross examination, Staff witness Blackmon made clear that pursuing enforcement of service quality standards from companies other than Qwest is not a high priority for Staff. *Tr. 2022.* This admission makes clear that Staff believes that Qwest customers are entitled to different service quality than customers of other carriers. It is also confirms that Staff believes that Qwest should be held to different standards and should pay steep penalties for failure to meet the SQPP requirements, even if that amounts to Qwest paying hundreds of thousands to millions of dollars despite providing good service. *Tr. 2019.* The unapologetic lack of a nexus between steep penalties and poor service is one of the most troubling aspects of this case.

[26] Every LEC with 2% or more of the state's access lines is a "Class A" company. *WAC 480-120-021.* The Commission recently clarified that, as a matter of law, CLECs with 2% or more of the state's access lines are Class A companies subject to the reporting requirements of WAC 480-120-439. *In The Matter Of Comcast Phone Of Washington, LLC, Application For Mitigation Of Penalties Or For Stay Docket Nos. UT-031459 and UT-031626 (consolidated), Order No. 04 -- Final Order Affirming And Adopting Initial Order Granting Mitigation, On Condition; Denying Exemption From Rule (Mar. 17, 2004).*

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interoffice/intercompany/interexchange trunk blocking reports and repair reports.[27] *If requested*, Class A companies must also file business office and repair answering system reports.[28] Despite the authority to request such information (information being provided by Qwest in connection with the SQPP), Staff has not requested such information from other Class A companies, with one minor exception. *Tr. 2021-22; Ex. 2, ¶27; Ex. 8.* Every LEC in Washington, whether a Class A or Class B company, must also file major outage reports when it experiences a major outage that lasts more than 48 hours.[29] Clearly, the regulatory landscape has also significantly changed since the SQPP was adopted in June 2000.

D. Qwest Continues to Make Extremely High Payments Despite Excellent Service

28 Notwithstanding the dramatic improvements in Qwest service quality achieved since the SQPP was adopted, Qwest continues to be liable for huge, self-executing credit payments. As noted above, Qwest paid over $1.9 million in credits for 2003 despite the exemplary service displayed above in Table 2. This amount is broken down by metric in Table 4.[30]

Table 4 – Summary of Performance and Credits Paid for 2003

	1	2	3	4
	Metric	**Merger Related Benchmark**	**2003 Avg Performance**	**2003 Credits Paid**
A	Orders completed < 5 Business Days	90% in each exchange for each month	98.99%	$49,020
B	Order Completed < 90 Calendar Days	99% in each exchange for each month	99.99%	$44,118
C	Trouble Reports	No more than 4 per 100 lines for 3 consecutive months or 4 of 12 months in each exchange	98.99%	$0

[27] *WAC 480-120-439(1),(3)-(4),(6)-(9).*

[28] *WAC 480-120-439(10).*

[29] *WAC 480-120-439(5).*

[30] *See also Ex. 1, Att. 1 (complete breakdown of annual performance and credits, 2001-2003).*

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D	Dial Tone Speed	Dial tone w/in 3 sec. on 90% of calls placed in each central office switch for each month	99.97%	$0
E	Out-of Service - Repair Interval	All reported interruptions shall be restored within two business days less exceptions – for each month	99.26%	$1,000,000
F	Repair Center Access	Except during periods of emergency operation - 80% within 30 seconds for each month	86.50%	$0
G	Business Office Access	Except during periods of emergency operation - 80% within 30 seconds for each month	75.60%	$666,667
H	Complaint Response	Complete and detailed response within two business days for each month	2 misses	$166,667
I	**TOTAL ANNUAL CREDIT**			**$1,926,471**

29 *Ex. 1, Att. 1.* Qwest also paid $3,173,800 in credits for 2001 and $1,895,243 in credits for 2002. *Id.* While the $1.9 million is a significant expense to Qwest (especially in light of the fact that the credits were required despite excellent service), its Washington customers each received only $0.81 for 2003. *Ex. 2, ¶17.* On average, over the life of the SQPP, customers have received an annual credit of approximately $1.00. *Ex. 1, ¶7 (fn 5).*

30 Two good examples of Qwest paying sizeable payments despite excellent service are the 5- and 90- day interval metrics. In 2003, Qwest made payments totaling $49,020 and $44,118, respectively, despite that its average performance was 98.98% for the 5-day metric and 99.98% for the 90 day metric. *Table 4 (rows A, B).* Qwest's performance is impressive in light of the fact that the 5-day standard is 90% and the 90-day standard is 99%.

31 Qwest made payments on these metrics for 2003 due to 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 order per month which are subject to the installation

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interval metrics. *Ex. 2, ¶29.* In many of its smaller exchanges (e.g., Crystal Mountain, Northport, Waitsburg), the order volume can be less than 10 orders per month. *Id.* 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. *Id.* This is because in each missed wire center, the total number of orders was less than 100, resulting in a percentage of orders completed with in the 90-day interval that was less than the 99% standard. *Id.* Despite excellent service, Qwest is making very large payments under the SQPP.

III. RELIEF REQUESTED

32 Qwest's primary request is that the Commission terminate the SQPP, effective (for purposes of tracking and measuring performance) December 31, 2003.[31]

33 Should the Commission conclude that termination of the SQPP is not appropriate, Qwest requests modification of the SQPP in three important respects, again effective December 31, 2003. First, Qwest requests that the Commission modify the SQPP metrics to reflect the benchmarks and standards found in the Commission's rules and summarized in Table 3 above. Second, Qwest requests that the Commission replace the 100% payment structure of the out-of-service repair metric (Table 1, row E) with the following sliding scale. *Ex. 1, at 7.*

Percent of out-of-service condition restored in 48hrs

Below 99%	99-99.5%	99.5-100%
100% of payment	50% of payment	No payment

34 Third, Qwest requests that the Commission replace the 100% payment structure for the

[31] In the first paragraph of the petition, Qwest asked that the relief requested in this docket be made effective as of December 31, 2003. *Ex. 1, ¶1.* The opponents did not take issue with Qwest's proposed effective date in their written statements.

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complaint response metric (Table 1, row H) with the following sliding scale for monthly misses. *Ex. 1, at 8.*

Number of missed responses to Commission within two/five days of complaint

>10	**6-10**	**1-5**
100% of payment	50% of payment	No payment

35 Qwest believes that, should the Commission decline to terminate the SQPP, the three aforementioned modifications would go a significant way towards establishing some measure of parity of regulation and would relieve Qwest from onerous, illogical and counterproductive metrics, while at the same time preserving (and perhaps intensifying) Qwest's incentive to provide excellent service quality to its Washington customers.

IV. DISCUSSION

A. Termination of the SQPP

36 The Commission should grant Qwest's petition and terminate the SQPP, effective December 31, 2003. Termination of the SQPP is in the public interest, as it would relieve Qwest of onerous payments without causing any associated harm to Washington consumers. The reasons for denying Qwest's petition set forth by the opponents are neither compelling, nor even rational. Worst of all, they reflect a perspective that punishing Qwest is of greater value than is ensuring parity of regulation or driving excellent service quality. Qwest's petition should be granted.

1. Standard for termination

37 It is beyond dispute that Qwest has every right to seek termination of the SQPP.[32] In reviewing Qwest's petition, the first question the Commission must ask is what standard to apply in evaluating the request. In a previous phase of this docket, the Commission held that the

[32] *Ninth Supplemental Order, App. A, at 7 (sec. II.B.7).*

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appropriate standard to be applied in such a case is whether the requested relief is in the public interest.[33] In the Twelfth Supplemental Order, the Commission clarified that the public interest standard can be satisfied by, among other things, a showing of changed circumstances or significant hardship.[34] It is notable that Staff and Public Counsel appear to agree with Qwest that a public interest standard is the appropriate standard. *Ex. 48; Ex. 56, sec. II.A.1.*[35]

2. Termination of the SQPP is in the public interest

38 Termination of the SQPP is, by any fair evaluation of Qwest's petition and the record evidence, in the public interest. Termination of the SQPP would remove what experience has shown to be irrationally punitive payments that are not necessarily tied to poor service quality. It would do so without imposing any corresponding harm on consumers. Circumstances have so drastically changed since the SQPP was adopted that the SQPP is simply no longer necessary. In addition, Qwest's service quality will remain regulated under the Commission's rules and the CSGP will remain in place until *at least* mid-2005. Finally, the self-fulfilling and circular arguments posed by the opponents as to why the Commission should deny Qwest's petition are far from compelling. Termination of the SQPP is appropriate and in the public interest.

a) Termination of the plan will not harm consumers

39 It is without question that termination of the SQPP will benefit Qwest. As detailed above, Qwest continues to pay self-executing credits in the millions of dollars despite providing exemplary service quality to its Washington customers. This is due to the plan's severe

33 *Twelfth Supplemental Order: Denying Petition for Modification of Ninth Supplemental Order and Mitigation of Credit Amount ("Twelfth Supplemental Order"), ¶¶16, 17, 26.*

34 *Id., ¶26.*

35 Application of a public interest standard is also consistent with the manner in which it resolves request for exemptions from regulatory obligations created by Commission rule. In that very similar context, the Commission may grant an exemption from the provision of a rule if such would be consistent with the public interest, the purposes underlying regulation and applicable statutes. *WAC 480-120-015(1).* A substantively-identical standard is set forth evaluating requests for relief from a procedural rule of the Commission. *WAC 480-07-110(1).*

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payment structure, which in multiple respects imposes maximum liability for even a single miss. Given Qwest's, the Commission's and the other parties' three years of experience of performance and payments under the SQPP, it would simply be bad public policy to continue the plan, especially in light of the fact that termination of the SQPP would not harm consumers. This can be demonstrated in a number of ways.

(1) Customers receive no perceptible benefit from the SQPP.

40 The financial "benefit" received by individual consumers is microscopic. For the year 2003, Qwest customers in Washington each received a bill credit of $0.81. *Ex. 2, ¶17.* On average, the *annual* credit has been in the $1.00 range. *Ex. 1, ¶7 (fn 5).* Thus, while in the aggregate, the SQPP costs Qwest large sums of money, Washington consumers do not realize a measurable financial benefit or remedy in return. Staff takes internally inconsistent positions regarding the meaningfulness of the SQPP credits. On multiple occasions, Staff notes that the credit is a "tangible" benefit and that customers would be "worse off" and would suffer a "measurable harm" without the credit. *Ex. 40, ¶¶19, 21, 41; Tr. 2067.* Staff also, apparently seeking to preserve credibility, acknowledges that the amount of the credit is not great when spread over the entire Washington customer base. *Id., ¶41.* Clearly, any attempt to spin an $0.81 annual credit as meaningful (or even noticeable) is wasted effort.

41 It is also important to note that, in addition to the bill credit being miniscule, Qwest customers likely do not even perceive the type of service quality being measured and harshly punished under the SQPP. Staff admits just this. In an attempt to defend against Qwest's argument that competition negates the need for the SQPP, Staff opines that

> [B]uyers cannot choose [among local exchange carriers] based on what they cannot see. Many of the service characteristics covered in the SQPP are experienced by customers broadly, rather than individually, or they occur only infrequently. (footnote omitted)

42 *Id., ¶ 8.* Staff similarly notes that customers do not perceive the difference between an "80/30" business office access standard and an average wait time standard. *Id., ¶53 (fn 15).* It is entirely unclear – aside from the obvious inference that Staff is more interested in punishing Qwest than taking a balanced approach to the questions posed in this docket – why Staff would so steadfastly stand by a plan which costs Qwest millions of dollars, yet offers individual customers neither perceptible monetary benefits nor perceptible improvements in service quality. Staff's position grows even more curious when one adds to the analysis Staff's admission that certain of the SQPP metrics are flawed and counterproductive.[36]

(2) The Commission's rules will continue to protect consumers.

43 Termination of the SQPP will not negate Qwest's obligations to abide by the Commission's recently-expanded service quality rules summarized in Table 3 above. As Table 3 reveals, the Commission's rules provide complete overlap of the SQPP and cover each of the eight SQPP metrics. The majority of these rules impose identical or more stringent service standards, a point admitted by Public Counsel witness Kimball at hearing. *Tr. 2065.* More specifically, the standard for the order completion metrics (less than 5 days and less than 90 days) is identical under the SQPP and the Commission rules.[37] The Commission rules impose *more stringent* standards for the trouble report, out-of-service repair and dial tone speed metrics.[38] For only one metric, complaint response, do the Commission's rules offer a more lenient standard. However, that more lenient standard relates only to non-service-affecting complaints.[39]

[36] In its Statement, Staff admits that "the all-or-nothing nature of the out-of-service repair measure and the complaint response measure was an obvious weakness." *Ex. 40, ¶48.*

[37] Both the SQPP and the rules require completion of 90% of orders per exchange in less than 5 days and 99% per exchange in less than 90 days. *Ninth Supplemental Order, App. A, Att. B, at 1; WAC 480-120-105.*

[38] For dial tone speed, the SQPP requires dial tone within 3 seconds for 90% of calls. *Ninth Supplemental Order, App. A, Att. B, at 2.* The rule raises that to 98% within 3 seconds. *WAC 480-120-401.* For trouble reports, the rule metric is missed if there are 4 or more trouble reports per 100 lines in 2 consecutive months, whereas it takes 3 such consecutive months for there to be a miss under the SQPP. *WAC 480-120-438; Ninth Supplemental Order, App. A, Att. B, at 2.* For out-of-service repair, the SQPP requires 100% out-of-service trouble reports to be repaired within two business days, whereas the Commission's rule uses 48 hours as the benchmark. *Ninth Supplemental Order, App. A, Att. B, at 2-3; WAC 480-120-440.*

[39] The SQPP requires that a complete and detailed response to the Commission Consumer Affairs Staff be provided for all complaints within two business days. *Ninth Supplemental Order, App. A, Att. B, at 3.* The Commission's rule utilizes

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44 For the remaining two metrics – business office access and repair center access – the Commission's rules take a completely different approach than did the SQPP. The rules utilize a 60 second average answer time, rather than the 80/30 SQPP standard. While noting that waiting 60 seconds for an answer is not desirable, in adopting the rule, the Commission held explicitly that 60 seconds is a reasonable time for a customer to wait.[40] Given this conclusion, there should be little concern about Qwest moving from the 80/30 SQPP standard to the standard under the rule.

45 Furthermore, the average 60 second benchmark under the rules is a much more reasonable standard. 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.[41] It is also far more meaningful as an incentive mechanism because it provides a continuing incentive throughout the month to meet the standard.[42] Managing business office access performance for the 2.5 million calls received per month is a very complex matter given the myriad of factors at play, including the demanding, high-pressure nature of the work and uneven call volumes. On this latter point, Qwest experiences an extremely high call volume on Mondays, but cannot simply

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the same standard for service-affecting complaints, but provides LECs five business days to respond to the Commission regarding non-service-affecting complaints. *WAC 480-120-166(6)-(7).* The additional 3 days for non-service-affecting complaints is not significant, the proof of which begins and ends with the fact that the Commission had every opportunity during the recent rulemaking to impose a universal 2 day standard such as exists under the SQPP. Obviously, the Commission found the 2-day/5-day split to be reasonable. There should be little concern that, with the termination of the SQPP, this particular metric will be made less stringent.

[40] *General Order R-507, In the Matter of Amending, Adopting and Repealing Chapter 480-120 WAC Relating to Telephone Companies, Docket No. UT-990146 (Dec. 16, 2002) ("General Order R-507"), ¶72.*

[41] As Public Counsel Kimball admitted at hearing, the 80/30 standard offers no information to assess how Qwest performed vis-à-vis the 20% that perhaps did not receive a representative within 30 seconds. *Tr. 2060-62.* An average wait time standard offers a better means of measuring how Qwest performed across the board.

[42] As explained in Qwest's reply comments, average wait time is a better measurement because an average wait time gives a direct measurement of performance for all business office calls relative to an objective standard. More specifically, average wait time measures the average hold time for each business office call, where the 80/30 metric measures that percentage of calls with hold times of greater or less than 30 seconds. Obviously, from an accountability perspective, the average wait time is affected by each and every call, while the 80/30 metric only addresses those calls that fall within the standard. For example, in one month Qwest might meet the 80/30 standard with an average wait time for all calls of 25 seconds and also meet the standard the next month with an average wait time of 35 seconds. These results obviously reflect two different customer experiences that are masked by the 80/30 metric. Finally, average wait time helps the company more effectively administer the business office in pursuit of the standard and also helps customers, regulators, and other interested parties more completely understand the results. *Ex. 6.*

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hire extra staff to work only on Monday. This Monday phenomenon makes it nearly impossible to meet the 80/30 standard given that so many calls are received on Monday relative to the rest of the week. *Ex. 6.* In all respects, the average wait time standard is a superior means of measuring and influencing performance.

46 On an equitable note, the Commission's rules are in place to protect all consumers, not simply non-Qwest customers. Staff fails to adequately respond to this undeniable fact. Staff's argument amounts to taking a position that the rules are adequate to protect non-Qwest customers, but badly inadequate (thus the need for harsh self-executing payments) to protect Qwest customers. Staff's position is tantamount to an argument that Qwest customers are entitled to "better" (or, at minimum, different) service quality than are MCI, CenturyTel and Verizon customers. The record reveals no facts supporting such an illogical, unfair conclusion.

47 The opponents also argue that because of Qwest's historical legacy as a Regional Bell Operating Company, it is not entitled to parity of regulation. *Ex. 40, ¶20; Tr. 2068, 2070.* Staff even goes so far as to say that the unique federal regulations pertaining to Qwest's *wholesale* operations reflect that Qwest still has market power in the retail market. *Ex. 40, ¶20.* This position is clearly without merit. Regardless of Qwest's history, it no longer has market power, a point recognized by the Commission's recent finding that Qwest faces effective competition for analog business services throughout Washington.[43] Qwest's historical place in the market has no bearing on this docket, nor does the fact that its wholesale operations are tightly regulated.[44] Over 100 carriers now compete for local exchange customers in Washington today. The Commission has in place service quality standards and

43 *2003 Competitive Classification Order.*

44 If nothing else, as the Commission noted in the competitive classification case, the stringent wholesale regulations support a view that Qwest lacks market power in its retail operations. As Staff pointed out in that case, it is imperative to distinguish between Qwest's fully-regulated wholesale regulations and more lightly-regulated retail operations. *2003 Competitive Classification Order, ¶¶ 92, 96.*

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reporting requirements that are broadly applicable. Harkening back to the pre-Telecom Act days gone by is a *non-sequitur*. It sheds no light on the issues in this case, and it reveals the opponents' unfounded desperation to keep the punitive and flawed SQPP in place at any cost.

48 Staff's preference for disparate regulation is made even more clear by its own lack of interest in monitoring the service quality of other carriers. The same Staff that uses hyperbole throughout its written comments about how Qwest is seeking to abandon a plan critical to Washington consumers wholly ignores its authority under the Commission's service quality rules to track the same information from other carriers. As discussed above, the new service quality reporting rule permits the Commission to request Class A companies to file business office and repair answering system reports.[45] As Staff witness Blackmon admitted at hearing, Staff has not made such request from any Class A company in Washington. *Tr. 2011-22.* To do so would apparently be a waste of time and resources. Per Dr. Blackmon, Staff has "better things to do with their time." *Tr. 2022.* Qwest puzzles at how this information can be critical for the sake of Qwest customers, but absolutely insignificant to know for the sake of Verizon and Sprint customers.

49 Staff's double standard was further revealed in Dr. Blackmon's explanation at hearing that, if the Commission terminates the SQPP, the Commission will have to "take a different approach" to enforcement of the rules *(Tr. 2031-32)*, as if Staff has not even contemplated enforcement given that Qwest (Staff's only concern) is covered by the SQPP. The clear implication is that, as long as Qwest is being penalized for not meeting service quality standards, Staff has discharged its duties to consumers. Again, Qwest fails to understand how Staff can defend an argument that Verizon and Comcast consumers inherently deserve and require better service than do Qwest customers.[46]

[45] *WAC 480-120-439(10).*

[46] As an aside, the record evidence suggests that Staff should be much more concerned with the service quality experience of Comcast customers. While again not dispositive, Comcast's ACSI scores are significantly (12.5%) below Qwest's and have shown no improvement since 2002, the time period that Qwest's ACSI scores have improved over 14%.

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(3) The CSGP will continue to protect consumers, and do so meaningfully.

50 That consumers will not suffer harm from the termination of the SQPP is made even more clear from the fact that the termination of the SQPP will have no bearing on the CSGP. That program provides meaningful credits directly to the retail customers affected by Qwest's inability to meet particular performance obligations. The CSGP provides "double coverage" (actually, triple coverage in light of the Commission's rules and enforcement abilities) to the SQPP, as it covers many of the same categories of service quality. These include delayed service, out-of-service conditions, no dial tone and trouble report rate. In light of the CSGP and the Commission's service quality rules, the SQPP is simply a punitive redundancy. The Commission should grant Qwest's petition and terminate the SQPP.

(4) Staff and Public Counsel offer nothing but speculation that service will decline without the SQPP.

51 Staff and Public Counsel argue that it is likely that (notwithstanding the Commission's service quality rules, the CSGP, increased competition and Qwest's vast improvements in service quality) Qwest's service quality will degrade in coming years should the Commission grant Qwest's petition. *Ex. 40, ¶¶26-29; Ex. 56, sec. II.A.4; Tr. 2030-31.* When pressed, however, neither Staff nor Public Counsel offer anything but uncorroborated speculation to back up these predictions.

52 By way of example, in its written comments, Staff states that, absent the SQPP, Qwest's service quality improvements *may* not be sustained due to recent decreases in Qwest network

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Ex. 34, at 2. Similarly, Dr. Blackmon testified that Verizon's service quality has declined in recent years. *Tr. 2029.* Yet, Staff has not exercised its right to obtain information from Verizon and has not pursued enforcement of the Commission's service quality rules against Verizon. *Tr. 2021, 2029.* While Qwest is not urging the Commission to take action against Verizon, Qwest is compelled to note the double standard that is being applied.

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investment and other factors. *Ex. 40,¶¶27-29.* To test whether Staff had specific, tangible concerns or whether it was simply speculating, Qwest asked Staff in discovery to identify with specificity each service affecting network or infrastructure project in Washington that Staff knows or believes Qwest failed to perform in 2002 and 2003. *Ex. 50.* Qwest also asked Staff to identify all network upgrades Staff knows or believes need to be performed in Washington through 2005 in order to sustain or improve service quality. *Ex. 51.* Staff's answer to both questions is illuminating. Staff responded that it does not know and that it does not review individual Qwest network or infrastructure projects. *Exs. 50, 51.* On cross examination, Dr. Blackmon admitted that "he can't say with any certainty what would happen to Qwest service quality" if the SQPP were terminated. *Tr. 2024, 2031-32.* Staff's argument is really little more than unsure speculation.

53 While expressing concern about Qwest's reduced investment in the prior couple years, Staff seems unaware of how this compares to other LECs in Washington. Staff offered no evidence demonstrating that Qwest's reduced investment is distinguishable from general industry patterns. The opponents' concerns that service quality will decline without the SQPP are unsupported by the record evidence, and should not form the basis for denying Qwest the relief it seeks.

54 The opponents' argument also fails to recognize two additional critical points. First, good service quality is not necessarily tied to the level of capital investment. *Ex. 2, ¶22.* 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. *Id.* Second, as noted above, Qwest is experiencing a steady and significant decline in customers and lines. *Id., ¶22; Ex. 3, at 1.* Despite the line loss, Qwest still managed 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. *Ex. 1, ¶22.* It is simply unrealistic and imprudent to

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expect that investment could or should be continued at historic levels going forward, when customer base and revenues continue to decline precipitously.[47] *Id.*

55 Qwest is able to continually provide a high standard of service quality in Washington due, in part, to the appropriate level of installation and maintenance personnel that Qwest has staffed across the state. *Id., ¶23.* Current network staffing levels in Washington for occupational employees exceed 2,200, which include a combination of central office technicians and network technicians.[48] *Id.* On most days, personnel levels are appropriate to handle retail and wholesale (CLEC) residential and business installation and repair volumes. *Id.* 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. *Id.* Furthermore, during this time of declining investment, so criticized by Staff and Public Counsel, Qwest's service quality has been steadily improving. *Id.* In sum, the opponents' dire predictions remain uncorroborated and ignore the realities of the changing marketplace.

b) Circumstances have dramatically changed since 2000

56 As discussed above, the Commission's Twelfth Supplemental Order in this case recognizes that a change in circumstances is an appropriate basis for terminating or modifying the SQPP.[49] The substantial evidence of changed circumstances since June 2000 has gone largely unrebutted by the opponents. These changes underscore the fact that the SQPP is no longer necessary and should be terminated in light of the impact of the SQPP on Qwest. There have been three critical changes since 2000, as discussed at greater length above. First, Qwest has

[47] Public Counsel's emphasis on and criticism of Qwest's reduced investment should be given little weight, especially in light of the fact that its witness has no experience working for a telecommunications company or utility, no experience making staffing decisions for a telecommunications company and no *firsthand* knowledge (apart from relying on the investment requirements under the merger settlement agreement) as to the level of investment necessary to maintain or improve service quality for a telecommunications company. *Tr. 2042-43.*

[48] Included in this title are employees working POTs Installation and Maintenance, Design Services, Customer Data Technicians, Construction and Cable Splicing, Maintenance and Repair.

[49] *Twelfth Supplemental Order, ¶26.*

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undeniably and significantly improved its service quality. *See section II.C.1. above.* Second, the competitive landscape in Washington for local exchange service has fundamentally changed, and Qwest finds itself losing access lines at a rapid rate while its wireline, wireless, cable and VOIP competitors grow in customers and market share. *See section II.C.2. above.* Finally, since the SQPP was adopted, the Commission has promulgated a robust set of service quality rules that will continue to drive Qwest and all other LECs in Washington to offer excellent service quality. *See sections II.C.3. and IV.A.2.a(2) above.* Given these changes, the SQPP is no longer necessary. Qwest is already, by necessity, financially motivated to "compete on service," to avoid paying CGSP credits and to avoid paying Commission fines for failure to abide by the Commission's service quality rules. The SQPP is punitive, counterproductive and superfluous. It should be terminated.

c) <u>The other reasons advanced by the opponents are not compelling</u>

57 Neither Staff nor Public Counsel articulate a cogent argument against Qwest's petition. Instead, they take a shotgun approach and rely on self-fulfilling, circular arguments leading to the inevitable conclusion that termination of the SQPP would be premature. Perhaps the most transparent example of this is the opponents' argument that the program is working as intended and therefore should not be terminated. *Ex. 40, ¶2; Ex.56, at II.A.2.*

58 No doubt they would also claim that Qwest should 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.[50] However, this interpretation of the merger 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

[50] Indeed, Public Counsel does take that position, arguing that Qwest's lack of improvement in one area means the program should be continued. *Ex. 56, at II.A.2.*

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terminated or modified. Qwest believes that such a situation currently exists. The opponents' argument that the SQPP must be maintained because Qwest has abided by it admirably reflects that either the opponents' negotiated the merger settlement agreement never intending that a circumstance could exist to allow termination of the SQPP or that they are unwilling to recognize changed circumstances when they are plainly presented with them.

59 In addition to the "if it isn't broken, don't fix it" argument, the opponents repeatedly interject an argument that Qwest agreed to the SQPP, and thus it is somehow unseemly for Qwest to ask to terminate it.[51] This argument is, likewise, in direct conflict with the right to terminate these opponents agreed to in the SQPP. Given the dramatic changes that have occurred since June 2000, Qwest's request is appropriate and reasonable.

60 In addition, the opponents offer the ever-reliable "we'll know it when we see it" argument as an analytical framework for this case. On cross examination, Judge Wallis asked both Dr. Blackmon and Ms. Kimball how the Commission will know when the purpose underlying the adoption of the SQPP has been achieved. Both answered that it was too complex a question, with too many factors at work, to provide a concise answer, *but* both conveniently opined that we had not yet reached the goal. *Tr. 2065-67, 2070.* In essence, the opponents offer no guidance for the Commission to ascertain whether the SQPP is no longer necessary, except that, in their opinion, it is premature. Qwest submits that such self-serving "analysis" should be given no weight whatsoever.

61 In an attempt to understand Staff's opposition to Qwest's petition, Qwest asked Staff in discovery to identify the circumstances that would have to exist for Staff to recommend that the Commission terminate the SQPP. *Ex. 44.* In response, Staff identified four scenarios, any

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[51] For instance, Staff twice characterizes Qwest's petition as an attempt to "abandon" the SQPP, as if its continuation is a perpetual condition of operation. *Ex. 40, ¶¶18, 25.*

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of which alone[52] could support termination: (1) a significant change in the method of regulation of the company; (2) the introduction of another mechanism with similar or superior objectives and incentive effects; (3) a demonstration that the mechanism was harmful to consumer such as by causing or encouraging the company to provide bad service; and (4) a level of performance that was so far above the levels established in the SQPP that there was no reasonable possibility that any payments would actually occur. *Id.*

62 Qwest acknowledges that these are certainly, *among many others*, legitimate reasons supporting termination of the SQPP. At hearing, Staff witness Blackmon acknowledged that Staff's list was not exhaustive and that other sufficient reasons may exist. *Tr. 2074-75.*[53] Ignoring for a moment that Staff gave such a limited set of potential reasons justifying termination, it is troubling that Staff ignores that most of them have actually been satisfied. Staff cites as sufficient the "introduction of another mechanism with similar or superior objectives and incentive effects," yet Staff dismisses out of hand that the Commission's recently-adopted service quality standards and reporting requirements. Clearly, Staff's second basis has been satisfied. If, instead, Staff means that there must be in place a performance plan with an *even more draconian* payment structure, clearly that is an unreasonable standard and reflects that Staff did not negotiate the merger settlement agreement believing that the termination provision could ever be meaningfully utilized. Forcing Qwest to accept a more onerous performance plan as the price for terminating the SQPP is hardly a reasonable prerequisite.

63 Staff's third reason – a demonstration that the SQPP is harmful to consumers such as by causing or encouraging the company to provide bad service – is also satisfied. While certainly

[52] *Tr. 2038.*

[53] For example, Staff seems to have ignored the Commission's conclusion in the Twelfth Supplemental Order that changed circumstances and significant hardship are both legitimate bases for terminating the SQPP. *Twelfth Supplemental Order, ¶26.*

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not true of all eight SQPP metrics, the two 100% standards (the out-of-service repair metric and the complaint response metric) are both so flawed that they give Qwest incentive to ignore these areas of service quality. Because Qwest pays the maximum payment under the SQPP whether it misses one or all out-of-service repairs within two business days, the measure is actually counterproductive. Staff acknowledges that the metrics are flawed, but again opines that the appropriate course of action for the Commission is to ignore the flaws and preserve the SQPP without modification. Staff has made no attempt to square its recognition of the flawed metrics, its third justification for termination and its opposition to Qwest's petition in this case.

64 Staff's fourth reason – a showing of extremely high performance by Qwest – appears on its face to be impossible and meaningless. If Qwest is correctly interpreting Staff's statement, mere outstanding performance is apparently not enough for Staff. Instead, it seeks a level of performance so far above SQPP levels that there is no reasonable possibility that any payments would occur in the future. Qwest submits that this is an impossible standard given that most of the processes measured by the SQPP are not mechanized and that it would be foolhardy to ever belief that there is no possibility of a payment. No matter how many resources are committed to systems and personnel,[54] no credible person or business can promise that errors will never occur in the future. That defies human nature. Additionally, two of the metrics require 100% performance, and thus performance above the required standard for those metrics is, by definition, impossible.[55]

65 Perhaps Qwest is misinterpreting Staff's fourth reason. If instead, Staff was articulating more reasonably that a dramatic improvement in service might justify termination of the SQPP, Qwest would agree and would note that such a standard has been satisfied in this case. As

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[54] Staff itself acknowledges that an over-dedication of resources is unwise and could actually harm consumers. *Tr. 2039.*

[55] Dr. Blackmon admitted on cross examination that Staff's fourth reason is not attainable vis-à-vis the two 100% metrics. *Tr. 2040.*

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explained at length above, Qwest's service quality is now outstanding, and it has vastly improved its performance under the SQPP standards. However, despite paying lip service to the fact that excellent performance may justify termination, Staff instead uses this as a basis to sustain the SQPP, arguing that because it is serving its intended purpose, the Commission should deny Qwest's petition. There is a remarkable level of inconsistency and circularity to these arguments.

66 In the final analysis, even should the Commission accept Staff's analytical framework, the record evidence demonstrates quite clearly that termination of the SQPP is merited and would be in the public interest. Doing so will relieve Qwest from significant, undue burden imposed on it by virtue of the plan's severe payment structure. At the same time, termination will not harm consumers, as the incentives that motivated the SQPP have now been replaced by changing competitive realities and new Commission standards. Qwest has every motivation to continue to provide excellent service quality, regardless of the existence of the SQPP.

B. Modification of the SQPP

67 If the Commission does not terminate the SQPP, Qwest urges the Commission to make three sensible modifications for the remaining two years of the plan. These three modifications are all squarely in the public interest.

1. Standard for modification

68 Just as with termination, modification of the SQPP may be made upon a showing that such modification is in the public interest and upon a showing of changed circumstances or significant hardship.[56] The Commission also noted that any petition to modify must be balanced.[57]

[56] *Twelfth Supplemental Order,* ¶¶*16, 17, 26.*

[57] *Id.,* ¶*26.*

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69 Staff and Public Counsel assert that modification is impermissible because all parties do not agree on the modifications. *Ex. 40, ¶48; Ex. 56, sec. III; Tr. 2048, 2051, 2054, 2071.* This position simply ignores the Twelfth Supplemental Order, in which the Commission identified changed circumstances or significant hardship (for example) as bases under which the Commission would modify the SQPP notwithstanding the objections of one or more parties.[58] Furthermore, modification is little more than termination (which Staff and Public Counsel agree is permissible if demonstrated to be in the public interest)[59] and replacement by a different set of standards.

2. Qwest's first modification should be granted

70 Qwest's first proposed modification to the SQPP is to replace the SQPP metrics with the benchmarks found in the Commission's rules and summarized in Table 3 above. As a part of this request, Qwest is *not* asking the Commission to eliminate the self-executing payment structure.

71 This proposal is quite straightforward. The Commission very recently reviewed and expanded its service quality standards for all carriers in Washington. This review resulted in standards that the Commission obviously believes are necessary and sufficient to protect telephone consumers. The opponents argue that to modify the SQPP to incorporate the rules standards would be an unwise "weakening" of the standards. Neither opponent, however, has explained why customers of CLECs, independent LECs or even Verizon deserve different service quality than do customers of Qwest. This modification is extremely sensible and fair. It would be unfair to continue to hold Qwest to different, admittedly-flawed standards given the thorough body of rules now in effect. Given the vast improvements by Qwest, it is in the public interest to put all carriers, and their customers, on equal footing.

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[58] *Id., ¶26.*

[59] *Ex. 48; Ex. 56, sec. II.A.1.*

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72 The opponents have offered no specific rebuttal to the fact that Qwest's proposed modifications are balanced. As discussed above, the majority of the metrics are either identical or more stringent under the Commission's rules, a point reluctantly conceded with regard to out-of-service repair by Public Counsel witness Kimball. *Tr. 2065.*

73 From Qwest's perspective, the most critical benefit to be derived from this modification is replacing the 80/30 standard for business office access with the 60 second average wait time benchmark found in the rule. As explained above, this change will transform the metric to one that is still reasonable[60] and meaningful, but is also much more reflective of the realities of the industry and that provides Qwest incentive to properly handle each customer call.

74 Thus, the rules standards, in addition to being those deemed sufficient by the Commission, are more logical and more manageable. There is simply no legitimate argument against harmonizing the SQPP, if it is not simply terminated, with the Commission's rules.

3. Qwest's second and third modifications should also be granted

75 Qwest's final two proposed modifications would rectify an obvious flaw inherent with the two 100% standards found in the SQPP. More specifically, Qwest requests that the Commission replace the 100% payment structure of the out-of-service repair metric (Table 1, row E) with the following sliding scale. *Ex. 1, at 7.*

Percent of out-of-service condition restored in 48hrs

Below 99%	**99-99.5%**	**99.5-100%**
100% of payment	50% of payment	No payment

76 Qwest also requests that the Commission replace the 100% payment structure for the complaint response metric (Table 1, row H) with the following sliding scale. *Ex. 1, at 8.*

Number of missed responses to Commission within two/five days of complaint

60 *General Order R-507, ¶72.*

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>10	6-10	1-5
100% of payment	50% of payment	No payment

77 Qwest's performance under both metrics has been outstanding. Under the out-of-service repair metric, Qwest's performance has been near or above 99% each year under the SQPP. *See Table 2, row E.* Nevertheless, Qwest has paid the maximum payment under this metric each month because of the 100% nature of the metric. Under the complaint metric, Qwest has lowered its misses by 99.8%, from 794 in 2001 to just 2 in 2003. *See Table 2, row H.* Yet, in the two months in 2003 in which Qwest had *one miss*, it paid $83,333 for each month for the single miss. Three years of experience with the SQPP reveals that, although the parties' intentions were admirable, the design of these two particular metrics was badly flawed. This is perhaps the most obvious example of Qwest (as Staff admits occurs) paying penalties despite providing good service.

78 As noted above, there is universal agreement that the purpose of the SQPP was to drive behavior, to motivate Qwest to improve service quality. Experience has shown, however, that the 100% standard for out-of-service repair fails in this regard. Because 99.5% compliance is penalized as harshly as 25% compliance, the metric does not drive service quality in any meaningful way.

79 Staff's opposition to this modification is curious given its admission that the "all-or-nothing nature of the out-of-service repair measure and the complaint response measure was an obvious weakness." *Ex. 40, ¶48.* Rather than take the opportunity to correct that obvious weakness, Staff urges the Commission to reject any modification to the SQPP. Staff's argument is at odds with its obligation to strike a balance between the interests of public service companies and the customers they serve.

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80 With regard to the out-of-service metric, Staff also asserts that Qwest need not be perfect to meet the standard given the *force majeure* exclusion. *Ex. 40, ¶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.[61] 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. In this regard, perfection is simply not practically possible,[62] a point not rebutted by Staff. On cross examination, Staff witness Blackmon admitted that the metric may be unattainable, even through the use of reasonable effort on the part of Qwest. *Tr. 2034.*

81 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.

82 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 proves the imbalance of the proposal. That does not prove the modifications are unbalanced. Rather, it shows that Qwest has made an effort 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.

[61] 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 it may be the case that neither is excludable. At hearing, Staff witness Blackmon admitted that he does not have a clear understanding of *force majeure* and stated he was unsure whether the locked gate example qualified as an excludable *force majeure* event. *Tr. 2035-36.*

[62] 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. See Exhibit 11 for a more detailed discussion of why it is impossible to meet repair and installation commitments 100% of the time. That exhibit illustrates that fact, and further illustrates why the exceptions built in to the SQPP do not appreciably mitigate this problem.

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83 Public Counsel's opposition also suffers based on its singular focus on whether the absolute standard is a higher or lower number. At hearing, Ms. Kimball expressed her belief that a service quality is *per se* weakened in all cases if the numerical benchmark is lowered, regardless of the actual impact of the revised metric as an incentive mechanism. *Tr. 2056.*[63] With all due respect, this one-size-fits-all approach is not compelling. The purpose of the SQPP is to drive improved service quality. The 100% standards, as even Staff acknowledges, fail to do that. Adoption of a modified sliding scale would provide Qwest incentive to maintain its current high level of performance. Leaving these flawed metrics as they are now simply serves to perpetuate the harsh and counterproductive payments scheme. Public Counsel's devotion to the 100% standards connotes again that Public Counsel deems the large payments more valuable than it does a system of metrics that serve their ostensible purpose, to motivate high service quality.

84 Qwest's primary request remains that the Commission terminate the SQPP. However, should the Commission conclude that the SQPP should not be terminated, Qwest submits that the three modifications discussed in this section are appropriate and in the public interest. They are both balanced and responsive to the changed circumstances and the most egregious flaws currently plaguing the SQPP.

C. Response to Public Comments

85 As a general proposition, Qwest believes that input from members of the public is useful and should be considered by the Commission. That said, in determining how much weight should be given to any particular comment, the Commission should be mindful of the relationship

[63] Ms. Kimball also noted (as did Staff's counsel by way of a question to Mr. Reynolds) that Qwest is surreptitiously seeking to lower the performance standard for out-of-service repair within 48 hours from 100% to 99.5%. *Tr. 1924, 2046-47.* As Mr. Reynolds explained, this is an unfair characterization of Qwest's proposal. A 100% *performance* standard will still apply under the SQPP and the rule. The difference is that the self-executing SQPP payments will not be triggered unless Qwest performs below 99.5%. *Tr. 1924-25.* No other carrier is liable for self-executing payments. *Id.* Technically, under the rule, Qwest (along with all other carriers) will still be subject to Commission fines for performance between 99.5% and 100%.

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between the substance of the comment and the matter at hand. Also, the Commission should consider if the individual's comment was spontaneously provided or solicited. Solicitation of comments is certainly reasonable, assuming the party soliciting comment does not use misleading information in order to gather support or opposition.

86 The written statements of the five public witnesses in this case are important to Qwest (as they reflect particular individuals' concerns about their customer service experiences), but they shed little light on this case. For the most part, the comments are very general and not specific to the categories of service quality measured by the SQPP.[64] *Exs. 67-69, 71-72.*

87 It is also important to note that the comment campaign organized by WashPIRG, with some assistance from Public Counsel,[65] was premised on misleading information. WashPIRG solicited public comments via an email "alert." *Ex. 61.* That alert ignored Qwest's marked service quality performance since June 2000, and instead relied on 1998 information regarding Commission complaints. *Id.* The alert also misrepresented the number of complaints per day, stating that there were "more than 30 for every day of the year," when in fact simple math shows that there were fewer than eleven. *Id.* When asked on cross examination why WashPIRG highlighted 1998 data, Mr. Pregulman had no answer, except to say that he believed he had also included a statement about how Qwest's service quality had improved in recent years. *Tr. 2083.* Mr. Pregulman then admitted that the alert contains no such statement. *Tr. 2083-84.* Mr. Pregulman likewise had no answer for why he had stated that in 1998 there were more than 30 complaints per day made to the Commission. *Tr. 2084-85.* Qwest offers

64 For example, CUA Public Witness Hagin recounts being on hold for 46 minutes while assisting a client obtain telephone service from Qwest. *Ex. 72.* While Ms. Hagin's feedback is valuable to Qwest, it is not material to this case. The hold time Ms. Hagin speaks of is not the hold time measured by the SQPP. The SQPP measures the number of seconds a customer remains on hold between selecting the last menu choice and reaching a service representative when calling into Qwest's business office. Ms. Hagin's example relates to the total time she spent discussing matters with Qwest representatives to install service and resolve any problems connected therewith. *Ex. 73.*

65 While Ms. Kimball disavowed having assisted in writing or reviewing the WashPIRG "alert," WashPIRG witness Pregulman testified that Public Counsel did assist WashPIRG in the research that went into drafting the alert. *Tr. 2057-58, 2082.*

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this criticism not to imply in any way that public comments are to be disregarded. They should not be. Qwest simply urges the Commission to be aware of the manner in which public comments are sometimes solicited and the connection (if any) between the comments and the subject matter at issue in evaluating how much weight to give to them.

V. CONCLUSION

88 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.

89 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 18th day of June, 2004.

QWEST

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