

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Application of)	DOCKET NO. UT-991358
)	
U S WEST, INC., and QWEST)	SIXTEENTH SUPPLEMENTAL
COMMUNICATIONS)	ORDER
INTERNATIONAL INC.)	
)	
For an Order Disclaiming Jurisdiction, or)	ORDER DENYING
in the Alternative, Approving the U S)	TERMINATION OF SERVICE
WEST, INC., - QWEST)	QUALITY PROGRAM;
COMMUNICATIONS)	GRANTING MODIFICATION
INTERNATIONAL INC. Merger)	
.....)	

1 **Synopsis:** *The Commission denies the request of Qwest Communications Inc. to terminate the Service Quality Protection Plan established in the Ninth Supplemental Order in this Docket. The Commission grants in full Qwest’s request to modify the program, to be effective July 1, 2004.*

2 **Proceeding:** In this docket, Qwest petitions for termination or modification of the Service Quality Protection Plan, an element of the Commission’s approval of the merger between Qwest and U S WEST.

3 **Procedure:** The Commission convened a hearing in this docket at Olympia, Washington on June 7, 2004, before Administrative Law Judge C. Robert Wallis, and convened a session at Olympia on June 25, 2004, for the presentation of oral argument to Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, and Commissioner Patrick Oshie.

4 **Appearances.** Lisa A. Anderl, Seattle, appeared for petitioner Qwest. Christopher Swanson, assistant attorney general, Olympia, appeared for Commission Staff. Simon ffitch, assistant attorney general, Seattle, appeared as

Public Counsel. John T. O'Rourke appeared on behalf of intervenor Citizens Utility Alliance of Washington.

5 **COMMISSION:** The Commission denies Qwest's request to terminate the Service Quality Protection Program (SQPP), ruling that the Company failed to demonstrate that the purposes of the Plan have been achieved or that termination is otherwise in the public interest. The Commission rules that modification is a lesser remedy, included in the right to seek termination that is included in the Ninth Supplemental Order, and that the Company established that substitution of the standards of current rules into the SQPP is consistent with the public interest. The Commission grants Qwest's proposal to modify the SQPP by replacing the SQPP standards with standards established in the Commission's current telecommunications rules, effective July 1, 2004, and by substituting different automatic payment provisions for the original provisions.

I. MEMORANDUM

A. Background and Procedural History.

6 The Commission concluded the principal phase of this proceeding on June 19, 2000, with the entry of its Ninth Supplemental Order Approving and Adopting Settlement Agreements and Granting Application. There, the Commission approved the proposed merger of U S WEST, Inc. and Qwest Communications International, Inc., subject to conditions including the requirement that Qwest, Inc.,¹ meet certain Service Quality Performance Program standards identified in the Order.

¹ Under the terms of the merger agreement, Qwest, Inc. became the "Surviving Corporation" and the separate corporate existence of U S WEST, Inc., ended. The Petition is brought in the name Qwest Corporation. We refer to the various corporate identities collectively as "Qwest" or the "Company."

7 The Commission convened a prehearing conference on April 7, 2004, noted that all parties to the original docket had the right to participate in this phase, provided for notice to all, and provided for default from this phase of parties not choosing to participate. The parties proposed a modified hearing plan for this docket, in which parties presented a statement of position on which one or more witnesses would be presented for cross-examination.² The prehearing order denied a request of Public Counsel and the Citizen's Utility Alliance for public hearings on the request, but provided for the presentation by any party of a limited number of public witnesses to present relevant and non-repetitive evidence. Parties filed statements pursuant to the schedule established in the Prehearing Order.

8 The Commission convened a hearing on June 7, 2004, before the administrative law judge. Expert witnesses appeared for three parties. Qwest offered the testimony of Mark Russell, Dennis Pappas, and David Teitzel; Commission Staff offered the testimony of Dr. Glenn Blackmon; and Public Counsel offered the testimony of Mary Kimball. Public Counsel and the Alliance each presented two public witnesses.

9 Although the prehearing order contemplated the presentation of limited statements of position and authorities, the parties chose to present traditional briefs. The parties waived an initial order and concluded their presentations with oral argument directly to the Commissioners on June 25, 2004.

B. The Service Quality Protection Program.

10 The Service Quality Protection Program was instituted in the Commission's Ninth Supplemental Order by the order's adoption of settlements among the parties to the merger proceeding. The SQPP identified eight service parameters

² The parties also agreed to convene informally after conclusion of the proceeding to critique the procedures used in this docket.

for measurement, and standards that the Company must meet for each of the parameters. The SQPP provided that when Qwest failed to meet the standards for any of the eight parameters, it would be obligated to provide credits to its customers in amounts set in the description of the Program. The order provided that Qwest could petition the Commission for termination of the SQPP after 2003.

- 11 Qwest unilaterally sought modification of the program before the window provided in the order. On January 31, 2002, Qwest petitioned the Commission to modify the Service Quality Performance Program element, “Out-of-Service Conditions—Repair Intervals.” Qwest argued that the standard proved virtually impossible to achieve. Other parties to the settlement vigorously opposed the proposal. The 12th Supplemental Order, served March 13, 2002, denied Qwest’s request to modify the Ninth Supplemental Order by changing the SQPP measure entitled “Out-of-Service Conditions - Repair Intervals” to provide that Qwest must restore 99.5 percent instead of 100 percent of out-of-service conditions within two business days, and by adding exceptions when service restoration is due to major cable outages or customer access reasons. The Commission also denied Qwest’s request to mitigate \$666,667 of the \$1,000,000 credit obligation under the existing standards for calendar year 2001. It ruled that in the context of the merger litigation and order, the Commission would not then approve a proposal to change a measure that was sponsored and supported by the Company in a way that unilaterally benefited the Company.

C. Qwest's Proposal for Termination or Modification.

- 12 Qwest filed a second unilateral petition on January 30, 2004, seeking termination or modification of the SQPP. It noted the opening of the window for it to do so, as specified in the Ninth Supplemental Order. Its principal request is that the program be terminated and that the Company be freed entirely from the

obligation to provide credits to customers under the program when it fails to meet the eight SQPP parameters.

13 Briefly, the eight parameters are the following:

1. Five-Day Order Completion
2. 90-day Order Completion
3. Trouble Reports
4. Dial Tone Speed
5. Out-of-Service – Repair Interval
6. Repair Center Access
7. Business Office Access
8. Complaint Response

A more-detailed description of the original SQPP is set out in Table I, below.

Table I

	Parameter	Current SQPP Benchmark	Monthly Payment for Non-Compliance	New WAC Standards
A	Orders completed < 5 Business Days	90% in each exchange for each month	\$4,902 per exchange	WAC 480-120-105. No change.
B	Order Completed < 90 Calendar Days	99% in each exchange for each month	\$4,902 per exchange	WAC 480-120-105. No change.
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	WAC 480-120-438. 4 / 100 lines / month for 2 months or 4 out of 12 months.
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	WAC 480-120-401. Dial tone in 3 seconds for 98% of calls.

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	WAC 480-120-440. 100% within 48 hours.
F	Repair Center Access	Except during periods of emergency operation - 80% within 30 seconds for each month	\$83,333 per month	WAC 480-120-133. 60 Second average wait time for service representative.
G	Business Office Access	Except during periods of emergency operation - 80% within 30 seconds for each month	\$83,333 per month	WAC 480-120-133. 60 Second average wait time for service representative.
H	Complaint Response	Complete and detailed response within two business days for each month	\$83,333 per month	WAC 480-120-166. Response within 2 business days for complaints about service, 5 business days for complaints where service is not affected.

14 Qwest also asked that, if the Commission were to reject its proposal to terminate the SQPP, the Commission modify the standards for each of the service parameters, to be consistent with the standards adopted in Commission service quality rules in 2003.³ The requested changes are also set out in Table I.

15 Some of the standards of the rule are less demanding than those of the SQPP; some are more demanding; and some are merely different. The standards for parameters A and B are the same in the SQPP and the rules. The standard for parameter C is more stringent in the rule: violation occurs after only 2 (instead of 3) consecutive months of four or more trouble reports per 100 access lines. The standard for parameter D is more stringent in the rule, requiring a dial tone

³ The rules were adopted on November 7, 2001 in Docket No. UT-990146, to become effective on January 1, 2003. The service quality standards are codified in Chapter 480-120 WAC.

within 3 seconds for 98% (instead of 90%) of calls. The standard for parameter E is more stringent in the rule, requiring 100% of service restorations after interruptions within 48 hours (instead of 2 business days).

- 16 The standards for parameters F and G are different in the rules from those in the SQPP. While the SQPP requires 80% of repair center and business office calls to receive a response within 30 seconds, the rules require a 60-second average wait time for all calls. Qwest notes that the rule provides accountability for all calls, while the SQPP provides accountability for only 80% of calls. Public Counsel did not dispute that the SQPP standard does not assess performance on 20% of calls. CUA provided public testimony that tends to support Qwest's assertion that the SQPP standard does not provide accountability for 20% of repair center calls. However, staff provided evidence that the rule is more lenient than the SQPP, noting that a 28-second average wait time for business office calls is equivalent to the SQPP in terms of difficulty to achieve. (Cite Statement of Commission Staff, footnote 14)
- 17 The standard for parameter H is more lenient in the rule, allowing five days (instead of two days) for Qwest to respond to complaints that do not affect service quality.
- 18 Finally, Qwest asks that the calculation of credits to customers be changed for two of the measures.
- 19 One is the measure that was the subject of its 2002 petition for modification of the SQPP, Out-of-Service - Repair Interval. It must now pay \$83,333 in credits to customers in each month that it fails to meet the standard of two business days for all service restoration. It asks that the measure be changed to restoration within 48 hours but that the payment of credits be triggered on a sliding scale—half the entire payment if it fails to meet that standard in one-half of one per cent

to one per cent of all repair instances, and that it be required to make the entire payment if it fails to meet the standard in more than one per cent, per month.

20 The second requested change in payment calculation is in Qwest's response to the Commission about complaints that the Commission receives regarding Qwest's service. Currently, Qwest must respond within two business days. If it fails to meet that standard for one or more complaints in any month, it must credit customers with \$83,333. Qwest proposes a sliding scale this standard. It asks an allowance of up to five failures per month, without payment. Six to ten failures would require payment of one-half the \$83,333 credit, and failure in 11 or more instances would require payment of the entire amount.

D. Discussion and Decision Regarding Termination.

21 Both the Administrative Procedure Act (RCW 34.05.060) and the Commission's rules (WAC 480-07-700) support the informal settlement of matters before the Commission. Both the APA (RCW 34.05.060) and the Commission's rules (RCW 480-07-700(1)) provide that a settlement is not effective unless and until adopted by the Commission in a Commission order. Once adopted, the order is the Commission's decision. Here, the language of the order is clear and the petition to terminate is fully proper under that language.

1. What is the pertinent standard?

22 The parties agree, and the Commission accepts, that the pertinent standard to apply in determining whether to terminate the proposal is whether the result is consistent with the public interest. The parties disagree, however, on whether the proposal meets that standard and on how to determine the public interest in making the decision.

23 Qwest makes three principal contentions of changed circumstances since entry of the Ninth Supplemental Order in support of its proposal: 1) dramatic changes in the competitive marketplace for its services, and a competitive market can now set service standards; 2) duplication of purpose with the customer service guarantee program (CSGP), which provides direct compensation to customers for insufficient service, and 3) 2003 amendments to the Commission's telecommunications rules that impose different standards from those of the SQPP for activities measured by the SQPP. In addition, it admits poor prior service, but argues that its service by today's measures is exemplary. The Company argues that these factors, taken collectively, warrant termination of the SQPP.

24 The other parties take issue with the Company's justification for the changes.

2. Does competition militate in favor of termination of the SQPP?

25 Commission Staff and Public Counsel argue that competition is not nearly so robust, especially in the market for residential services, as would effectively require maintenance of service quality. They argue also that Qwest fails to prove its contention that competition will require a high level of service quality. Qwest presented no studies demonstrating that correlation. Finally, they note that a considerable volume of Qwest's competition is provided on Qwest's infrastructure by means of a platform of unbundled network elements ("UNE-P") or by leased lines, and urge that Qwest has no service quality competition from such vendors because their service can be no better than that of Qwest.

26 Qwest's presentation does not support its contention that this factor favors termination of the SQPP. It is fundamentally a bare contention, with no objective support. While its wholesale and UNE-P customers are not within the measurements of the SQPP, Qwest does not demonstrate that its service to such customers is of a sufficiently high level that those customers can offer better service than Qwest.

3. Does Qwest's customer service guarantees militate in favor of termination of the SQPP?

- 27 Qwest points out that it does provide service guarantees to customers for a number of service elements, and provides direct credits to those consumers for certain failures. These include parameters A, B, C, D, and E.
- 28 Staff and Public counsel argue that the Customer Satisfaction Guarantee Plan complements, but does not replace, the SQPP. They urge that both plans are necessary to ensure compliance with pertinent standards. They point out that the CSGP not only provides an incentive to maintain quality service, but also compensates customers for time and inconvenience associated with the service failures that are part of it. They also urge that the CSGP has not demonstrated its effectiveness in maintaining service quality, pointing to a high level of payments associated with the program.⁴
- 29 The Service Quality guarantee Program and the SQPP are designed to fill different purposes and they do not directly track the same elements. While both are designed to provide the Company with incentives to improve service,⁵ the service guarantees are designed to address the needs of individual customers in specific situations and the SQPP is designed to provide incentives to an overall level of service. They may both provide incentives, but they do not entirely duplicate each other. The Service Quality guarantee Program does not, by itself, support termination of the SQPP, but it is a factor to be considered when viewing the context of the SQPP.

⁴ Qwest is not required to, and does not, report the volume of service failures in guaranteed services, nor the total credited or paid to consumers under the program.

⁵ Credits or payments under both programs are associated with service failures, but they are self-executing incentives and are not penalties, despite parties' references to them as such during argument.

4. Does the existence of revised service quality rules support termination of the SQPP?

- 30 Qwest points to the adoption of revised telecommunications rules during 2001, including the adoption of revised rules relating to service quality. Qwest points out that the rules do address the same parameters of service quality as the SQPP, and urges that the existence of the rules obviates the need for the SQPP. Qwest also urges that it is unfair to hold Qwest to different standards from those required by the rules.
- 31 Commission Staff and Public Counsel argue that while the rules address the same behaviors, the standards chosen for the SQPP are tailored to Qwest, to its role as the primary telephone company in the state, and to the needs of its consumers. They suggest that if there are differences between the standards of the rules and those of the SQPP, perhaps the rules should be revisited to see whether the latter standards are preferable.
- 32 The SQPP was imposed in a commission order, not in a rule, and in an order that addressed that public protections that would be sufficient to allow a significant merger to take place, amongst a background of significant customer service failures. Moreover, Qwest accepted the conditions of the merger order, and participated in development of the standards themselves. On the other hand, the rules were adopted after a great deal of process and deliberation, comprise the judgment of the commissioners themselves (as distinct from approval of a settlement among parties), and represent "the latest" commission view on the public interest in the relevant metrics. Thus both the standards and the rules have a claim of primacy. The main qualitative distinction, however, between the standards and our rules, is the automatic payments that the standards require for failure to meet certain metrics. Termination of the SQPP would eliminate that feature without a comparable substitute in the rules.

5. Should the SQPP be terminated?

- 33 In deciding whether to terminate the SQPP, we look to the circumstances of the merger order, the acknowledged challenges that U S WEST experienced in providing satisfactory service prior to the merger, the evidence of Qwest's current performance, and the acknowledged purpose of the SQPP as an incentive to Qwest to maintain the level of investment necessary for satisfactory service.
- 34 Qwest acknowledged that the SQPP was created to provide a financial incentive to the company for making investments necessary to improve its flagging service record.⁶ While the witnesses in this phase of the docket did not postulate a direct relationship between investment and service quality, it appears clear in retrospect that a lack of financial support was a substantial contributing factor in U S WEST's service challenges.
- 35 Qwest contends that its performance is exemplary. Commission Staff and Public Counsel disagree, pointing out the size of credits under the SQPP, Qwest's level of informal consumer complaints to the Commission, anecdotal evidence of payments under the Company's Service Quality Guarantee Program,⁷ and results of an industry service quality measurement. The latter, the American Customer Satisfaction Index finds, Qwest's service quality to be rising, but to be the lowest of measured telecommunications companies.
- 36 As noted above, while the rules and the SQPP address similar behaviors they also are designed for different purposes and they have substantially different remedies.

⁶ See, Teresa Jensen testimony, TR 403.

⁷ The information about the service quality guarantee program's cost is surprising. It is also surprising that Qwest is not required to report regularly on its performance under the program. We direct Commission Staff to prepare within 30 days an appropriate order for us to enter. The order should direct Qwest to report current and historical information in reports that continue for the duration of the program unless terminated earlier by order of the Commission Secretary, pursuant to authority granted in RCW 80.04.080.

- 37 Enforcement mechanisms for the SQPP and the rules are different. This record does make it clear that the enforcement mechanism associated with the SQPP provides a better incentive for performance than that of the rules.
- 38 The SQPP is self-executing, in that Qwest knows the standards, keeps track of performance, and provides the credit based on its performance and the scale for providing credits. Enforcement of the rules, however, requires a Commission (or private) complaint or a penalty assessment, and the existence of penalties for rule violation is somewhat academic until penalties are assessed and paid. Litigating a complaint can be more expensive than the value of the penalties that may result. A private complaining party enjoys no financial benefit from the payment of penalties to the public service revolving fund and so may have little incentive to make a necessary investment in a complaint. While the SQPP continues, it provides a constant incentive for the Company to meet SQPP standards. We find that a purpose of the SQPP is to maintain an incentive for the Company to provide satisfactory service. We find that Qwest's service quality has improved, but believe that the SQPP credit requirements have provided, and should continue to provide, important incentives in fostering good service quality.
- 39 Considering all of the evidence of record on the subject, we find that the SQPP continues to provide effective incentives for service quality and that Qwest has not demonstrated that it is consistent with the public interest to terminate the SQPP. The Commission denies Qwest's request to terminate the Service Quality Protection Program.

E. Discussion and Decision Regarding Qwest's request to modify the SQPP

1. May Qwest seek modification under the terms of the order?

- 40 Commission Staff and Public Counsel oppose Qwest's proposal to modify the performance standards in the SQPP. They argue that the language of the Ninth Supplemental Order permits Qwest to seek termination of the program, but does not include modification and therefore excludes it. (At oral argument, Public

Counsel softened in this position). They argue, in support of their position, that modification is different in quality, demands a different analysis from that involving termination because of the interrelationship of many factors, and should only be accomplished through a consensual process involving parties to the settlement agreement underlying the order. Public counsel urges a delay of 30 days to allow the parties to negotiate, if the Commission denies termination and wants to explore modification.

41 Qwest responds that modification is a lesser-included remedy within the authorization to seek termination, that Qwest has presented a well-conceived program that all parties had an opportunity to explore through discovery and cross-examination, and that parties had an opportunity to make counter proposals. Qwest urges us to adopt its proposal if we deny termination.

42 We reject the restrictions postulated by Public Counsel and Staff. Authority to conduct an activity includes lesser components of that activity. The ultimate modification to a program is its termination. Termination of a multifaceted program involves consideration of all of facets with regard to the alternative for each. Lesser changes than termination pose no greater or lesser challenge and offer no substantive reason to reject consideration or to require a negotiated result.

43 As parties to the settlement agreement, Public Counsel and Staff had the opportunity to include provisions for modification. The proposal that the Commission considered and adopted contained no such provision. The proposal was implemented by a Commission order and now it is the Commission's responsibility to interpret it based on the record available and the Commission's view of the Commission's intentions in deciding the merger issues in the language that it accepted. Not even the Commission can foreclose a future Commission from *considering* modification of terms of an order, whether or not the order adopts a settlement.⁸ The statutes vest the authority in the commission

⁸ For example, the Commission considered Qwest's prior request for modification of the SQPP.

acting on the request, and the state's constitution prevents modification of that authority by parties or by a prior commission.⁹ We have given serious consideration to parties' views in disputes regarding settlements, and we have occasionally allowed inquiry into circumstances at the time of a settlement, but we remain the sole determiner of the intention and meaning of language in Commission orders, including orders accepting settlements and the language of adopted settlement.

44 Moreover, Public Counsel and Staff did have the opportunity to negotiate with Qwest in pursuit of the settlement of this dispute as well as the dispute that was resolved in the Twelfth Supplemental Order. They may have done so (the record is appropriately silent about the existence and result of any settlement discussions). Now, the issues have been litigated, all parties had the opportunity to engage in settlement discussions, and all parties had the opportunity to respond to Qwest's proposal with other suggestions for change. The opposing parties chose to respond that no change was appropriate, and that is the record on which the matter will be decided.

2. Should Qwest's proposed modifications be accepted?

45 Qwest proposes that the current SQPP be modified in two ways: first, to adopt the performance standards of the rules in lieu of the current SQPP standards, and second, to lower the bar for triggering penalties in regard to two parameters.

i. Performance standards of the rules.

46 Qwest proposes that the Commission adopt the performance standards set out in the current Commission service quality rules for use in the SQPP. It argues that the proposal is then more fair to Qwest, removing any discrimination against it, and it argues that the standards reflect the Commission's decision as to

⁹ See, State ex rel. *Everett Firefighters, Local 350 v. Johnson*, 46 Wn. 2d 114, 278 P.2d 662 (1955); lk. Davis, *Administrative Law Treatise*, §§2.01-2.16 91958)

appropriate standards after much discussion among Staff, industry, the public, and the Commissioners.

47 Staff and Public Counsel respond that changes in the SQPP standards are inappropriate because those standards were designed in a collaborative manner, agreed-to by the parties, and comprise the appropriate measures for Qwest's specific situation. In contrast, the rules, they say, were designed for universal application and were not adopted with a view to Qwest's SQPP or even, exclusively, to Qwest's unique situation.

48 The Commission adopts Qwest's proposal and rejects the challenges from opposing parties. The Commission adopted the rules only last year. In some instances, the Commission chose from among proposals that included the standards of the SQPP, and rejected those standards. The Commission believed at the time and continues to believe that the adopted rules strike the best balance among competing interests for telecommunications companies in current circumstances.¹⁰

49 While opposing parties describe the development of the SQPP standards and state that the standards are uniquely appropriate to Qwest's merger circumstances, they provide no objective analysis or support for that contention and do not explain clearly why specific SQPP standards are more appropriate than their counterparts in the rules.

50 The opposing parties also argue that the Commission should put considerable weight on the consensual nature of the SQPP rules. We have addressed that point to some extent above. Here, we will note that the Twelfth Supplemental Order, entered before the opening of the window specified in the Ninth Supplemental Order, did acknowledge and defer in part to the consensual nature of the SQPP standards in denying Qwest's modification proposal.

¹⁰ See, *UT-990146 General Order No. R-505 - Order Adopting and Repealing Rules Permanently.*

51 Now, when Qwest clearly has the right under terms of the order to seek
termination and modification, we look to our view of the public interest and our
evaluation of the appropriate need for incentives in the remaining period of
SQPP effect. We find that the standards in the rules are appropriate standards
for general application, that differences in incentives for compliance with the
SQPP and the rules will enhance compliance when the rules and SQPP standards
are identical, and that Qwest has met its burden to demonstrate that they are
appropriate standards for application to Qwest in the SQPP.

ii. Changes in the application of credits.

52 Two standards require perfect performance, or near-perfect performance, in
order to avoid the payment of credits to customers. Those are the Out-of-Service
- Repair Interval and Qwest's response to Commission complaints.

53 **The Out-of-Service - Repair Interval.** The current standard is that all reported
service interruptions must be restored within two business days (less certain
exceptions) in each month. Qwest must now pay \$83,333 in credits to customers
in each month that it fails to meet the standard. It asks that the measure be
changed to restoration within 48 hours (a stricter standard) but that the payment
of credits not be triggered by failure to meet perfection. Qwest proposes that it
be required to make no payment if it meets the standards in all but one-half of
one percent of instances, or less; half the entire payment if it fails to meet that
standard in one-half of one per cent to one per cent of all repair instances; and
the entire payment if it fails to meet the standard in more than one per cent of all
out-of-service instances in a month.

54 Public Counsel and Staff respond that despite Qwest's contentions, it is possible
to meet the standard and that the SQPP provides for the exclusion of certain
failures and for mitigation of exceptional circumstances they state that Qwest has
not sought mitigation.

55 The Commission upheld the SQPP measure earlier in this docket against Qwest's challenge, ruling that Qwest had not met its burden to demonstrate that the change should be made. Now, with the additional experience under the SQPP, the opening of the window for Qwest to make its proposal, and our review of and changes to the Commission rules, we believe that retaining the prior payment trigger would be unreasonable. Qwest's proposal is reasonable, considering its size and the volume of service restorations that are necessary. It allows for a small number of difficult situations but provides a sufficiently small window that avoidance of the incentive credit still requires exemplary service.

56 **Responses to informal complaints.** The second proposed change in payment standards is in Qwest's response to the Commission about informal consumer complaints that the Commission receives regarding its service. Currently, it must complete a detailed response to the Commission for all such complaints within two business days. If it fails to meet that standard for one or more complaints in any month, it must credit customers with \$83,333. Qwest proposes a sliding scale for credits when it fails to meet this standard. It proposes to allow up to five failures per month, without payment. Six to ten failures would require payment of one-half the \$83,333 credit, and failure in 11 or more instances would require payment of the entire amount.

57 The Commission has some concern about this change. The Commission's ability to respond to and resolve consumer complaints depends on the cooperation of utility companies and their willingness to provide necessary information about the circumstances causing concerns to consumers. However, we have no evidence in this record about the effect this would have on Staff's ability to perform its functions or about alternatives that might be preferable.

58 Based on the record, we conclude that Qwest's proposal is reasonable. It provides Qwest with the opportunity to defer a small number of responses (given the number of inquiries and complaints the Commission receives each

month) whose completion may be hampered by lack of staff availability or whose completion or schedule might be inordinately expensive.

59 We will monitor how the proposals are working, with regard to Qwest's overall performance and particularly with regard to this element. The standard offers no direct consideration of undue delay in responses to a small number of complaints, and we are concerned about possible delays in some settings. On balance, given the existing record, we are satisfied that the standard reasonable and offers the proper incentive to the Company to devote the necessary resources to its responses to Commission inquiries about pending informal consumer complaints.

F. Public Participation.

60 The Commission denied the request of Public Counsel for specially-scheduled hearings to receive testimony from members of the public. It did provide all parties the opportunity to provide a limited number of public witnesses to present relevant and non-cumulative testimony. Four such witnesses testified.

61 We express our appreciation to the persons who testified and those who wrote us or Public Counsel with their views. The witnesses spoke of the critical importance to members of the public, especially persons who have few or no alternative means of communication, of high-quality service that minimizes delays and optimizes availability of telecommunications services.

62 The Commission shares the goal. We believe that the Company's modification proposal is shown to be the best alternative available on this record to ensure that Qwest's service quality continues to improve.

G. Effective Date.

63 Qwest filed its petition in this matter on January 30, 2004. It asks, however, that the application of termination or modification be effective on January 1, 2004. Commission Staff and Public Counsel respond that, if authorized at all,

termination or modification should only be effective after entry of the Commission's order.

64 We believe that it would be inappropriate to back-date the effect of these changes. We have accelerated the schedule for decision, and believe that allowing effect on July 1, 2004, best balances the disputed interests.

H. Conclusion.

65 In this order the Commission finds that Qwest has failed to meet its burden to demonstrate that it is consistent with the public interest to terminate the SQPP that the Commission established in its Ninth Supplemental Order in this docket. Qwest did, however, demonstrate that it is consistent with the public interest to change the performance standards in the SQPP to be consistent with the analogous standards in Commission rules, and to accept a range for credits associated with performance of restoring out-of-service situations and furnishing information to the Commission about pending consumer complaints.

II. FINDINGS OF FACT

66 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington vested by statute with the authority to regulate in the public interest the rates, services, facilities, and practices of telecommunications companies in the states.

67 (2) The Commission authorized the merger of U S WEST, Inc., and Qwest International, Inc., in its Ninth Supplemental Order in this docket on June 19, 2000. The order, which adopted a settlement agreement proposed by the parties to the docket, established a service quality protection plan, or SQPP, as an incentive for Qwest to improve the quality of its service.

- 68 (3) In supporting the settlement agreement, U S WEST acknowledged that its service quality needed improvement. U S WEST and Qwest supported adoption of the SQPP. The parties agreed, and the Commission ordered, that the SQPP remain effective for a period of five years and that Qwest could petition for termination of the agreement after 2003.
- 69 (4) The SQPP addressed eight service parameters. For each, it established a standard of performance for Qwest to meet and a self-executing credit to customers for failure to meet the standard. Qwest sought modification of the SQPP and mitigation of credit to customers in January, 2002. The Commission denied the petition in the Twelfth Supplemental Order in this docket.
- 70 (5) Qwest petitioned on January 30, 2004, for termination of the SQPP or, in the alternative, for modification of all eight parameters to parallel the requirements of Commission rules adopted in 2003 and for modification of the schedule of payments as to two parameters, as to the length of service outages and the length of time in which Qwest must provide information to the Commission about facts underlying informal consumer complaints to the Commission.
- 71 (6) Termination of the SQPP would weaken incentives for Qwest to maintain and improve service quality. Termination of the SQPP is not consistent with the public interest.
- 72 (7) The proposed modification of SQPP standards would result in slightly lower standards for some parameters, slightly higher standards for other parameters, and different parameters—neither demonstrably higher or lower—as to others.

- 73 (8) The Commission adopted the standards contained in the Commission's 2003 service quality rule amendments after a thorough review of needs of the public and the telecommunications industry and Commission decisions as to the best manner to balance needs of consumers and needs of the industry. The standards contained in the SQPP were developed and adopted specifically for the circumstances of the Qwest merger and the recent history of U S WEST service quality but without the same level or breadth of review.
- 74 (9) The standards contained in the Commission's service quality rule amendments are a better measure for Qwest performance than the measures presently contained in the SQPP, because they better balance the interests of consumers with the interests of the Company, and because when aligned the two mechanisms (the rules and the SQPP) will better support each other.
- 75 (10) It is in the public interest to grant Qwest's request for modification of the service quality standards of the SQPP.
- 76 (11) SQPP Schedules for the payment of credits to customers as to two elements—customer out-of-service length and response time for information about informal consumer complaints—demand near-perfection in a way that is extremely difficult to achieve. This difficulty may create incentives for inefficient service quality achievement.
- 77 (12) The schedules proposed for credits to customers for customer out-of-service length and response time for information about informal consumer complaints that Qwest proposes provide better incentives for achievement and better recognize improvements in performance.

- 78 (13) It is consistent with the public interest to grant Qwest's request for modification of the schedules proposed for credits to customers for customer out-of-service length and response time for information about informal consumer complaints that are contained in the SQPP.
- 79 (14) Public witnesses expressed concern that Qwest's service quality be maintained and improved. Granting Qwest's proposed modifications best assures achievement of those goals.

III. CONCLUSIONS OF LAW

- 80 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of and the parties to this proceeding.
- 81 (2) Qwest Corporation is engaged in the business of furnishing telecommunications services to the public in the State of Washington and in doing so is a public utility subject to the jurisdiction of the Washington Utilities and Transportation Commission.
- 82 (3) Termination of the service quality protection program is not consistent with the public interest. The Commission should deny Qwest's request to terminate the SQPP.
- 83 (4) Modification of the SQPP is a lesser-included remedy within the provision in the Ninth Supplemental Order in this docket authorizing Qwest to petition for termination of the SQPP after 2003. The Commission should consider Qwest's request to modify the SQPP.

- 84 (5) Service quality standards contained in the Commission's 2003 revisions to its telecommunications rules better balance the interests of companies and customers than the service quality standards contained in the SQPP, and are appropriate for appreciation to Qwest. The Commission should grant Qwest's request to modify the SQPP service quality standards.
- 85 (6) The schedules that Qwest proposes for the payment of credits to customers for customer out-of-service time and for Qwest's response time for information about informal consumer complaints provide better incentives for achievement and better recognize improvements in performance than the schedules in the SQPP. The Commission should grant Qwest's request to modify the SQPP as to the schedule for payment of credits as to these two parameters.
- 86 (7) An effective date for SQPP modifications of January 1, 2004, would pre-date Qwest's request and would be improper. An effective date of July 1, 2004, would best facilitate transition to revised standards. The modifications authorized in this order should be allowed to become effective as of July 1, 2004.
- 87 (8) Based on the foregoing findings of fact and conclusions of law, the Commission enters the following Order.

IV. ORDER

- 88 (1) The Commission denies Qwest's request to terminate the Service Quality Protection Program established in the Ninth Supplemental Order.
- 89 (2) The Commission grants Qwest's requests to modify the Service Quality Protection Program to align the standards applied therein to the provisions of currently-effective service quality rules and to modify the

obligation for customer credits in measures involving out-of-service repair times and the time for response to Commission complaints, as set forth in this Order.

Dated at Olympia, Washington, and effective this 30th day of June 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.