

Gregory J. Kopta (WSBA No. 20519)  
DAVIS WRIGHT TREMAINE LLP  
1201 Third Avenue, Suite 2200  
Seattle, Washington 98101-3045  
Telephone: (206) 757-8079  
Facsimile: (206) 757-7079  
E-mail: gregkopta@dwt.com

Attorneys for XO Communications Services, Inc.

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

-----  
In the Matter of Qwest Corporation's                    ) DOCKET NO. 07-049-31  
Request for Approval of a Stipulation                )  
Regarding Certain Performance Indicator            ) XO COMMENTS  
Definitions and Qwest Performance                 )  
Assurance Plan    )  
-----

Pursuant to the Commission's Notice of Request for Comments issued August 28, 2007, XO Communications Services, Inc. ("XO"), provides the following comments on the Stipulation Regarding Certain Performance Indicator Definitions and Qwest Performance Assurance Plan Provisions ("2007 Stipulation").

Qwest Corporation ("Qwest") has requested that the Commission approve changes to the Qwest Performance Assurance Plan ("QPAP") that are identified in a stipulation between Qwest and some competitive local exchange carriers ("CLECs"), not including XO. The QPAP is included in XO's interconnection agreement ("ICA") with Qwest, and XO has both procedural and substantive concerns with Qwest's petition.

Procedurally, XO disagrees with Qwest that Commission consideration of the petition must be completed within 60 days. Section 252(f), the provision of the

Telecommunications Act of 1996 on which Qwest relies, applies to Commission review of a statement of generally available terms (“SGAT”), but Qwest no longer maintains an SGAT in Utah. Rather, a carrier seeking an ICA with Qwest must either adopt another carrier’s agreement or negotiate its own ICA based on Qwest’s multi-state template. CLECs can no longer adopt the SGAT that the Commission approved in Docket Nos. 00-049-08 and 00-049-68. The QPAP in isolation is not an SGAT. Section 252(f) thus is inapplicable.

Even if the QPAP, standing alone, could somehow be considered an SGAT, changes to an SGAT do not affect carriers with Commission-approved ICAs that remain in effect. Indeed, at least one federal court has made it abundantly clear that a state commission cannot make a generic ruling that alters existing contractual arrangements.<sup>1</sup> Qwest, however, requests that the Commission approve changes to the QPAP as it is currently incorporated into existing ICAs. The Commission lacks authority to impose such unilateral changes on XO or any other CLECs. At a minimum, the 60 day review period in section 252(f) does not apply, and should not be applied, to that aspect of Qwest’s petition.

XO also has substantive concerns with Qwest’s proposed changes. XO has not yet reviewed the stipulation in depth but understands from discussions with interested parties that Qwest is proposing a substantial reduction in the payments Qwest makes to both CLECs and the state under the QPAP. Qwest’s petition does not even attempt to

---

<sup>1</sup> *Pacific Bell v. Pac-West Telecomm, Inc.*, 325 F.3d 1114, 1127 (9th Cir. 2003).

demonstrate that such a reduction is warranted and that the resulting payments will provide Qwest with sufficient incentive to ensure adequate service quality to CLECs. Qwest should be required to make such a showing, subject to interested party review and comment.

The Washington Utilities and Transportation Commission, in response to these concerns and similar concerns expressed by its staff, issued several bench requests to Qwest and established a procedural schedule to address the 2007 Stipulation as filed in that state, including a requirement that Qwest provide additional information in support of the 2007 Stipulation.<sup>2</sup> This Commission should take similar action and should not approve the 2007 Stipulation, at least with respect to XO and other CLECs who are not a party to that stipulation, until Qwest has demonstrated that the revisions to the QPAP are in the public interest. More specifically, the Commission should require Qwest to demonstrate that the reduced payment levels that would result from the 2007 Stipulation are sufficient to ensure that Qwest will provide CLECs with adequate service quality.

RESPECTFULLY SUBMITTED this 13th day of September, 2007.

DAVIS WRIGHT TREMAINE LLP  
Attorneys for XO Communications Services, Inc.

By \_\_\_\_\_  
Gregory J. Kopta  
WSBA No. 20519

---

<sup>2</sup> *In re Petition of Qwest for Commission Approval of Stipulation Regarding Certain Performance Indicator Definitions and Qwest Performance Assurance Plan Provisions*, WUTC Docket No. UT-073034, Order 02 (Aug. 23, 2007).