

Alex M. Duarte  
Corporate Counsel  
QWEST  
421 SW Oak Street, Room 810  
Portland, OR 97204  
(503) 242-5623  
(503) 242-8589 (facsimile)  
[Alex.Duarte@qwest.com](mailto:Alex.Duarte@qwest.com)

Attorney for Qwest Corporation

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the Matter of Qwest Corporation’s Request  
for Approval of a Stipulation Regarding  
Certain Performance Indicator Definitions and  
Qwest Performance Assurance Plan Provisions

Docket No. 07-049-31

**QWEST’S REQUEST FOR LEAVE  
TO FILE SUPPLEMENTAL  
COMMENTS IN SUPPORT OF  
ITS PETITION FOR REVIEW,  
RECONSIDERATION OR  
REHEARING OF THE  
COMMISSION’S JUNE 30, 2008  
ORDER, AND SUPPLEMENTAL  
COMMENTS RE SAME**

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Qwest Corporation (“Qwest”) respectfully seeks leave to file these brief supplemental comments in support of its petition for review, reconsideration or rehearing (“petition for reconsideration”) of the Commission’s Report and Order issued in this docket on June 30, 2008 (“Order”). In its petition, Qwest seeks review, rehearing or reconsideration of that part of the Commission’s order that held that the approved changes to the Qwest Performance Assurance Plan (“PAP” or “QPAP” or “Plan”) and the Performance Indicator Definitions (“PIDs”) will be effective on a going-forward basis only and that the Commission will not retroactively impose such changes upon existing interconnection agreements with competitive local exchange carriers (“CLECs”). Order, p. 4.

Since the filing of Qwest’s petition, XO, the only CLEC that filed comments with the Commission in this docket and the party which the Commission referenced when it made its

decision on this issue, filed a response to Qwest’s petition yesterday. XO’s response supports Qwest’s petition in that it recommends that the Commission clarify the Order to state that changes to the QPAP apply to all CLECs whose interconnection agreements incorporate the PAP (so long as the Commission has approved those changes following an appropriate proceeding in which all interested parties are able to fully and meaningfully participate). Thus, XO concludes that it does not have any objections to the relief that Qwest seeks.<sup>1</sup>

In addition, in the event there remains any concerns about whether the Commission has the authority to implement PAP and PID changes to interconnection agreements without specific amendments, Qwest notes that section 16.1.1 of the Utah QPAP provides that any industry-wide agreed-upon changes to it shall be incorporated into the PAP and modify the agreements between CLECs and Qwest. This is consistent to what the Commission has allowed to happen in the past.

Accordingly, Qwest respectfully seeks leave to file these supplemental comments, and requests the Commission consider them before deciding Qwest’s petition for reconsideration.

### **SUPPLEMENTAL COMMENTS**

#### **I. Section 16.1.1 expressly provides that Qwest/CLEC agreed-upon PAP and PID changes will apply to all existing interconnection agreements in Utah**

As demonstrated in the petition, the QPAP<sup>2</sup> defines itself in a manner that not only permits but also requires it to remain as a whole, applicable to all CLECs who opt into the QPAP in a given state. In Qwest’s petition for reconsideration, Qwest identified several QPAP

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<sup>1</sup> Alternatively, XO stated that it would not object if the Commission construed Qwest’s request as a petition for a periodic review under the PAP. However, it also stated that since the Commission did not received any adverse comments from any interested party following a full and fair opportunity to review and comment, it believes the Commission could also approve the proposed changes in the PAP as part of such periodic PAP review, which would then still have the effect of making those changes applicable to all interconnection agreements that have incorporated the PAP. As XO mentions, “[u]nder either option [granting Qwest’s requested relief or initiating a six-month review], however, XO recommends that the Commission clarify its Order to state that when changes to the PAP are approved by the Commission pursuant to the periodic review process established in the PAP, *those changes apply to all ICAs that incorporate the PAP.*” (Emphasis added.)

<sup>2</sup> References herein to the QPAP also incorporate, as applicable, the Performance Indicator Definitions (PIDs) that constitute the performance measurements upon which QPAP payments are based.

provisions showing that only one version of the PAP should be in effect at any given time in Utah. See e.g., Qwest's Petition, pp. 6-8, including fns. 3-5. Included in these references was section 16.1 of the Utah QPAP that addresses six-month reviews and explains how the changes resulting from a six-month review modify CLECs agreements. The method described there works in a way that is similar to how a change of law would apply, yet also leaves authority with the Commission to make changes at any time to the PAP when those are consistent with due process and the parties' rights.

Another section of the Utah QPAP that Qwest did not expressly cite in its petition, but which is a subsection of section 16.1, also addresses the Commission's ability to apply Qwest/CLEC agreed-upon PAP and PID changes to all existing interconnection agreements between Qwest and CLECs in Utah. Specifically, section 16.1.1 of the Utah QPAP addresses the applicability of changes emerging from processes that are very similar to the one that generated the changes presented in this docket. Section 16.1.1 states as follows:

Notwithstanding section 16.1, if any agreements on adding, modifying, or deleting performance measurements as permitted by section 16.1 are reached between Qwest and CLECs participating in an industry Regional Oversight Committee (ROC) PID administration forum, those agreements *shall be incorporated* into the PAP *and modify the agreement between CLEC and Qwest* at any time those agreements are submitted to the Commission, whether before or after a six-month review. (Emphasis added.)

These provisions, taken as a whole, demonstrate that the intent of the QPAP is to exist as an integrated, comprehensive plan for *all CLECs* electing to have a PAP in their interconnection agreements in any given state. And no matter where changes to the QPAP originate, once such changes are to go into effect, they need to apply to all CLECs that have opted into the PAP. Since CLECs have a choice to either "opt in" to the QPAP, or to "opt out" (if they do not want to make the PAP's terms applicable to their business relationships with Qwest), they are certainly not compelled to enter into a PAP. However, CLECs that *do choose* to opt in to the PAP, and thus receive the PAP's benefits, realize that the Plan is the same for all CLECs in a given state,

and thus they accept that the Plan may be revised from time to time. Indeed, XO itself recognizes this fact and its response filed on August 13, 2008 is evidence of such recognition.

**B. The Commission has applied prior QPAP changes to all interconnection agreements**

In addition, Qwest notes that historically, prior QPAP changes in Utah have applied to all agreements that incorporate the PAP. For example, on June 28, 2004, Qwest filed with this Commission certain QPAP modifications arising from a stipulation reached in the second six-month QPAP review in the state of Washington. Later, on November 30, 2004, Qwest filed with the Commission certain QPAP changes arising from a stipulation reached in Arizona's first six-month review. In both of these cases, this Commission permitted these changes to go into effect by operation of law and apply to all CLECs who had opted into the PAP. See Docket No. 04-049-32, including DPU Comments of December 7, 2004.

Accordingly, Qwest believes these facts indicate that CLECs who have opted into the QPAP understand that changes which have been approved or allowed to go to effect after submission will apply to all interconnection agreements that contain the PAP. More importantly, these facts indicate that the Commission has previously applied QPAP changes to apply to all interconnection agreements that contain a PAP.

**C. Although unnecessary, Qwest would be willing to participate in a six-month review**

Finally, Qwest believes that the current docket has provided sufficient notification and opportunity to comment on the PAP and PID changes that the Commission has previously approved, as XO has mentioned, and as this Commission has recognized in approving the QPAP changes in its June 30, 2008 order approximately one year after Qwest filed the stipulation with numerous CLECs with this Commission. Alternatively, in the event that this Commission does not believe there has been sufficient notification and opportunity to comment on the approved

PAP and PID changes, Qwest would be willing to participate in a six-month review to more fully investigate the QPAP provisions governing modifications to its provisions.<sup>3</sup>

### **CONCLUSION**

Accordingly, Qwest respectfully requests the Commission consider these supplemental comments. Further, for the reasons above, Qwest respectfully submits it has shown good cause for review, reconsideration or rehearing of that part of the Commission's Order that ruled that the approved changes to the QPAP and the PIDs would not apply to existing interconnection agreements. Therefore, Qwest further requests that the Commission apply the approved changes to any interconnection agreement existing and effective prior to the date of the Order.

Dated: August 14, 2008

Respectfully submitted,

QWEST CORPORATION

By \_\_\_\_\_  
Alex M. Duarte  
QWEST  
421 SW Oak Street, Room 810  
Portland, OR 97204  
(503) 242-5623  
(503) 242-8589 (facsimile)  
[Alex.Duarte@qwest.com](mailto:Alex.Duarte@qwest.com)

Attorney for Qwest Corporation

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<sup>3</sup> Nevertheless, Qwest believes this is not necessary under the present circumstances, especially since all CLECs have had notice and opportunity to participate, the matter has had due consideration of the Commission and the DPU, and these same changes have been evaluated under the auspices of a six month review, including non-stipulating CLEC participation, in the state of Washington.