

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of Qwest Corporation's Petition)
to Open a Six-Month Review Under Section) DOCKET NO. 08-049-50
16.1 of the Utah Performance Assurance Plan) ORDER APPROVING PAP AND PID
) CHANGES TO ALL INTERCONNECTION
) AGREEMENTS WITH PAPs
)

ISSUED: February 4, 2009

By The Commission:

On June 27, 2007, Qwest Corporation (Qwest) filed a request that the Commission approve changes to its Performance Assurance Plan (PAP) and Performance Indicator Definitions (PIDs) based on a stipulation it entered with a number of Competitive Local Exchange Carriers (CLECs) throughout its 14-state incumbent service territory. The Commission docketed this request as Docket 07-049-31.

The PAP contains terms and conditions, including PIDs, which were established as part of Qwest's effort, in the early part of this decade, to obtain Federal Communications Commission (FCC) approval, pursuant to 47 U.S.C. Section 271, to enter into the interstate long distance telecommunications market. There was concern that Regional Bell Operating Companies (RBOCs), including Qwest, could "back-slide" in their interconnection performance and in providing network provisioning and access to other telecommunications providers once these RBOCs were permitted to participate in the interstate long distance telecommunications market. Hence, PAPs were negotiated to provide additional assurance of continued appropriate interconnection and network access between Qwest and other telecommunications providers. The PAP and PIDs may be incorporated into or referenced in individual interconnection agreements between Qwest and another telecommunications providers. They were also included

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in the Statement of Generally Available Terms and Conditions (SGAT) previously approved by the Commission and available to telecommunications providers who did not desire to negotiate a separate, unique interconnection agreement with Qwest.

During 2006 and 2007, Qwest held a number of meetings with other telecommunications carriers to negotiate possible changes to its PAP and PIDs. Part of the drive for PAP and PID changes is due to the FCC's changing iterations of necessary interconnection terms, including network elements that must be provided pursuant to 47 U.S.C. 251, and changes in the types of network services, functions and capabilities developed or developing in the telecommunications industry. As a result of these negotiations, Qwest, Eschelon Telecom, Inc., DIECA Communications, Inc. d/b/a Covad Communications Company, US Link, Inc. d/b/a TDA Metrocom, and McLeodUSA Telecommunications Services, Inc. (Stipulating Parties) entered into a Stipulation Regarding Certain Performance Indicator Definitions and Qwest Performance Assurance Plan Provisions (2007 Stipulation). They intended that the 2007 Stipulation be implemented in all PAPs throughout Qwest's 14-state service territory.

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Thus, on June 27, 2007, Qwest, for itself and on behalf of the other Stipulating Parties, submitted the 2007 Stipulation and requested the Commission approve the 2007 Stipulation, accept the agreed upon changes to Qwest's PAP and apply them to interconnection agreements containing the PAP, and also allow the changes to the PIDs to take effect and be applicable after Commission approval. As stated, the Commission docketed this request as Docket 07-049-31.

The Commission then requested comments from interested parties regarding the Stipulating Parties' requests and received comments for the Division of Public Utilities (DPU) and XO Communications Services (XO). The DPU recommended granting approval. XO raised concerns relative to the timeframe the Stipulating Parties had suggested for Commission review. In addition, XO argued that Commission approval should not affect pre-existing agreements of non-Stipulating Parties without due consideration by the Commission and noted that Qwest no longer offered an SGAT in Utah, at least not one approved by the Commission.

As the Stipulating Parties sought approval of the 2007 Stipulation in all of the states of Qwest's service territory, many states considered that a joint examination of the 2007 Stipulation be conducted by these states' Regional Oversight Committee (ROC), an existing organization established to coordinate such activities among the 14 states in Qwest's incumbent service territory. The DPU, participating in the ROC effort on behalf of the State of Utah, reported on the status of the ROC work. However, in a May 9, 2008 memo, the DPU noted that the participating states had drifted to dealing with the 2007 Stipulation on an individual state basis and that no further collaborative work was expected. Thus, the DPU recommended the Commission rule on the 2007 Stipulation and requested approvals. The DPU also reiterated its prior recommendation for Commission approval of the 2007 Stipulation and adoption of the PAP and PID changes. The DPU further explained that the earlier concerns that XO had expressed had been addressed, as they were of a procedural, not substantive, basis concerning consideration of the 2007 Stipulation. The DPU reported that recent communication with XO indicated there are no lingering substantive XO objections.

JUNE 30, 2008 REPORT AND ORDER IN DOCKET NO. 07-049-031

Accordingly, on June 30, 2008, we issued a Report and Order in Docket No. 07-049-031 addressing approval of the 2007 Stipulation and the specific requests made by the Stipulating Parties. We recognized and agreed that developments within the telecommunications industry and changes in the FCC's implementation and administration of the 1996 Federal Telecommunications Act provide a basis for changes in the PAP and PIDs. We recognized that certain items or aspects are no longer available, relevant or necessary to effectuate the purpose of a performance assurance plan. We concluded that the suggested changes to the PAP and PIDs in the 2007 Stipulation were reasonable and may be approved for use in interconnection agreements of Qwest and other telecommunications providers with Utah operations.

However, we also agreed with the comment originally made by XO. Thus, we ruled that the changes to the PAP and PIDs would only be effective on a going-forward basis. Our approval therein was not intended to alter PAP terms and conditions or PIDs in any interconnection agreement existing or entered into prior to that order. We noted that parties to an existing agreement may obviously voluntarily modify their contracts to adopt the new PAP and PIDs, but that we would not retroactively impose changes upon unwilling parties who do not wish to modify agreements entered into prior to this order.

Accordingly, we entered our order on June 30, 2008 in which we (1) adopted and approved the changes to Qwest's PAP and associated PIDs contained in the 2007 Stipulation; (2) approved the use of the new PAP and PIDs adopted therein as of the date of that order and ruled that they may be used for an interconnection agreement negotiated and effective after such date, and (3) denied the request that the changes to the PAP and the PIDs should be applied,

absent a mutual voluntary modification by agreement parties, to any interconnection agreement existing and effective prior the date of that order.

Thereafter, on July 28, 2008, Qwest filed a motion for review, rehearing or reconsideration of our order with respect to that part of the order that held that the approved changes to the PAP and PIDs would be effective on a going-forward basis only and that the Commission would not retroactively impose such changes upon unwilling parties who do not wish to modify agreements entered into prior to this order. Qwest also filed supplemental comments on August 14, 2008. The motion was denied by operation of law on August 17, 2008. Utah Code Ann., §§ 54-7-15(2)(c).

QWEST'S SIX-MONTH REVIEW PETITION, DOCKET NO. 08-049-50 (this proceeding)

Thereafter, on September 23, 2008, Qwest filed the instant petition to open a six-month review under Section 16.1 of the Utah PAP for the limited purpose of reviewing and approving, in the context of a six-month review, the stipulated PID and PAP modifications that we approved in our June 30, 2008 Report and Order in Docket No. 07-049-31, for the purpose of making the Stipulated Changes applicable to all CLECs that have opted into the PAP and PIDs in Utah. We docketed that petition as Docket No. 08-049-050.

On October 13, 2008, the DPU filed comments recommending that we provide the opportunity for comments and to schedule a technical conference in this matter. Therefore, on October 20, 2008, we set a December 1, 2008 deadline for comments on Qwest's petition, and scheduled a technical workshop for December 3, 2008. The purpose of the conference was to discuss questions that should be addressed in the six-month review regarding how the Stipulated Changes should be applied. No comments were filed by December 1, 2008.

Thereafter, on December 3, 2008, representatives from Qwest, Commission Staff and the DPU appeared at the technical workshop. Representative of Integra and Qwest also appeared by telephone. At the conference, all parties agreed that we should approve the changes that Qwest requested in its six-month review petition. In addition, Qwest agreed to Integra's request for Qwest to make certain EDI/XML changes that were previously agreed upon in the states of Colorado and Washington. Specifically, this consists of updating the PID to address the retirement of the Electronic Data Interchange (EDI) interface and its replacement with the Extensible Mark-up Language (XML) interface, and making such other related PID and PAP changes as were agreed upon in the Colorado 2007 Annual PAP review, as applicable to Utah. Qwest further agreed to make a filing representing that it has agreed to Integra's request to make the EDI/XML changes, which filing it made on December 15, 2008.

WHEREFORE, we enter this ORDER, wherein we:

1. Adopt and approve the changes to Qwest's Performance Assurance Plan (PAP) and associated Performance Indicator Definitions (PIDs) contained in the Stipulating Parties' 2007 Stipulation Regarding Certain Performance Indicator Definitions and Qwest Performance Assurance Plan Provisions that Qwest originally submitted on June 27, 2007 and that we approved on June 30, 2008 in Docket No. 07-049-31, and that we now make applicable to all CLECs that have opted (or will opt) into the PAP and PIDs in Utah.
2. Adopt and approve the agreed-upon EDI/XML changes referenced herein to the PAP and associated PIDs as applicable to all CLECs that have opted (or will opt) into the PAP and PIDs in Utah.

3. Instruct Qwest to file with the Commission a copy of the revised PAP and PIDs reflecting these changes within 30 days after the effective date of this Order.

Pursuant to Utah Code §§ 63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission within 30 days after the effective date of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code §§63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 4th day of February, 2009.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#60418