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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

In the Matter of Qwest’s Petition for Review and Termination of Qwest’s Performance Assurance Plan Termination pursuant to Section 16.3	Docket No. 09-049-60 <b>MOTION TO LIMIT THE SCOPE OF THE PROCEEDING TO THE ELIMINATION OF TIER 2 PAYMENTS</b>
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On December 15, 2009, Qwest Corporation (“Qwest”)<sup>1</sup> filed a petition to terminate the Qwest Performance Assurance Plan (“QPAP”). Subsequently, Qwest Communications International, Inc. and CenturyLink, Inc. sought approval for an indirect transfer of control of Qwest Corporation, Qwest Communications Company, LLC and Qwest LD Corporation to CenturyLink. The Public Service Commission of Utah (the “Commission”) approved the indirect transfer of control of CenturyLink, Inc. to Qwest on January 4, 2011. As a result of settlement commitments made by Qwest in the merger preceding it no longer currently seeks to terminate the QPAP in its entirety, but instead now seeks to amend its original request by only seeking the elimination of Tier 2 payments from the QPAP. As part of its settlement with the Division of Public Utilities (the “Division”) in the merger proceeding, Qwest agreed that within 3 months of the merger close, it will file a motion in this docket seeking to limit the scope of this proceeding to consider only the elimination of the Tier 2 payments. Pursuant to Utah Admin. Rule § R746-100-3H and commitments made in the merger proceeding, Qwest now files this motion, and requests that the Commission limit the scope of this docket to the elimination of Tier 2 payments from the QPAP.

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<sup>1</sup> Qwest Corporation is now a subsidiary of CenturyLink, Inc. (“CenturyLink”)

In the event there is no opposition to this motion and no opposition to the elimination of Tier 2 payments, Qwest requests that the Commission approve this as expeditiously as possible and eliminate the Tier 2 payments from the QPAP. To the extent there is opposition to this motion or the elimination of Tier 2 payments Qwest recommends that the Commission schedule a technical conference to further discuss the elimination of Tier 2 payments from the QPAP and to determine the remaining process in this proceeding.

## **1. BACKGROUND**

On December 15, 2009, Qwest filed a Petition for Review and Termination of the QPAP. In the December 15, 2009 Petition, Qwest sought the elimination of the QPAP, and requested a technical conference to discuss the Petition and the possible elimination of the QPAP.

The Commission conducted a technical conference and determined that further discussion with respect to the Petition was needed. Subsequently, Qwest, the Division, and representatives from Comcast, Integra, McLeod and XO held settlement meetings regarding the termination of the QPAP. The parties were not able to come to an agreement with respect to the termination of the QPAP.

Subsequently, on May 19, 2010, Qwest Communications International, Inc. and CenturyLink filed a Joint Application for Approval of Indirect Transfer of Control (Merger) of Qwest Corporation, Qwest Communications Company, LLC and Qwest LD Corporation to CenturyLink. On January 4, 2011, the Commission issued its Report and Order (the "Order") approving the indirect transfer of control of the Qwest Communications International, Inc. operating subsidiaries to CenturyLink. As part of its Order the Commission approved settlement agreements between the Joint Applicants and the Division, Utah Office of Consumer Services, Salt Lake Community Action Program, Department of Defense, Integra, and 360networks.

As a condition of the settlement agreement with the Division, Qwest agreed that it would not discontinue the use of the QPAP for at least 36 months after the transaction closing. Further, as part of the Division settlement agreement, Qwest agreed that it will file a motion in this docket seeking to limit the scope of this proceeding to consider only the elimination of the Tier 2 payments. The Division agreed to support the elimination of the Tier 2 payments. The transaction between CenturyLink and Qwest closed on April 1, 2011, and this motion is now timely filed pursuant to the settlement agreement with the Division.

## **2. Elimination of Tier 2 Payments**

The QPAP is a self-effectuating performance assurance plan that is implemented as Exhibit K of interconnection agreements (ICAs) between Qwest and competitive local exchange carriers (CLECs) that opt to include it in their ICAs. The QPAP was originally offered voluntarily by Qwest in conjunction with its application to the FCC for authority to offer interLATA long distance services under Section 271 of the federal Telecommunications Act of 1996. The QPAP currently provides for a two-tiered self-executing remedy plan. The QPAP provides for payments to CLECs (“Tier 1 payments”) and payments to states (“Tier 2 payments”) that are triggered by measurements with parity or benchmark standards in the Performance Indicator Definitions (“PIDs”) when service performance is nonconforming to those standards.

Tier 2 payments go to the state, not individual CLECs, and the Division has already indicated as part of the merger proceeding that it supports the elimination of Tier 2 payments. Further, Utah will not be alone with the elimination of Tier 2 payments from the QPAP, as the Idaho Public Utilities Commission recently eliminated Tier 2 payments. Further, the elimination of Tier 2 payments does not change any of the measurements in the PIDs, which will continue to be reported pursuant to Exhibit B of interconnection agreements.

A copy of the QPAP reflecting the elimination of Tier 2 payments is attached as Exhibit 1. The proposed changes to the QPAP are provided in a redlined version attached hereto as Exhibit 2.

**WHEREFORE**, Qwest respectfully requests that the Commission limit the scope of this docket to the elimination of Tier 2 payments from the QPAP. In the event there is no opposition to this motion and no opposition to the elimination of Tier 2 payments, Qwest requests that the Commission approve this as expeditiously as possible and eliminate the Tier 2 payments from the QPAP. To the extent there is opposition to this motion or the elimination of Tier 2 payments Qwest recommends that the Commission schedule a technical conference to further discuss the elimination of Tier 2 payments from the QPAP and to determine the remaining process in this proceeding.

Dated: June 13, 2011

Respectfully submitted,

QWEST CORPORATION/CENTURYLINK



By \_\_\_\_\_

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