

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Qwest's Petition for )  
Review and Termination of Qwest's ) DOCKET NO. 09-049-60  
Performance Assurance Plan Termination )  
pursuant to Section 16.3 ) ORDER  
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ISSUED: January 14, 2010

By The Commission:

On December 15, 2009, Qwest Corporation ("Qwest") filed a request for a technical conference to accomplish: "the review contemplated in Section 16.3 of the Qwest Performance Assurance Plan" ("QPAP"). The Utah Public Service Commission ("Commission") declined to treat the requested technical conference as the requested review because the issues involved would require more evidence and analysis than could be accomplished in such a venue. The Commission would also like input from all interested parties. The QPAP grew out of Qwest's application to the Federal Communications Commission ("FCC") for authority to offer interLATA long distance services under Section 271 of the federal Telecommunications Act of 1996 ("the Act"). As a part of that original 271 application process, Qwest requested the Utah Commission to conduct a review and issue a finding that allowing Qwest interLATA long distance authority was in the public interest. In our June 18, 2002, Order in Docket No. 00-049-08 we stated:

This Order addresses the adequacy of Qwest's proposed performance assurance plan (Qwest's proposed PAP) and *provides the findings and changes required before the Commission can accept the plan as adequate*. The purpose of a performance assurance plan (PAP) is to provide sufficient economic incentives and constraints such that Qwest will continue to fulfill its obligations (federal and state) to its competitors (CLECs) after receiving in-region interLATA authority. (Emphasis added.)

We further stated:

... In general the Staff agreed with the Facilitator's recommendations, but also recommended that the Commission should be the "ultimate decision maker" in the six-month review process *and in all matters regarding final changes to the Utah PAP*. Qwest opposes unilateral modifications to the Utah PAP by the Commission, arguing that the Commission does not have such inherent authority, and the FCC does not require that such authority be conferred on the state. The Commission notes that Qwest repeatedly stresses that the Utah PAP is a voluntary instrument Qwest offers to secure federal section 271 approval, and is not a requirement of state or federal law. However, our acceptance of the Utah PAP's adequacy can only be based on a finding that it is *sufficient to protect the public interest*. Part of that adequacy is the ability of the Commission to change the Utah PAP over time as needed. Without such authority the Commission cannot find that the proposed Utah PAP is in the public interest. Therefore the Commission directs that Qwest incorporate the Staff's proposed language regarding change authority. (Emphasis added.)

This Order was not appealed and Qwest filed an updated QPAP incorporating the Commission's required changes. Faced with a request to review the need for the QPAP the Commission desired to gather more information regarding the current state of the market and the relationships among the competitors within that market. As a result it scheduled a Technical Conference on January 7, 2010, to discuss issues related to the current QPAP. The following issues were addressed:

1. Overview of the history and purpose of QPAP and its place in Commission-approved interconnection agreements.
2. Review of QPAP operation from 2003 to present: performance and payment levels.
3. Discussion of QPAP Section 16.3: the "appropriateness of the PAP and whether its continuation is necessary...."

4. Discussion of a future framework for wholesale service quality to replace QPAP.
  - Qwest Proposals,
  - Comments of other parties,
  - Commission perspectives and guidance.
5. Discussion of next steps – process for moving forward.

There was considerable disagreement among the parties at the technical conference regarding the on-going need for the QPAP. But there was also a recognition that the market today is very different than that which prevailed when Qwest was granted interLATA authority. Qwest faces competition from many different sources, not just from competitors which use portions of its network. Qwest's market share, and the resulting market power it might exercise, has also changed dramatically since it obtained interLATA authority, as has its business strategy and its relationships with its competitors. Further, the regulatory framework in which Qwest operates, at both the State and federal levels, has changed significantly as well.

While we decline to treat the Technical Conference as fulfilling any type of review of the merits of the QPAP and its current necessity in the Utah market, we do find that such a review would be beneficial in the future. However, after considering the material presented at the Technical Conference, the Commission concludes that it would be useful for all parties to explore the possibility of a negotiated settlement to these issues. The Commission believes that Qwest and its competitors should attempt to find a voluntary resolution to the issues. It is apparent that the competitive local exchange carriers believe there is value in having some type of a self-actuating payment mechanism in place to ensure that Qwest does not

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abuse whatever market power it might have. It is just as clear that Qwest feels the administrative expense, and the total payment level, of the current QPAP is excessive and counter-productive. While those two views are certainly not in agreement, neither are they mutually exclusive. It may well be that a more precisely targeted plan based on company-to-company metrics and individual company payments, rather than broader company and state-level metrics and payments, could be agreed upon. Such a plan would likely be much less costly to administer and would still address the performance concerns of the competitive carriers. Therefore, we direct the parties to meet and discuss these issues to determine if a settlement among the parties is possible. We direct the parties to jointly report the results of these meetings, and file any resulting agreement, within 120 days of this Order.

DATED at Salt Lake City, Utah, this 14<sup>th</sup> day of January, 2010.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary  
G#65050