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UTAH DEPARTMENT OF COMMERCE

Division of Public Utilities

MARGARET W. BUSSE
Executive Director

CHRIS PARKER
Division Director

Action Request Response

To: Public Service Commission of Utah

From: Utah Division of Public Utilities

Chris Parker, Director
Artie Powell, Manager
Brenda Salter, Utility Technical Consultant Supervisor
Casey J. Coleman, Utility Technical Consultant

Date: September 12, 2022

Re: **Docket No. 22-049-60**, Qwest Corporation d/b/a/ CenturyLink QC's Petition for Elimination of Performance Assurance Plan and Performance Indicator Definitions.

RECOMMENDATION (APPROVE)

The Division of Public Utilities (Division or DPU) recommends the Public Service Commission of Utah (PSC or Commission) grant the request of Qwest Corporation d/b/a CenturyLink QC (CenturyLink or Company) to eliminate the Performance Indicator Definitions (PID) and Performance Assurance Plan (PAP).

ISSUE

On July 19, 2022, CenturyLink¹ filed a petition requesting the Commission eliminate the PID and PAP portions of its interconnection agreements (ICA), with each Utah CLEC. The petition discussed the point that "PIDs and PAPs have been in place for nearly 20 years and have successfully accomplished their goal of performance parity as evidenced by low and declining volumes."²

¹ Over the past 20 years there have been a number of different entities that existed before CenturyLink, namely Qwest. Instead of referring to CenturyLink and stating formerly known as Qwest, I have used CenturyLink consistently, knowing that at times the reference is to Qwest or a former company.

² CenturyLink's Petition, Docket No. 22-049-60, page 1.

BACKGROUND

The use of PIDs and PAPs has been an integral part of utility regulation since 1996 when the Federal Communication Commissions (FCC) allowed for more competition in the telecommunications industry. The need for a PAP “grew out of [CenturyLink’s] application to the FCC for authority to offer interLATA long distance services under Section 271 of the federal Telecommunications Act of 1996 (the Act). As part of that original 271 application process, [CenturyLink] requested the Utah Commission to conduct a review and issue a finding that allowing [CenturyLink] interLATA long distance authority was in the public interest.”³

The Commission’s June 18, 2002 Order in Docket No. 00-049-08 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.)⁴

With that 2002 Order, the Commission allowed for CenturyLink to begin offering additional services to customers with PIDs and PAPs in place to protect the competitive environment of the telecommunications market in Utah.

On December 15, 2009, CenturyLink filed a petition with the Commission requesting a technical conference be opened for the purpose of accomplishing the review contemplated in Section 16.3 of the PAP. In the petition filed with the Commission, CenturyLink offered the following supporting information:

1. 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.

³ Utah Public Service Commission Order, Docket No. 09-049-60, January 14, 2010, page 1.

⁴ Ibid.

2. 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 Act.
3. QPAP Section 16 contains provisions that allow for changes approved by the Commission and that also allow for termination of QPAP following review by “the Commission and Qwest.” Specifically, QPAP Section 16.3 states: “Qwest will make the PAP available for CLEC interconnection agreements until such time as Qwest eliminates its Section 272 affiliate. At that time, the Commission and Qwest shall review the appropriateness of the PAP and whether its continuation is necessary. However, in the event Qwest’s authority to serve the interLATA market ends, the PAP shall be rescinded immediately.”
4. While the Section 272 affiliate was not necessarily known or constructed as such in Utah, it nevertheless had an existence in Qwest during the early years of QPAP existence and was therefore referenced in the Utah version of Qwest’s QPAP. Qwest’s Section 272 affiliate no longer exists.
5. In any event, pursuant to Section 272(f)(1) of the Act: The provisions of this section (other than subsection (e)) shall cease to apply with respect to . . . the interLATA telecommunications services of a Bell operating company 3 years after the date such Bell operating company or any Bell operating company affiliate is authorized to provide interLATA telecommunications services under section 271(d), unless the Commission extends such 3-year period by rule or order.
6. On December 23, 2005, the FCC determined that the provisions of section 272 (other than section 272(e)) of the Communications Act of 1934, as amended (the Act), applicable to Bell Operating Company (BOC) provision of in-region, interLATA telecommunications services sunset for the operations of Qwest Communications International Inc. (Qwest) in the states of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming by operation of law as provided in section 272(f)(1), effective December 23, 2005.
7. The Section 16.3 review by “the Commission and Qwest” of “the appropriateness of QPAP and whether its continuation is necessary” is the subject of this Petition, and Qwest proposes that this review take the form of a technical conference held by the Commission.⁵

The technical conference, as suggested by CenturyLink, was held and the PAP and PIDs were discussed in length. After the conference the Commission did not order any changes to the PID or PAPs but instead recommended the Division and other interested parties hold meetings to discuss the PID and PAPs going forward and see if there was a resolution that could be reached by the parties.

⁵ CenturyLink’s Petition, Docket No. 09-049-60, December 16, 2009, page 1.

The Division along with representatives from Qwest, Comcast, Integra, McLeod, and XO held settlement meetings during the months of January 2010 to May 2010. Some of the people in attendance at these settlement meetings in addition to the Division were, Sharon M. Bertelsen, Ballard Spahr LLP, Jim Farr, CenturyLink, Alex Duarte, CenturyLink, Rex Knowles, XO Communications, Douglas K. Denney, Integra Telecom, Julia Redman-Carter, McLeodUSA, and Michael Nelson, Comcast. Many ideas and concerns were discussed, but ultimately the differences between the parties could not be bridged through discussions. No specific actions were taken because of the settlement discussions.

In the same Docket 09-049-60, CenturyLink filed a motion on June 13, 2011, to limit the scope of the proceeding to the elimination of Tier 2 payments as outlined in the PAP. The Division filed comments July 27, 2011, supporting limiting the scope of the Docket to Tier 2 payments and recommending the Commission eliminate CenturyLink's requirement to pay Tier 2 payments. The Division's analysis showed that CenturyLink had made a Tier 2 payment only once in an eight-month period of \$150. Another factor in approving elimination of the Tier 2 payments was the fact that there was no opposition to CenturyLink's new petition.⁶ On August 22, 2011, the Commission issued an order eliminating the requirement for CenturyLink to make Tier 2 payments.

As stated earlier, CenturyLink has filed with the Commission requesting that the PIDs and PAPs be eliminated in Utah. CenturyLink offered the following statement supporting this request.

The PIDs and PAPs have been in place for nearly 20 years and have successfully accomplished their goal of performance parity as evidenced by low and declining volumes. This achievement coupled with the substantial changes recently ordered by the FCC to significantly reduce the unbundled network elements (UNEs) Regional Bell Operating Companies (RBOCs), like CenturyLink, are required to offer CLECs has created an environment in which the PIDS and PAP have become irrelevant and are no longer useful to the CLECs. However, the requirement to maintain them demands that the company expend substantial resources inapposite of their value. This is illustrated by the fact that annual payments to CLECs under the Utah PAP have dwindled to \$300 for all CLECs combined in Utah.⁷

⁶ Division of Public Utilities Memorandum, Docket No. 09-049-60, July 27, 2011, page 2.

⁷ CenturyLink Petition, Docket No. 22-049-60, July 19, 2022, page 1.

DISCUSSION

In this Docket, CenturyLink has made several claims supporting the elimination of the PID and PAP. Some of those claims include the dwindling importance of PID payments to CLECS, the changing regulations and statutes dealing with PID and PAP payments, and the overall changing of the telecommunications market from 2002 when the PID and PAPs were first established.

The Division has done its own analysis of the information to determine if it is appropriate to eliminate the PID and PAP requirements in the State of Utah. One of the first steps taken by the DPU was to have a conference call with Donna Heaston and Douglas K. Denney from Allstream.⁸ Mr. Denney is considered one of the leading experts in PID and PAPs and has represented a number of CLECs on this topic. Mr. Denney was extensively involved in the settlement discussions in 2010 when CenturyLink filed to eliminate the PID and PAP in Docket No. 09-049-60.

On August 11, 2022, the DPU discussed the petition of CenturyLink and the evolution of the competitive market with Ms. Heaston and Mr. Denney. Mr. Denney indicated that Allstream had participated in the proceedings on the federal level at the FCC dealing with this topic. Mr. Denney also alluded that because the topic had been decided by the FCC allowing for the elimination of most unbundled network elements, Allstream was not opposing the filing of CenturyLink in the State of Utah.

Mr. Denney also indicated that having a competitive marketplace that allows for parity for all telecommunications providers is still important to Allstream. With the changing rules and regulations as well as the adapting telecommunications landscape, the market has reached a significant level of parity. Finally, even with the proposed elimination of the PID and PAPs, CLECs will still have some methods of remedy if CenturyLink were to digress from its current access to the network that allows for market parity.

The fact that PID and PAPs are not as significant of an issue as they were in 2010 is also evidenced in CenturyLink's petition. In 2020 and 2021 only one company logged into the

⁸ The Division of Public Utilities has permission to share the details and items discussed in this meeting from Ms. Heaston and Mr. Denney.

portal provided by CenturyLink to review its multi-state performance. In 2019 not a single CLEC had accessed the portal. If the PIDs and PAPs were an important issue to CLECs they would be accessing the portal more frequently to review the situation for each of its companies. This is not happening.

Another fact the Division considered in its analysis is the changing telecommunications landscape. As a point of reference, the DPU looked at total revenues for all telecommunications companies from fiscal year 2007 and 2021. Looking at this information would give the DPU a snapshot of how the market position of CenturyLink has changed over the years. CenturyLink's revenues for each year were compared to the total gross revenues that companies reported as part of the calculation for the Public Utilities Regulatory Fee. For 2007 CenturyLink's revenues were 63.31 percent of the total. That percentage drops to 39.78 percent of the total telecommunication's revenues for 2021. Over that 14-year period CenturyLink has seen its monopolistic position erode. As another reference point, the total gross revenues for all regulated telecommunication utilities from 2007 to 2021 decreased 56.31 percent. Because of cellular service, voice-over-internet-protocol, and other forms of communication like text messaging, the telecommunications market has drastically changed from 2002 or even 2010 to today.

Another set of data that supports this conclusion is looking at the number of connections. While the DPU does not have the information available dealing with the number of connections/customers for 2010 it does have numbers from July 1, 2020 to June 30, 2022. During that time frame Utah's ILEC's served approximately 218,000 traditional landline telephone accounts, while CLECs served approximately 370,000. Wireless carriers (traditional) served about 2.9 million accounts/customers, while pre-paid wireless carriers served about 250,000. In addition, voice-over-internet-protocol carriers provided service to approximately 170,000 lines/accounts. As the numbers indicate here, CenturyLink as an ILEC is no longer the major provider of telecommunications services in the State of Utah.

The final point considered was the fact that payments from PID and PAPs were \$300 in 2021 and zero in 2022 YTD. Because the payments have reduced over time, it indicates that CenturyLink is meeting the requirements of the PID and PAPs and are not required to make substantial penalty payments. This low payment amount indicates the plan has

provided sufficient economic incentives and constraints to support a competitive marketplace in the state of Utah.

CONCLUSION

The DPU recommends the Commission eliminate the PID and PAPs and allow CenturyLink to modify its ICAs as requested. There has been no opposition to this petition by any CLEC. The Division has requested in previous dockets, the elimination of PIDs and PAPs because of low penalty payments. This same line of reasoning is applied in this Docket. Finally, the telecommunications market has changed significantly since the PAP and PIDs were established and the need for the continued requirements have decreased. Because of all these factors it is in the public interest to eliminate the requirement for CenturyLink to have PIDs and PAPs.

Cc: Max Backlund, Utah Government Affairs Director, CenturyLink