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July 30, 2010

VIA HAND DELIVERY

Jean D. Jewell, Secretary
Idaho Public Utilities Commission
472 West Washington
Boise, ID 83702-5983

RE: Docket No. QWE-T-08-04

Dear Ms. Jewell:

Enclosed for filing with this Commission are an original and seven (7) copies of the Amended Petition of Qwest Corporation. If you have any questions, please contact me.

Thank you for your cooperation in this matter.

Very truly yours,

Mary S. Hobson

Enclosures
cc Service List

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

In Re WITHDRAWAL of QWEST COPORATION'S STATEMENT OF GENERALLY AVAILABLE TERMS AND CONDITIONS	**Case No. QWE-T-08-04** **AMENDED PETITION of QWEST CORPORATION**

Qwest Corporation ("Qwest"), by and through its undersigned attorneys, petitions the Idaho Public Utilities Commission ("Commission") to withdraw its Performance Assurance Plan (PAP) and replace it with an alternative offering called Qwest Performance Assurance Plan II (QPAP II) as more fully set out below.

This Amended Petition supersedes the pending portion of Qwest's Petition filed herein on May 2, 2008 in which Qwest sought permission to withdraw its Statement of Generally Available Terms (SGAT). The Commission granted that portion of Qwest's requested relief in Order No. 30750 dated March 17, 2009. In its initial petition Qwest also requested that the PAP and the Performance Indicator Definitions (PIDs), which are used in conjunction with the PAP, be removed entirely. This Amended Petition seeks an Order of this Commission amending the PAP and PIDs as set out in detail below and in Qwest's testimony.

INTRODUCTION

1. Qwest is a Colorado corporation whose principal place of business in Idaho is Boise. Qwest is the successor corporation to U S West Communications, Inc., which provided telecommunications services in Idaho pursuant to Titles 61 and 62, Idaho Code. Presently Qwest provides retail telecommunications services in Idaho under Title 62, Idaho Code. For convenience, both Qwest and its predecessor shall be referred to as "Qwest" in these proceedings.

2. Under the federal Telecommunications Act of 1996 ("1996 Act" or "the Act") Qwest is a Bell Operating Company ("BOC") as defined in 47 U.S.C. § 153 (35) and operates as an "incumbent local exchange carrier" ("ILEC") as defined in section 251(h) of the 1996 Act. 47 U.S.C. § 251(h).

3. Pursuant to the 1996 Act, ILECs such as Qwest are required to enter into interconnection agreements with other providers of telecommunications services who request access to its network, facilities or services. *See* 47 U.S.C. §§ 251-252.

4. The 1996 Act also provided a means by which BOCs like Qwest could gain entry into certain telecommunications markets, known as the in-region interLATA services markets, from which they had been legally precluded. 47 U.S.C. § 271 Proceedings by which BOCs sought regulatory approval for this market entry ("interLATA freedoms") were termed "271 proceedings" and the path these proceedings took through state and federal regulatory tribunals is often referred to as "the 271 process." As part of the 271 process, state regulatory bodies such as this Commission were to consult with the Federal Communications Commission ("FCC") as to whether a particular BOC had met the standards set out in section 271. 47 U.S.C. § 271 (d) (2) (B)

5. The Idaho Legislature in 1997 enacted Idaho Code § 62-615 (1), which granted the Commission "full power and authority" to implement the 1996 Act.

JURISDICTION

6. The Commission has jurisdiction over this matter under section 615, Title 62, Idaho Code.

QWEST'S PIDs and PAP

7. After the passage of the 1996 Act, Qwest in Idaho was actively engaged in taking all steps necessary to comply with the Act and to successfully complete the requirements for entry into the in-region, interLATA service markets through the 271 process.

8. Among these activities, Qwest negotiated numerous interconnection agreements with competitive local exchange carriers (CLECs). Said agreements were

subsequently submitted to the Commission for approval pursuant to section 252(e) of the 1996 Act.

9. On June 6, 2002, the Commission entered its "Final Decision on Qwest's Corporation's Compliance with Section 271" stating that it was prepared, when consulted by the FCC, to advise that Qwest had adequately addressed the section 271 requirements. The FCC approved Qwest's application for market entry through the 271 process on December 23, 2002.[1]

Part One—Origin of the PIDs and PAP

10. At the onset of the 271 process, the focus was on implementing wireline competition. One critical element of that implementation was assuring the BOCs provided nondiscriminatory service to the competitors to whom they provided interconnection and other products and services used in their CLEC operations. In particular CLECs sought assurance that service quality would be maintained once the BOCs received 271 approval and re-entered the interLATA service markets.

11. Among the BOCs, Bell Atlantic (now Verizon) was the first to receive 271 approval from the FCC. As a result, the Bell Atlantic application became a blueprint for all other 271 submissions. In particular Bell Atlantic's extensive, independent third-party Operations Support Systems (OSS) testing and voluntary plan to assure service quality were seen as a useful approach. Included in that approach were:

- Development of clearly defined performance measures and standards; and,

[1] *Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming*, WC Docket No. 02-314, Memorandum Opinion and Order, 17 FCC Rcd 26303 (2002).

- Adoption of performance assurance measures with substantial penalties that created a strong financial incentive for Bell Atlantic's post-approval compliance with the section 271 requirements.

12. As noted, Bell Atlantic's application, including its performance assurance plan became a blueprint for other BOCs, like Qwest, who were seeking the FCC's approval under section 271. Therefore, like Bell Atlantic, Qwest submitted to extensive third-party testing of its OSS offering and worked with interested parties to develop performance measures known as Performance Indicator Definitions ("PIDs") that would be used to provide specific data about Qwest's performance. Finally, Qwest voluntarily put into place a Performance Assurance Plan ("PAP") that applies specific standards to the performance data to assure post-approval compliance with section 271 requirements.

13. Based on a snapshot of the industry as BOCs completed their 271 processes, Qwest ***voluntarily*** offered the PAP. PAPs were not required under the Act. Instead, they were considered an anti-backsliding mechanism to assure that the pro-competitive measures required prior to the BOCs gaining access to the in-region, interLATA markets were not compromised once interLATA freedoms were attained. Consequently, PAPs went far beyond what had been considered commercially reasonable in ordinary business-to-business agreements and required Qwest make payments for failure to meet PIDs even where CLECs suffered no actual harm and without regard to the overall service quality provided to CLECs.

Part Two—The PAP Was Never Intended to Be Permanent

14. During the workshops and negotiations in the 271 process, it was anticipated that the PAP would not always be in place. In fact, terms were added to the

Idaho PAP providing for its elimination. By its own terms, the Idaho PAP provides at Section 16.3:

> 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. . . .*" (Emphasis added)

This reference to "Section 272" is to a provision of the 1996 Act. Essentially that section allowed BOCs to provide in-region, interLATA telecommunications services through separate corporate affiliates, if certain safeguards were in place. 47 U.S.C. § 272(a)(2). By its own terms, many of the requirements in section 272 expire three years after a BOC is authorized (through the 271 process) to provide in-region, interLATA services. 47 U.S.C. § 272(f)(1). As noted above, the FCC granted Qwest's section 271 authorization for Idaho in an order released on December 23, 2002. Therefore, pursuant to section 272(f)(1), the provisions of section 272 (other than section 272(e)) sunset by operation of law for Qwest in Idaho effective December 23, 2005. After that time Qwest was no longer required to provide its in-region, interLATA services through a section 272 affiliate.[2] However, Qwest did not cease using its 272 affiliates to offer its in-region interLATA services because if Qwest had offered those services immediately itself, they would have been subject to additional FCC regulations until the FCC issued a forbearance order.

15. On February 20, 2007, the FCC granted Qwest's *Petition for Forbearance from Enforcement of the Commission's Dominant Carrier Rules as They Apply after 272*

[2] *See Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, Memorandum Opinion and Order, 17 FCC Rcd 26869 (2002) (finding that section 272(f)(1) is best interpreted as providing for a state-by-state sunset).

Sunsets.[3] In connection with this forbearance grant, Qwest provided the FCC with notice that Qwest had stopped providing in-region, interstate, interLATA interexchange ("IXC services") through section 272-compliant affiliates as of February 20, 2007.

16. Thus, the triggering event contemplated in section 16.3 of the Idaho PAP occurred as of February 20, 2007.

Part Three—The PAP Has Accomplished Its Purpose

17. Since the creation of the PAP and continuing through Qwest's successful 271 process and entry into the in-region, interLATA market, Qwest has consistently provided excellent, non-discriminatory service to CLECs. Average Idaho performance since 2003 has been over 99%, as summarized below:

Idaho - Percent Items Met	Period						
PID Group	2003	2004	2005	2006	2007	2008	2009	Total
Billing (BI)	95.83%	99.61%	99.77%	99.99%	99.99%	99.98%	100.00%	99.72%
Maintenance & Repair (MR)	99.29%	99.36%	99.55%	99.43%	99.59%	99.61%	99.55%	99.46%
Ordering & Provisioning (OP)	99.11%	98.68%	98.67%	97.48%	98.21%	95.95%	96.19%	98.06%
Pre-order / Order (PO)	99.10%	99.52%	99.32%	99.48%	98.36%	99.22%	98.92%	99.18%
Grand Total	95.98%	99.60%	99.77%	99.97%	99.98%	99.97%	99.99%	99.71%

18. Qwest remains committed to providing excellent service to CLEC customers. The realties of today's marketplace dictate that CLEC-related services are a critical piece of Qwest's ongoing business and play a major role in keeping end users on the Qwest network, thereby helping to support Qwest's huge financial investment and its economic future. These business realities constitute a powerful incentive to continue to

[3] In this petition Qwest sought relief from FCC requirements that would have made any IXC services it provided subject to the stringent regulations known as "dominant carrier regulations."

provide CLECs with excellent service as defined under the PIDs and otherwise. In addition Qwest is well aware that it continues to operate under a federal statutory requirement to provide non-discriminatory service to CLECs. Qwest service in Idaho has consistently met that standard and Qwest is fully committed to continuing to do so.

19. Based on the foregoing, Qwest believes it would be consistent with the history of the PAP, the language of the Plan that was accepted by the FCC and this Commission, and federal law for the PAP and PIDs to be withdrawn in their entirety, allowing Qwest and the CLECs to pursue business-to-business agreements that meet their ongoing commercial needs. However, based upon the input from CLECs in this and similar dockets, as well as the comments of the Commission Staff, Qwest is willing to continue to voluntarily offer the PAP, with certain modifications and simplifications described below and in more detail in Qwest's testimony that make operation of the PAP in the future more efficient and balanced, while preserving the strong financial incentives considered so important by CLECs and regulators.

Part Four—The PAP and its History Demonstrate it May be Modified

20. Today, the PAP, if adopted by an individual CLEC, forms a part of the CLEC's interconnection agreement. Specifically the PAP takes the form of Exhibit B, which sets forth the measurement definitions and standards (i.e. "the PIDs"), while Exhibit K sets forth the payment framework. Qwest now seeks to modify Exhibits B and K of existing interconnection agreements to reflect a more balanced approach that continues to provide economic incentives to Qwest to help maintain open telecommunications markets for CLECs. This modification is provided pursuant to

section 16.3 of the current PAP, which permits the Commission and Qwest to have a proceeding such as this to determine the future of the Plan in existing and future interconnection agreements.

21. Given the nature of the PAP and PIDs, and while CLECs provided comments and input to the Plan, neither exhibit has historically been subject to individual CLEC negotiations because of Commission acceptance of the Plan and because Qwest is not capable of managing multiple plans. CLECs either opted in and received the benefit of the Plan, or believed these exhibits were not needed and did not include them in their interconnection agreements. If a CLEC opted to include Exhibits B and K, it did not adopt a static version of the PAP or PIDs. Instead the CLECs are informed and aware that the PAP and PIDs are subject to future negotiations and modifications approved by the Commission, as well as to modifications from changes in law governing the parties' duties toward each other and submitted to the Commission. For example, the Idaho PAP and PIDs were modified by the Commission in Case No. QWE-T-03-23 by Order No. 30461.

22. Moreover, CLEC interconnection agreements with Qwest contain provisions that address the fact that changes in law will affect obligations under the agreement. *See e.g., Section 2.2 of Qwest's Negotiations Template.* Given that the Idaho PAP in section 16.3 explicitly sets out the roles of Qwest and the Commission in determining whether the PAP is necessary after Qwest ceases offering in-region, interLATA services through section 272 affiliates, the agreements currently containing the PAP recognize the possibility of a regulatory determination affecting the continuing availability or content of the PAP. Further, in approving Qwest's 271 application

supported by a PAP containing the language of section 16.3, the FCC effectively leaves the matter of changes or termination of the PAP to the Commission and Qwest in the context of approving interconnection agreements in which the PAP resides.

23. In the following section of this Amended Petition and in Qwest's testimony, the Company describes a modified version of the PAP that Qwest will offer voluntarily to CLECs subject to termination dates and a review provision contained therein. Qwest's proposal is contingent upon the Commission entering an order that will substitute the modified Plan for the existing PAP in all existing interconnection agreements in Idaho by operation of law. For CLECs that do not currently have the PAP and for new CLECs, Qwest will make the modified version of the PAP available in Qwest's Negotiations Template as an option for their interconnection agreements.

<u>Part Five ----Exhibits B and K Should Be Amended to Streamline the Measurements and Reward Superior Service Where it is Rendered</u>

24. One of Qwest's primary concerns with the current PAP is its one-sided approach to applying self-executing consequences to the service received by CLECs. While every deviation from standard, no matter how minor or isolated generates a penalty, the current Plan makes no provision for service that exceeds standards, even by substantial, measurable increments. Qwest's proposed amended version of the PAP (hereinafter referred to as "QPAP II") provides essentially the same economic incentives, i.e., self-executing penalties, provided under the current plan but also offers Qwest the added incentive of earning offsetting performance credits against those penalties for service that is measurably superior.

25. Qwest's testimony filed in conjunction with this Amended Petition details how performance credits will be measured and calculated. Essentially this amendment to the Plan will create three categories of service performance: 1) service that meets standards, which generates neither a penalty or reward; 2) sub-standard ("non-conforming") service as measured by the PIDs, which under QPAP II, as under the current plan, produces self-executing penalties payable to CLECs; and 3) superior service that exceeds standards by a defined, measurable increment and which serves to create offsets against accrued penalties. The amended PAP which is attached to the testimony of Michael G. Williams as Qwest Exhibit 1 provides that these credits will apply only to offset accrued penalties within similar areas of services and elements and only within a single CLEC's operations such that superior service to one CLEC will not offset sub-standard service to another.

26. QPAP II, like the current Plan provides economic incentives to Qwest to provide non-discriminatory service as required under section 271 of the Act, while rewarding Qwest for essentially providing its CLEC customers with service that may be, in many cases, superior to that Qwest provides its own retail customers.

27. QPAP II also streamlines the measurements used to determine service levels and the service/element categories by combining what have proven to be unnecessary disaggregations into a single measurement, removing measurements that are included in the PIDS but not in the current PAP or are no longer material to the purpose of current PAP, and moving some measurements into categories that continue to track the information for possible future reinstatement of the measurements but do not impact the Plan itself. QPAP II also streamlines product categories by combining the reporting for

similar products or processes into one product category and removing products that have very low activity levels. Qwest's testimony will show that these changes serve to simplify the Plan and make its operation less burdensome while still providing the service-related information that CLECs have told this Commission they value and covering the vast majority of products and services CLECs purchase from Qwest.

28. Finally QPAP II eliminates the so-called "Tier 2" and minimum payments features of the current Plan. Under the current PAP certain measures did not yield penalties payable to individual CLECs ("Tier 1"). Instead, these measures generated payments to state commissions that are termed "Tier 2" payments. In addition, other measurements were allowed to generate payments in both Tier 1 and Tier 2. At the time the PAP was being developed, it was thought Tier 2 payments, and minimum payments that would essentially "round upward" small Tier 1 payments to single CLECs, would provide additional economic incentives to Qwest to provide conforming service. Qwest submits these incentives are no longer useful or necessary and that removal of Tier II and minimum payments from the PAP will have no adverse impact on CLECs or the service they receive.

WHEREFORE, Qwest respectfully prays for relief as follows:

1. That the Commission enter an order modifying the Qwest PAP as shown in Qwest Exhibit 1 ("QPAP II") and ordering that current interconnection agreements that contain the existing PAP be modified by operation of law to contain said modified QPAP II.

2. That the Commission authorize Qwest to withdraw Exhibits B and K, which form the only remaining pieces of its Statement of Generally Available Terms (SGAT), and replace them with QPAP II made available in Qwest's Wholesale Negotiations Template.

3. That the Commission order such other relief as is appropriate in the circumstances.

Dated this 30th day of July, 2010.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing **Amended Petition of Qwest Corporation** was served on the 30th day of July, 2010 on the following individuals:

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Mary S. Hobson
Attorney for Qwest Corporation