

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22M-0092T

IN THE MATTER OF THE VERIFIED PETITION OF CENTURYLINK FOR ELIMINATION OF THE QWEST PERFORMANCE ASSURANCE PLAN (PAP) AND ASSOCIATED PERFORMANCE INDICATOR DEFINITIONS (PIDS).

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
DISMISSING INTERVENTION AND
GRANTING PETITION**

Mailed Date: October 6, 2022

I. STATEMENT

1. On February 28, 2022, Qwest Corporation, doing business as CenturyLink QC (CenturyLink) filed its Verified Petition for Elimination of the Qwest Performance Assurance Plan (PAP) and Associated Performance Indicator Definitions (PIDS) (Petition).

2. On February 28, 2022, the Commission issued notice of CenturyLink's Petition (Notice). The Notice gave interested parties 30 days to intervene in this proceeding. A list of interested parties notified is attached to this Recommended Decision as Appendix A.

3. CenturyLink also provided notice to those affected by their Petition. A list of those notified is attached to this Recommended Decision as Appendix B.

4. On March 30, 2022, Bresnan Broadband of Colorado, LLC and Time Warner Cable Information Services (Colorado) LLC (collectively, Charter) filed their Request for Intervention as of Right or, in the Alternative, Motion to Permit Intervention.

5. By Decision No. C22-0219-I, issued on April 8, 2022, the Commission referred this proceeding to an Administrative Law Judge (ALJ).

6. By Decision No. R22-0281-I, issued May 5, 2022, a procedural schedule was established and an evidentiary hearing was scheduled for October 20, 2022.

7. On September 1, 2022, Charter filed a Notice of Withdrawal of Intervention, stating that it has conferred with CenturyLink and resolved all issues raised in its intervention. As a result, Charter has since reevaluated its interest in the above proceeding and now requests to withdraw its intervention.

8. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record in this proceeding along with a written Recommended Decision.

II. FINDINGS AND CONCLUSIONS

A. Charter's Intervention

9. Charter's request to withdraw their intervention is unopposed. There being no prejudice to any party, Charter's intervention in this proceeding will be withdrawn and Charter is dismissed as an Intervenor.

10. Withdrawal of the intervention and dismissal of Intervenor leaves the Petition uncontested. Pursuant to § 40-6-109(5), C.R.S., and Rule 1403 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, the uncontested Petition may be processed under the modified procedure, without a formal hearing.

B. CenturyLink's Petition

11. As stated above, CenturyLink's Petition is verified and includes an affidavit of Timothy Kunkleman, Regulatory Director for Colorado for Lumen Technologies. Lumen

Technologies includes CenturyLink. Mr. Kunkleman attests that the contents of the Verified Petition and facts set forth therein are true, accurate, and correct to the best of his knowledge, information, and belief.

12. CenturyLink describes the PAP as a self-effectuating performance assurance plan that contains terms and conditions, including the PIDs. These were established as part of CenturyLink's efforts in the early 2000s, pursuant to 47 U.S.C. § 271, to enter the interLATA long-distance telecommunications market. The PAP was negotiated with Colorado Competitive Local Exchange Carriers (CLECs) to provide additional assurance of continued appropriate interconnection and parity network access between CenturyLink and CLECs and to help enable the Federal Communications Commission (FCC) to determine that § 271's requirements, particularly as to competitive parity, had been satisfied.

13. CenturyLink had been providing Unbundled Network Elements (UNEs) to CLECs; but, as CenturyLink's Petition explains, UNEs have been eliminated through a series of FCC forbearance orders. On October 28, 2020, the FCC issued its "UNE Modernizing Forbearance Order," which made further significant changes and effectively eliminated all remaining UNEs. This Order would remove almost all the PIDs and PAP over various product level timelines because it effectively eliminates all remaining UNEs. Therefore, according to CenturyLink, it no longer makes sense to just modify the PIDs and PAP in Colorado. Rather, CenturyLink states, it is appropriate to eliminate them altogether.

14. Additionally, CenturyLink notes that some CLECs have already signed Amendments to their interconnection agreements (ICAs) as well as Commercial Agreements effectuating the UNE Modernizing Forbearance Order. They have also begun to order products outside of these short-term remaining UNEs from their ICAs, thus making the remaining months

of metric tracking increasingly irrelevant in proving non-discrimination, which was the original intent.

15. As stated above, notice was provided to impacted CLECs of this Petition. CenturyLink also directly reached out to the CLEC's with the highest volume and/or payments under the current PAP and explained its intention to initiate this proceeding to eliminate the PIDs and PAP, and received no objections.

16. CenturyLink states that this Petition is consistent with petitions already granted by South Dakota Public Utilities Commission, the Iowa Utilities Board, the Wyoming Public Service Commission, and the Nebraska Public Service Commission.

17. CenturyLink states that CLECs' reliance on the PAP has declined dramatically in Colorado and the company's most significant competitors (cable and wireless) have their own networks, so UNEs are no longer significant components of the competitive landscape in Colorado. Payments to CLECs under the PAP have declined significantly since first implemented; PAP payments totaled \$6,603,054 in 2004 and declined to \$16,992 in 2021.

18. CenturyLink further states that CLEC orders for services still covered by the PAP have continued to decline significantly, to the point that ordering activity is now *de minimis*.

19. Repairs for products still covered by the PAP have also continued to decline.

20. Finally, CenturyLink points out that CLECs are rarely even logging into the PAP platform to review performance in Colorado; in fact, most CLECs do not even check their results.

21. For these reasons, CenturyLink contends it is time to eliminate the PIDs and PAP in Colorado in their entirety, and requests that all existing ICAs that currently contain the PAP and PIDs be deemed modified to incorporate these revisions without need for further filings or approvals.

22. As stated above, all Intervenors have withdrawn their intervention and been dismissed from the proceeding. The Petition is unopposed. Therefore, and based on the Petition and the facts contained therein, the ALJ will grant the Petition in this proceeding.

23. The remaining deadlines on the procedural schedule and the evidentiary hearing schedules for October 20, 2022, will be vacated.

24. In accordance with § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. The intervention filed by Bresnan Broadband of Colorado, LLC and Time Warner Cable Information Services on March 30, 2022, is withdrawn and they are dismissed as parties.

2. The verified Petition filed by Qwest Corporation, doing business as CenturyLink QC on February 28, 2022, is granted consistent with the discussion above.

3. The Performance Assurance Plan (PAP) and Associated Performance Indicator Definitions (PIDS) described in this Petition are eliminated.

4. All existing interconnection agreements that currently contain the eliminated PAP and PIDS are deemed modified to incorporate these revisions without need for further filings or approvals.

5. The remaining procedural schedule and evidentiary hearing scheduled for October 20, 2022, are vacated.

6. Proceeding No. 22M-0092T is closed.

7. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

8. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

9. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads 'Doug Dean'.

Doug Dean, Director