

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF QWEST) CASE NO. QWE-T-21-13
CORPORATION’S PETITION FOR)
ELIMINATION OF PERFORMANCE)
ASSURANCE PLAN AND PERFORMANCE) ORDER NO. 35426
INDICATOR DEFINITIONS)
)

On December 1, 2021, Qwest Corporation d/b/a Century Link QC (“Company”) petitioned the Commission for an order eliminating the Performance Indicator Definitions (“PIDs”) and the Performance Assurance Plan (“PAP”) portions of its interconnection agreements (“ICAs”) with each Idaho competitive local exchange carrier (“CLEC”).

On February 4, 2022, the Commission issued a Notice of Petition and Notice of Modified Procedure. Order No. 35310.

Commission Staff (“Staff”) filed comments on February 25, 2022. The Company did not respond.

On April 21, 2022, the Commission approved the Company’s petition and ordered it to file, by July 1, 2022, all ICAs that had been amended by removing the PIDs and PAPs. Order No. 35379 at 3.

On May 12, 2022, the Company filed a petition entitled, “Compliance with Order No. 35379 or, in the Alternative, Request for Clarification or Reconsideration” (“Petition”) requesting the Commission accept its Petition as the Company’s compliance with Order No. 35379 or, in the alternative, clarify or reconsider Order No. 35379.

With this Order, we clarify Order No. 35379, and find the Company’s Petition complies with our directive.

BACKGROUND

As previously stated in Order No. 35379:

Under the Telecommunications Act of 1996, the Company, as an incumbent local exchange carrier (“ILEC”), was required to enter ICAs with other telecommunications service providers who requested access to the Company’s network, facilities, or services. 47 U.S.C. §§ 251-252. The processes and procedures outlined by 47 U.S.C. § 271 (“section 271 requirements”) also allowed the Company to enter, for the first time, in-region inter LATA services markets.

However, before the Federal Communications Commission (“FCC”) allowed the Company to enter such markets, the Company was required under the section 271 requirements to submit its systems and processes to third-party testing and develop performance measurements by implementing PIDs and putting in place a PAP.

The Company represented that, by 2020, many of the elements of the PIDs and PAP process became unnecessary due to the proliferation of cable and wireless services and, furthermore, were eliminated by the FCC forbearance orders and the Commission.

Order No. 35379 at 1. Therefore, based on the above facts, the Company requested Commission authorization to eliminate the PAP and PIDs from the ICAs.

The Commission granted the Company’s request to remove the PIDs and PAP from all its ICAs with CLECs. Order No. 35379 at 2. The Commission further directed and ordered the Company “to file for Commission review by July 1, 2022, all ICAs that have the PIDs and PAPs removed.” *Id.* 2 and 3.

PETITION FOR RECONSIDERATION OR CLARIFICATION

In its Petition, the Company responded that it had provided information it believed complied with the directive in Order No. 35379. Petition at 1. The Company explained that it had identified 90 ICAs that included terms for PIDs and PAP. The Company filed an Attachment to its Petition which listed every individual CLEC it had a filed ICA with that included the PIDs and the PAP as well as the contract number of the ICA and type of communication line corresponding to each of the 90 CLECs. The Company believed this information indicated to the Commission every ICA that had been amended through removal of the PIDs and the PAP.

The Company further explained why filing amended ICAs would be unnecessary, impractical, and unduly expensive.

The Company pointed out that Exhibit K of every ICA with a CLEC contained the following provision: “15.2.1 Subsequent changes to the PAP approved by the Commission will be incorporated into individual interconnection agreements that contain the PAP as soon as the effective date of the Commission order, and **without further Amendment to those Agreements.**” *Id.* (emphasis in the original.) The Company also explained that other exhibits to ICAs, in addition to Exhibit K, could be amended generically by the Commission without additional filings or written amendments.

In addition to being unnecessary to amend every ICA, the Company explained that it would be “virtually impossible, and highly impractical to amend every single [ICA] that contain[ed] a

PAP” due to the fact that many CLECs never respond to the Company for a variety of reasons. *Id.* at 3. Last, the Company explained that there were “no internal processes or systems support that would allow it to create different PID/PAP criteria for individual CLECs.” *Id.* at 4.

Based on the above reasons, the Company suggested that its Attachment to its Petition listing all the CLECs in Idaho with whom it had an ICA, and the number of each ICA satisfied the Commission’s directive in Order No. 35379.

COMMISSION FINDINGS AND DISCUSSION

The Commission has jurisdiction over this matter under *Idaho Code* § 62-615 (the Commission’s authority to implement the Telecommunications Act of 1996) and *Idaho Code* § 62-605(5)(b) (the Commission’s continuing, noneconomic authority over Title 62 telephone corporations); *see also* 47 U.S.C. 252(e)(1).

The Commission has the authority to grant or deny reconsideration under *Idaho Code* § 61-626(2). Reconsideration allows any interested person to bring to the Commission’s attention any question previously determined, and thereby affords the Commission an opportunity to rectify any mistake or omission. *Washington Water Power Co., v. Kootenai Environmental Alliance*, 99 Idaho 875, 879, 591 P.2d 122, 126 (1979). The Commission’s Rules of Procedure require a petition for reconsideration to “set forth specifically the ground or grounds why the petitioner contends that the order or any issue decided in the order is unreasonable, unlawful, erroneous or not in conformity with the law.” Commission Rule 331.01, IDAPA 31.01.01.331.01.

Any person may petition the Commission to clarify an order under Commission Rule 325, IDAPA 31.01.01.325. A petition for clarification may be combined with a petition for reconsideration. *Id.*

We note Exhibit K’s language that “changes to the PAP approved by the Commission will be incorporated into individual interconnection agreements without further Amendment to those Agreements.” When we issued Order No. 35379, the PIDs and PAP portions in every ICA on file with the Commission were effectively removed as a result of the operation of Exhibit K. In other words, Order No. 35379 “amended” every relevant ICA on file with the Commission. Accordingly, by filing a list of all the CLECs with ICAs on file with the Commission that previously had the PIDs and the PAP, we clarify that the Company complied with our directive in Order No. 35379.

While we acknowledge that the Company complied with our directive in this case, we note the Company’s statement that it has not filed amendments relating to the FCC forbearance petition

that is the subject of Case No. QWE-T-20-02. Petition at 3.¹ However, we further acknowledge the Company's assurance in the Petition in this case that it "still intends to file the amendments" which, the Company claims, are due under the FCC requirements by August 1, 2022. *Id.* at 3, fn. 4. We direct the Company, consistent with Order No. 34766, to file the amendments relating to the FCC forbearance petition by August 1, 2022.

ORDER

IT IS HEREBY ORDERED that the Company's Petition is granted: the Company, with the filing of its Petition, complied with our directive in Order No. 35379.

IT IS FURTHER ORDERED the Company file with the Commission the amendments it was ordered to file in Order No. 34766 by August 1, 2022.

THIS IS A FINAL ORDER ON RECONSIDERATION. Any party aggrieved by this Order or any final order in this case may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules. *See Idaho Code* § 61-627.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 9th day of June 2022.



ERIC ANDERSON, PRESIDENT

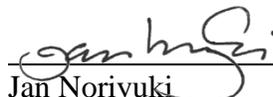


JOHN CHATBURN, COMMISSIONER



JOHN R. HAMMOND JR., COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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¹ In Order No. 34766 the Commission ordered the Company to file "for Commission review all ICAs that the Company has amended with CLECs due to the 2019 Forbearance Orders." *See* Order No. 34766.