

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: August 22, 2023**

REGULAR _____ **CONSENT** X **EFFECTIVE DATE** _____ **N/A**

DATE: August 14, 2023

TO: Public Utility Commission

FROM: Laurel Anderson

THROUGH: Bryan Conway and Marc Hellman **SIGNED**

SUBJECT: QWEST CORPORATION D/B/A/ CENTURYLINK QC:
(Docket No. UM 2293)
Petition for Approval of Elimination of the Qwest Performance Assurance Plan and Performance Indicator Definitions.

STAFF RECOMMENDATION:

Staff recommends the Commission approve Qwest Corporation d/b/a CenturyLink QC's (CenturyLink) petition for removal of the Performance Indicator Definitions (PIDs) and Performance Assurance Plan (PAP) portions of its interconnection agreements (ICAs) with each Oregon CLEC.

DISCUSSION:

Issue

Whether the Commission should approve CenturyLink's petition for removal of the Performance Indicator Definitions (PIDs) and Performance Assurance Plan (PAP) portions of its interconnection agreements (ICAs) with each Oregon CLEC. The PIDs and PAP have been in Place for nearly twenty years. In 2019 and 2020, the Federal Communications Commission (FCC) further reduced the products CenturyLink must provide to CLECs as unbundled network elements. CenturyLink asserts that rather than incorporating the FCC's changes into ICAs and making expensive system changes to modify them, it is better to eliminate the PIDs and PAP entirely from ICAs.

Applicable Law

The PIDs and PAP were established as part of CenturyLink's efforts in the early 2000s, to obtain FCC approval, pursuant to 47 U.S.C. § 271, to enter the interstate long distance telecommunications market. The PAP was negotiated to provide additional assurance of continued interconnection and network access between CenturyLink and CLECs.

The CenturyLink PAP and PIDs were adopted in 2002 under Docket No. UM 823¹ and Docket No. UM 973,² providing a mechanism to monitor and track performance in delivering wholesale services to CenturyLink's predecessor's CLEC customers. Such monitoring and tracking were intended to fulfill the requirements of the former Bell Telephone Operating companies under 47 USC 271, which is part of the Federal Telecommunications Act of 1996.

Analysis

Background

The company provided the following background:

The PAP is a self-effectuating performance assurance plan that is implemented as Exhibit K of ICA's between CenturyLink and CLECs that opt to include it in their ICAs. The PIDs are implemented as Exhibit B to CenturyLink's ICAs and contain the definitions and metrics that support the PAP.

The PAP contains terms and conditions, including performance indicator definitions, that were established as part of CenturyLink's (then known as Qwest) efforts in the early 2000s, to obtain FCC approval, pursuant to 47 U.S.C. § 271, to enter the interstate long distance telecommunications market. The PAP was negotiated to provide additional assurance of continued appropriate interconnection and network access between CenturyLink and CLECs.

To stay compliant with the FCC's August 2, 2019, Order titled, "UNE Analog Loop and Resale Forbearance Order," CenturyLink filed to update the PIDs and PAP (Exhibit B and Exhibit K to the ICAs) in the state of Oregon on May 19, 2020. The Commission approved these changes by Order No. 20-384 issued October 27, 2020, in Docket No. UM 2098. This change significantly reduced the remaining volume of products and metrics under the PIDs/PAP.

¹ UM 823 Commission Ruling/Memoranda 8/19/2002, pg. 14-18.

² UM 973 Staff Report 8/21/2007.

On October 28, 2020, the FCC issued its “UNE Modernizing Forbearance Order” (the “Second Order”) that made further significant changes:

- 1) Elimination of unbundling requirements, subject to a reasonable transition period, for enterprise-grade DS1 and DS3 loops;
- 2) Elimination of unbundling requirements for broadband-capable DS0 loops in the most densely populated areas, and for voice-grade narrowband loops nationwide;
- 3) Elimination of unbundled dark fiber transport provisioned from wire centers within a half-mile of competitive fiber networks but providing an eight-year transition period for existing circuits so as to avoid stranding investment and last-mile deployment by competitive LECs that may harm consumers.

Complying with the FCC’s Second Order would remove almost all the PIDs and PAP over various product level timelines.

Modifying the PIDs and PAP to comply with the Second Order would require CenturyLink to completely change the architecture of the automated reporting processing. The Second Order lists which counties are deemed competitive and open to the forbearance. Complying would require that metrics be compiled at the wire center level rather than at a state level. Doing so for both wholesale CLECs and all retail customers (for the parity calculation of non-discrimination) would be very costly.

Some of CenturyLink’s CLECs have already signed Amendments to their ICA’s as well as new Commercial Agreements. They have begun to order products outside of these short-term remaining UNEs from their ICAs, thus making these remaining months of metric tracking no longer relevant in proving non-discrimination, which was the original intent of the PIDs/PAP framework under the Telecommunications Act.

Public Interest Analysis

CLECs’ reliance on the PAP has declined dramatically in Oregon. CenturyLink’s most significant competitors (cable and wireless) have their own networks and unbundled network elements are no longer significant components of the competitive landscape.

Both CLEC order volume for services and repair volume still covered by the PAP continue to decline. The Company’s systems record how often CLECs log into the PAP to review performance in Oregon. Most CLECs do not even check their results (only three CLECs have checked since 2014 and have done so infrequently).

As evidenced by the changes to unbundled obligations ordered by the FCC, the decline in services covered by the PIDs and PAP, the cost of updating these documents and

systems compared to CLECs interest in them, it is time to eliminate the PIDs and PAP entirely.

Processing PIDs/PAP reports requires Century Link to pull data from numerous source systems internally. As technology changes CenturyLink has been required to consolidate those source systems. Historically CenturyLink completes three to five major conversion projects per year at a cost of \$2,000,000 to \$4,000,000 per year. The necessary PIDs/PAP reporting statistical analysis software costs an additional \$400,000 to \$500,000 annually on top of the yearly conversion project costs. At this point, this cost would be borne by only Oregon and Washington.

Payments to CLECs under the PAP have declined from \$449,808, in 2003, to \$0 from January through June of 2023. The table below summarizes PAP payments by year since 2003. The increase in 2022 was mainly caused by a single event, an outlier event involving Local Number Portability that accounted for two-thirds of the 2022 total. Errors were made on a handful of purchase orders, and because CenturyLink could not determine whether the errors were the CLEC's or CenturyLink's, CenturyLink accepted responsibility.

Year	Oregon
	Total PAP Payments
2003	\$449,808
2004	\$550,149
2005	\$352,047
2006	\$301,322
2007	\$215,499
2008	\$158,218
2009	\$96,413
2010	\$86,593
2011	\$176,316
2012	\$109,609
2013	\$108,881
2014	\$16,101
2015	\$26,325
2016	\$10,061
2017	\$4,688
2018	\$177
2019	\$3,422
2020	\$186
2021	\$3,720

2022	\$12,274
2023 YTD	\$0

Staff Analysis

CenturyLink has reached out to CLECs multiple times of their desire to eliminate the PIDs/PAP from their interconnection agreements and have received no pushback from Oregon CLECs. The PIDs/PAP removal has been approved in 12 states and requests have been submitted in the remaining two states, Oregon and Washington, that CenturyLink maintains interconnection agreements.

New interconnection agreements provide protection to the CLECs on all remaining elements contained in the contracts.

Staff does not find a competitive provider complaint or problem that would indicate that the Commission should not approve the removal of the PAP and PIDs as requested. Staff recommends that the Commission authorize the amendment of the interconnection agreements with Oregon CLECS, without the need for further filings or appeals.

Conclusion

Staff does not find a competitive provider complaint or problem that would indicate that the PAP and PIDs should not be removed from all interconnection agreements in Oregon. All existing interconnection agreements that currently contain the PAP and PIDs should be modified to incorporate these revisions as soon as possible.

PROPOSED COMMISSION MOTION:

Approve CenturyLink's request to eliminate the PIDs and PAP portions of its interconnection agreements with Oregon CLECs and to incorporate the approved changes without the need for further filings or appeals.