

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**In the Matter of CenturyLink QC's Petition for Case No. PU-22-20
Elimination of the Qwest Performance
Assurance Plan and Performance Indicator
Definitions**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

July ____, 2022

Appearances

Commissioners Julie Fedorchak, Randy Christmann and Sheri Haugen-Hoffart.

Paul Sanderson, Evenson Sanderson, PC, 1100 College Drive, Suite 5, Bismarck, North Dakota 58501, appearing on behalf of Qwest Corporation d/b/a CenturyLink QC ("CenturyLink").

Jason D. Topp, Qwest Corporation d/b/a CenturyLink QC, 200 South 5th Street, Minneapolis, Minnesota 55402, appearing on behalf of CenturyLink.

Brian L. Johnson, Legal Counsel, Public Service Commission, State Capitol, 600 E. Boulevard Avenue, Bismarck, North Dakota 58505, appearing on behalf of Public Service Commission Advocacy Staff.

John M. Schuh, General Counsel, Public Service Commission, State Capitol, 600 E. Boulevard Avenue, Bismarck, North Dakota 58505, appearing on behalf of the Public Service Commission Advisory Staff.

Hope Hogan, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14th Street, Suite 303, Bismarck, North Dakota 58503 as Procedural Hearing Officer.

Preliminary Statement

On January 6, 2022, CenturyLink filed an application with the Commission for approval to eliminate the Performance Indicator Definitions ("PIDs") and Performance Assurance Plan ("PAP") portions of its interconnection agreements ("ICAs") with each North Dakota Competitive Local Exchange Carrier ("CLEC"). The proposed elimination was prompted by the Federal Communications Commission's Unbundled Network

Elements (“UNEs”) Modernizing Forbearance order. CenturyLink requested, effective February 1, 2022, approval of the elimination of PIDs and PAP from all ICAs in North Dakota, and that existing ICAs be modified to eliminate the PIDs and PAP without the need for further filings or approvals.

On February 28, 2022, Public Service Commission Advocacy Staff (“Staff”) filed Direct Testimony and a recommendation regarding the Application, recommending the elimination of PIDs and PAP would not be in the public interest and denial of the Application.

On April 25, 2022, CenturyLink filed rebuttal testimony in support of the Application.

On March 30, 2022, the Commission issued a Notice of Hearing, and scheduled a public hearing on the Application for June 24, 2022. The issues identified in the Notice for Hearing for consideration by this Commission were:

1. Whether the elimination of PIDs and PAP should be approved; and
2. Whether all existing interconnection agreements with CenturyLink should be modified to eliminate the PIDs and PAP without the need for further filings or approvals.

On June 24, 2022, a public hearing was held as scheduled in the Commission Hearing Room, State Capitol, 600 E. Boulevard Avenue, 12th Floor, Bismarck, North Dakota 58505.

Having allowed all interested persons an opportunity to be heard, and having heard, reviewed, and considered all testimony and evidence presented, the Commission makes the following:

Findings of Fact

1. Qwest Corp. dba CenturyLink QC (CenturyLink) is a Delaware corporation, duly authorized to provide telecommunications service to retail customers in North Dakota.
2. The facts of this proceeding are largely, if not entirely undisputed.
3. The PIDs and PAP are the result of a specific plan that CenturyLink entered into voluntarily with CLECs in 2000 as part of its effort to receive approval from the states and the FCC to operate under Section 271 of the Telecommunications Act of 1996 (“the Telecom Act” or “the Act”), and be allowed to re-enter the long distance business that the Regional Bell Operating Companies (“RBOCs”) had been precluded from since their divestiture from AT&T in 1984.

4. Under the Telecom Act, the RBOCs were required to provide CLECs with access to their Operations Support Systems (“OSS”) for purposes of ordering and provisioning of UNEs so that CLECs could use the UNEs to provision services for their own end user customers. At the time, in the late 1990s, it was a very complicated process to establish the connections between hundreds of CenturyLink’s proprietary OSS and the systems the CLECs were developing to enable them to compete with CenturyLink. The CLECs believed, and CenturyLink agreed, that the PIDs/PAP arrangement would provide a measure of the success in establishing OSS connections that would allow the CLECs to provide service on a par with the way CenturyLink’s own customer care agents provided service to CenturyLink’s retail customers

5. The PIDs/PAP was an arrangement available to CLECs who chose to participate in it and elected to include Exhibit K, which spells out the terms of the PAP, in their Interconnection Agreements (ICAs). However, not all CLECs have a PIDs/PAP arrangement with CenturyLink.

6. The PIDs and PAP have been in place for nearly 20 years. During that time period the number of products covered by the PIDs and the PAP have declined and the Commission has modified the PIDs and the PAPs to reflect those changes. In 2019 and 2020, the FCC further reduced the products CenturyLink must provide to CLECs as UNEs. As of February 2023, the only products that will be covered are local interconnection service trunks and those are not UNEs nor is there a comparable retail product. Rather than incorporating those changes and making expensive system change to modify them, CenturyLink seeks to eliminate the PIDs and PAP entirely

7. Of the 100 CLECs who currently have ICAs with CenturyLink in North Dakota, 88 have opted into the PIDs/PAP arrangement and 12 have chosen not to participate in the PIDs/PAP. None of the 88 CLECs who have chosen to participate have received a payment under the PAP in the two years preceding the application or looked at their results between 2018 and 2021. Two payments were made in 2022.

8. All CLECs operating in North Dakota were notified pursuant to the Change Management Process (“CMP”) of CenturyLink’s plan and were given 30 days to raise any concerns they had about the elimination of the PIDs and PAP. In addition, CenturyLink reached out specifically to the CLECs with the highest volume of orders under the plan during the past several years and offered to meet with them to address any concerns they might have. Only one CLEC expressed any interest in meeting with CenturyLink about the elimination, and after providing them with their own detailed data, they confirmed that they would have no concerns. No CLEC objected to CenturyLink’s Application to eliminate the PIDs/PAP.

9. The PIDs/PAP no longer serve the purpose for which they were originally designed. CenturyLink and the CLECs long ago established the connections between their OSS to ensure that CLECs achieved parity with CenturyLink in their ability to serve their retail customers. Because parity has been firmly established and CLEC orders for

UNEs are practically non-existent, there is virtually nothing left to be measured that has any meaning for the CLECs with respect to non-discrimination. In 2021 only one UNE product subject to the PIDs/PAP was ordered by a single CLEC in North Dakota

10. In the meantime, the years since 2000 have seen an increase in the telecommunications marketplace of alternative service providers including cable companies, wireless carriers, wireless internet service providers, satellite companies and VoIP providers. So, although the CLECs may have played a role in developing the competitive operating environment for ILECs 20 years ago, alternative services available from a wide variety of unregulated competitors keep prices in check for consumers today and drive companies to provide quality services to their customers. And it is that competitive marketplace that has led the FCC to issue its orders in 2019 and 2020, as referenced in the Petition for Elimination in paragraphs 4 and 5, to forbear from requiring RBOCs to provide access to UNEs.

11. CenturyLink provides quality services to its customers through service level agreements (“SLAs”) that allow customers to obtain billing credits for missed commitments under both its tariffs and commercial agreements. So, when the CLECs choose to purchase services from CenturyLink out of its tariffs or through commercial agreements, instead of purchasing UNEs through ICAs, the CLECs have the recourse to seek bill credits when CenturyLink fails to meet the standards spelled out in those commitments. CenturyLink provides CLEC customers with specific, measurable standards for the services it sells and compensates customers monetarily if it does not deliver on those standards.

12. Modifying the PIDs and PAP would require CenturyLink to completely change the architecture of its automated reporting process from a statewide collection of data to a county-by-county collection of data, for counties deemed non-competitive. To accomplish this, metrics would have to be compiled at a wire center level and then converted to county level data. Because wire centers cross counties and counties cross wire centers it would require complex system programming to capture this data for both CenturyLink’s CLEC and retail customers. CenturyLink testified it costs between \$2M and \$5M annually to maintain the PIDs and PAP coding in systems as they change or are updated. It would cost multiple millions of dollars more to completely change the architecture of the reporting process. In addition, CenturyLink and the CLECs would need to renegotiate the Exhibits B (PIDs) and K (PAP) referred to in the ICAs to determine how to implement the new county level detail and its impact on the parity and data aggregation calculations. These negotiations would require agreement by the CLECs as a group to the new terms because due to the nature of the data and the calculation of parity these cannot be individually negotiated exhibits.

13. Despite the FCC’s objectives for leaving UNEs available in non-competitive counties for a longer period of time, CLECs do not typically purchase the digital UNEs that are the subject of the 2020 Forbearance Order in non-competitive areas. Rather, the CLECs have, in the past, purchased analog UNEs for voice services in non-competitive areas. However, the FCC eliminated those UNEs nationwide with its 2019 Forbearance

Order and they are already not available for purchase in non-competitive areas. As a result, CenturyLink would be required to set up a costly reporting and payment structure for areas the CLECs have historically shown no interest in serving and for which there will soon be virtually nothing left to measure.

Conclusions of Law

1. The Commission has jurisdiction in this proceeding pursuant to NDCC 49-21-01.7(7) and (8) as well as 47 USC § 252(a)(1)
2. This Commission approved the North Dakota PAP in Case No. PU-314-97-193. The PAP has been amended several times since then.
3. On October 28, 2020, the FCC issued its 'UNE Modernizing Forbearance Order' that made further significant changes:
 - a. Eliminating unbundling requirements, subject to a reasonable transition period, for enterprise-grade DS1 and DS3 loops;
 - b. Eliminating unbundling requirements for broadband-capable DS0 loops in the most densely populated areas, and for voice-grade narrowband loops nationwide;
 - c. Eliminating unbundled dark fiber transport provisioned from wire centers within a half-mile of competitive fiber networks but provide 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.¹
4. Complying with the second FCC Order would remove almost all the PIDs and PAP over various product level timelines. Modifying the PIDs and PAP to comply with the Order, would require CenturyLink to completely change the architecture of the automated reporting processing.
5. CenturyLink has provided undisputed evidence establishing that the PIDs and PAP no longer serve as a useful tool in measuring parity between wholesale and retail performance and that maintaining the PIDs and PAP involves millions in annual expense. Modifying the PIDs and the PAP to reflect the changes in Federal Rules would add to this expense. In light of this evidence and the fact no CLEC has appeared in this proceeding to oppose this request, the Commission hereby approves this petition.

¹ *In the Matter of Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services*, Report and Order, WC Docket No. 19-308, Released Oct. 28, 2020, ¶ 3.

Order

The Commission hereby Orders as follows:

1. Qwest Corporation dba CenturyLink QC's petition for the elimination of PIDs and PAP is approved; and
2. All existing interconnection agreements with CenturyLink should be modified to eliminate Exhibit B (PIDs) and Exhibit K (PAP) without the need for further filings or approvals.

PUBLIC SERVICE COMMISSION

Randy Christmann
Commissioner

Julie Fedorchak
Chair

Sheri Haugen-Hoffart
Commissioner

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

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AFFIDAVIT OF SERVICE

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

The undersigned, being duly sworn, deposes and says that: I am a United States citizen, over 18 years of age, and on July 14, 2022, I served a copy of the attached:

Proposed Findings of Fact, Conclusions of Law and Order

by electronically serving a copy addressed to each person named below, at the electronic mailing addresses stated below:

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Dated today, July 14, 2022.

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By: /s/ Paul Sanderson
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