

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Qwest Corporation
PIDs & PAP
Cancellation/Application**

Case No. PU-22-20

Proposed Findings of Fact, Conclusions of Law and Order

_____, 2022

Appearances

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

Jason D. Topp, Assistant General Counsel, 200 South 5th Street, Room 2200, Minneapolis, MN 55402, on behalf of Qwest Corporation.

Brian Johnson, Legal Counsel, Public Service Commission, State Capitol, 600 E Boulevard Ave, Bismarck, ND 58505, appearing on behalf of Public Service Commission Advocacy Staff.

John M. Schuh, General Counsel, Public Service Commission, State Capitol, 600 E Boulevard Ave, Bismarck, ND 58505, appearing on behalf of Public Service Commission Advisory Staff.

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

Preliminary Statement

Under the federal Telecommunications Act of 1996, Qwest Corporation, dba CenturyLink QC, (CenturyLink) is required to provide open access to its networks, facilities and services to other providers of telecommunications services, such as competitive local exchange carriers (CLECs). Measures known as Performance Indicator Definitions (PIDs) provide specific data about the quality of the open access provided by CenturyLink to other carriers, and a Performance Assurance Plan (PAP) applies specific standards or goals that the performance measures must accomplish.

On January 6, 2022, CenturyLink filed an application with the Commission for approval to eliminate the PIDs and PAP. The proposed elimination was prompted by the Federal Communications Commission's (FCC's) Unbundled Network Elements (UNE) Modernizing Forbearance Order. CenturyLink is requesting, effective February 1, 2022, approval of the elimination of PIDs and PAP from all interconnection agreements in North

Dakota, and that existing interconnection agreements be modified to eliminate the PIDs and PAP without the need for further filings or approvals.

On January 18, 2022, the Commission suspended the elimination of the PAP and PIDs in the interconnection agreements and issued a Notice of Opportunity for Hearing in the matter providing until March 4, 2022, for comments and requests for hearing.

On February 28, 2022, Commission Advocacy Staff (Advocacy Staff) filed testimony and requested a hearing.

On March 30, 2022, the Commission issued a Notice of Hearing (Notice), scheduling a formal hearing on June 24, 2022. The Notice identified the following issues to be considered in this proceeding:

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

On April 25, 2022, CenturyLink submitted the rebuttal testimony of Teresa Million.

On June 24, 2022, a public hearing was held as scheduled in the Commission Hearing Room, State Capitol, 600 E. Boulevard Ave, 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 Corporation dba CenturyLink QC (Centurylink) is a foreign corporation authorized by the North Dakota Secretary of State to do business in North Dakota.
2. The Commission has authority under North Dakota Century Code (NDCC) section 49-21-09 and NDCC section 49-21-01.7(9) to approve or disapprove agreements for interconnection services or network elements which may include PIDs and PAP.
3. The PIDs and PAP are the result of a specific plan entered into between Centurylink and CLECs in 2000 in order to receive approval from the FCC and the Commission to operate under Section 271 of the Telecommunications Act of 1996 (Telecom 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 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. 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 provided service to its own retail customers.

5. 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. Rather than incorporating those changes and making modifications as they have done in the past, CenturyLink seeks to eliminate the PIDs and PAP entirely.

6. During Advocacy Staff's investigation they requested a listing of active interconnection agreements that would be impacted by the requested change. In its response to the request for information, CenturyLink stated that "This information would be burdensome to develop and unnecessary for this docket". An indication of how little effort and attention CenturyLink provides to both retail and wholesale customers, and sufficient reason to deny its application.

7. Only as part of their proposed order did CenturyLink identify that there are 100 CLECs who currently have ICAs with CenturyLink in North Dakota. 88 of which have opted into the PIDs/PAP arrangement and 12 which 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. However, two payments were made in 2022.

8. The current PIDs/PAP are no longer applicable to serve the purpose for which they were originally designed and should be properly amended but not eliminated. 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.

Conclusions of Law

1. The Commission has jurisdiction in this proceeding pursuant to North Dakota Century Code sections 49-21-09 and 49-21-01.7(9).

2. The 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.

4. Complying with the second FCC Order would remove many of the PIDs and PAP over various product level timelines. Modifying the PIDs and PAP to comply with the Order, would require CenturyLink to change the architecture of the automated reporting processing.

5. CenturyLink has not provided sufficient evidence to establish that the PIDs and PAP no longer serve as a useful tool in measuring parity between wholesale and retail performance. Modifying the PIDs and the PAP to reflect the changes in Federal Rules is the appropriate action that should be undertaken.

Order

The Commission orders:

1. CenturyLink's request to eliminate the Performance Assurance Plan and Performance Indicator Definitions for interconnection agreements is denied.
2. CenturyLink's request to eliminate the Performance Assurance Plan and Performance Indicator Definitions from all existing interconnection agreements without need for further filings or approvals is denied.

PUBLIC SERVICE COMMISSION

Randy Christmann
Commissioner

Julie Fedorchak
Chair

Sheri Haugen-Hoffart
Commissioner