

BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Six-Month Review	)	
of Qwest Corporation’s Performance	)	DOCKET NO. UT-033020
Assurance Plan	)	ORDER NO. 07
	)	
	)	ORDER GRANTING, IN PART,
	)	QWEST’S PETITION FOR
	)	CLARIFICATION OF
	)	REQUIREMENTS IN ORDER
	)	NO. 05 ADDRESSING
	)	ENHANCED EXTENDED LINKS

.....

**I. SYNOPSIS**

1 *In this Order, the Commission grants, in part, Qwest’s Petition for Clarification of Order No. 05, clarifying that Qwest must begin making Tier 1 and Tier 2 payments based upon the first full month of reported data following the effective date of changes to Exhibits B and K of the SGAT required by paragraph 118 of Order No. 05.*

**II. PROCEDURAL HISTORY**

2 **Nature of the Proceeding.** The Washington Utilities and Transportation Commission (Commission) conducts a review every six months following the December 23, 2002, approval by the Federal Communications Commission (FCC) of Qwest Corporation’s (Qwest) Section 271 application for the state of Washington of Qwest’s Performance Assurance Plan (QPAP). The review focuses on whether certain performance measures or performance indicator definitions (PIDs) should be added to, removed from, or revised in the set of performance measures, whether standards should be modified, and whether payment classifications in the QPAP should be modified. The first six-month review period began on June 23, 2003, and closed at the end of December 2003.

- 3 **Procedural History.** On January 16, 2004, the Commission entered Order No. 05 in this proceeding, resolving issues raised by the parties during the first six-month review period. On January 26, 2004, Qwest filed a Petition for Clarification seeking clarification of the requirements of Order No. 05 concerning the timing for implementing the new standards for enhanced extended links (EELs) and making payments under those new standards. By notice served on January 27, 2004, the Commission sought responses from the parties concerning Qwest's petition by January 29, 2004.
- 4 On January 26 and 28, 2004, Qwest filed letters with the Commission correcting errors in its petition. Commission Staff and Eschelon Telecom Inc. (Eschelon) filed responses with the Commission on January 29 and 30, 2004. On January 30, 2004, Qwest filed a Motion for Leave to Reply to the responses of Commission Staff and Eschelon. In Order No. 06, entered on February 4, 2004, the Commission granted Qwest's Motion for Leave to Reply.
- 5 In addition, on January 29, 2004, Qwest filed a letter notifying the Commission that all parties agree that additional changes to performance indicator definitions (PIDs) arising from the Long Term PID Administration (LTPA), a multistate collaborative forum addressing changes to the PIDs, will be filed with the Commission on February 17, 2004.

### III. MEMORANDUM

- 6 **Qwest's Petition for Clarification.** Paragraph 118 of Order No. 05 requires that:

Qwest must, within 30 days of the service date of this Order, incorporate in SGAT Exhibits B and K the standards and payment opportunities for enhanced electronic links to which Qwest stipulated in Colorado, and that the Colorado Commission approved for reporting and payment purposes in the Colorado performance assurance plan.

In its petition, Qwest states that the compliance filing required under paragraph 118 of Order No. 05 is due on February 17, 2004.

- 7 Qwest further states that changes in PIDs are effective 60 days after filing with the Commission, and that Qwest will begin reporting new standards for EELs on April 1, 2004. Qwest asserts that the EELs standards required under Order No. 05 “represent new product disaggregations for Washington” and that Qwest has no process to disaggregate new products for payment and reporting on other than a calendar month basis. *Qwest Petition at 1-2.*
- 8 Qwest seeks clarification that Order No. 05 requires it to “process payments for CLECs for performance results for services rendered in May 2004 because Qwest currently does not have the capability by individual product to prorate or apply payments based on less than one month’s reported data.” *Second Erratum to Petition for Clarification.* Qwest also seeks clarification that “payments should begin on the first full month of reported data following the effective date of the change to the QPAP.” *Qwest Petition at 2.*
- 9 **Commission Staff Response.** Commission Staff asserts that it is not aware of the derivation of Qwest’s proposed 60-day effective date. *Staff Response at 1-2.* Staff asserts that Qwest has already implemented the same performance measures and standards for EELs in Colorado, and that Qwest does not need 60 days to report performance and make payments for the EELs product. *Id. at 2.* Although Staff agrees that it is reasonable for Qwest to begin measuring EELs performance for payment purposes on a monthly basis, Staff asserts that Qwest should begin measuring EELs performance on March 1, 2004, and make payments in May 2004 for data processed during April 2004. *Id. at 2-3.*
- 10 **Eschelon Response.** Eschelon asserts that Qwest should implement the EELs standards under the QPAP within 30 days of the service date of Order No. 05, and that Qwest is seeking to further delay the requirement to meet EELs

standards. *Eschelon Response at 2*. Eschelon asserts, contrary to Qwest's statements in its petition, that Qwest has disaggregated EELs performance under the affected PIDs for more than a year, and that Qwest has prorated QPAP payments for Eschelon and other carriers on a partial month's performance. *Id. at 2-3*. Eschelon further argues that, although in error, Qwest has calculated payments to Eschelon in the October 2003 QPAP report for EELs under PIDs MR-5 and MR-8 as if the standards were in place.<sup>1</sup>

11 In reference to Qwest's proposed effective date of 60 days after filing, Eschelon notes that Qwest may be referring to the 60-day period for state commission review under 47 U.S.C. § 252(f)(3)(B). *Eschelon Response at 3*. This section allows a Statement of Generally Available Terms and Conditions (SGAT) to become effective if a state commission does not act on the filing within 60 days. Eschelon asserts that the outcome of the Commission's decision on the SGAT should not affect carriers like Eschelon that already operate under the QPAP, and that any changes to the QPAP should automatically apply. *Id.*

12 **Qwest Motion for Leave to Reply.** In its motion, Qwest seeks to respond to the request of the Administrative Law Judge for responses concerning Qwest's statement that PIDs are effective 60 days after filing. Qwest asserts that the 60-day effective date refers to the time period set forth in 47 U.S.C. § 252(f)(3)(B) in which state commissions must act upon SGAT changes or allow the changes to become effective. *Qwest Reply at 1-2*. Qwest acknowledges that the Commission has approved certain changes within the 60-day period, but has also allowed changes to become effective 60 days after filing. *Id. at 2*. Qwest disputes Eschelon's claim that the 60-day review period in 47 U.S.C. § 252(f)(3)(B) does not apply to changes under Section 16 of the QPAP. *Id. at 2-3*.

---

<sup>1</sup> On January 30, 2004, Qwest filed a report of January payments under the QPAP in Docket No. UT-030388, stating that Qwest had rerun payment reports for the period of January 2003 – October 2003 for several reasons, including that "Qwest inadvertently paid CLECs & States for line splitting and EEL performance."

- 13 In response to Eschelon's arguments about product disaggregation, Qwest asserts that the Commission has ordered Qwest to implement disaggregation of EELs for reporting at DS0, DS1 and DS3 levels, which it has not previously done in Washington. *Id. at 2*. Qwest also disputes Eschelon's argument that Qwest faces no implementation issues for the nine EELs standards ordered by Order No. 05. *Id. at 3*. Qwest offers to participate in a clarification conference pursuant to WAC 480-07-840 to provide additional information to the parties. *Id.*
- 14 As to reporting on and providing payments on less than a calendar month, Qwest asserts that Eschelon's evidence does not support its claim, and notes that Staff appears to concur with Qwest's concerns about prorating partial months of data for individual products. *Id. at 1, 2*.
- 15 **Discussion and Decision.** The QPAP is attached as Exhibit K to Qwest's Statement of Generally Available Terms and Conditions, or SGAT.<sup>2</sup> Under Section 16.1 of the QPAP, the Commission conducts a review of performance measures every six months to determine if measures should be added, deleted, or modified; whether benchmark standards should be modified or replaced by parity standards; and whether payment classifications should be modified. *See Second Amended Exhibit K (October 31, 2003) § 16.1*.
- 16 The Commission concluded its first six-month review in December 2003 and entered Order No. 05 on January 16, 2004, resolving issues pending in the first six-month review. Qwest now seeks clarification of paragraph 118 of that Order. Under WAC 480-07-835, a party who does not seek to change the outcome with respect to an issue may file a motion for clarification of a final order to seek "clarification of the meaning of an order so that compliance may be enhanced." Filing a petition for clarification tolls the time for seeking judicial review, but does not toll the time for compliance with the final order. *WAC 480-07-835(4)*.

---

<sup>2</sup> The Commission approved Qwest's SGAT and the QPAP on July 1, 2002. *See 39<sup>th</sup> Supplemental Order, Docket Nos. UT-003022 and UT-003040 (July 1, 2002)*.

- 17 Qwest is correct that the compliance filing must be filed with the Commission on February 17, 2004. Qwest is also correct that the 60-day review period of 47 U.S.C. § 252(f)(3)(B) applies to all filings that modify Qwest's SGAT, including Qwest's compliance filing in this proceeding. The Commission, however, may approve the compliance filing in less than 60 days, requiring Qwest to begin reporting and making payments sooner than Qwest proposes in its Motion for Clarification.
- 18 It is reasonable for Qwest to gather and report data and make payments under performance measures on a full calendar month basis. Although Qwest may have made payments to Eschelon and other CLECs on a prorated basis for a partial calendar month's data, Qwest regularly gathers and reports data for performance measures on a full calendar month basis.
- 19 The remaining issue concerns when Qwest must begin gathering and reporting data and making payments under the new EELS standard. Qwest's petition proposes to process payments for performance results for services rendered in May 2004, which means that payments would presumably be made in June 2004. *See Second Erratum to Qwest Petition.* Qwest's proposal appears to assume that the Commission would not approve the compliance filing until the full 60-day review period had elapsed on April 19, 2004. Under this assumption, May 2004 would be the first full month following the effective date of changes to the SGAT. In its Motion for Leave to Reply, however, Qwest clarifies that it could complete implementation of paragraph 118 of Order No. 05 in order to report results beginning on April 1, 2004. *See Motion for Leave to Reply, n.2.*
- 20 Staff argues that Qwest must begin measuring performance under the new EELs standards in the first full calendar month after Qwest makes its compliance filing, *i.e.*, March 1, 2004, and make payments for March 2004 performance in May 2004, allowing for data to be processed and payments prepared during April 2004. *Staff Response at 2-3.* Eschelon argues that Qwest should "make EEL

PAP payments to any CLEC operating under a PAP beginning on February 17, 2004." *Eschelon Response at 2.* Presumably, Eschelon believes that CLECs operating under the QPAP as of February 17, 2004, should begin receiving payments on March 1, 2004, for EELs performance between February 17, 2004, and February 29, 2004. Although the timing of Staff's proposal is reasonable, both Staff's and Eschelon's proposals are based on the incorrect assumption that Qwest will begin gathering and reporting data and making payments based on the compliance filing date, rather than the date the SGAT changes become effective.

21 Exhibit B to the SGAT includes a comprehensive set of all performance measures, or PIDs, for which Qwest must track and report its performance. When performance measures are modified, Qwest must first make changes to SGAT Exhibit B, and submit those changes to the Commission for review under 47 U.S.C. § 252(f)(3)(B). Qwest must simultaneously submit changes to Exhibit K to the SGAT, the QPAP, as only some of the performance measures included in SGAT Exhibit B are included in the QPAP for the purpose of making Tier 1 and Tier 2 payments.<sup>3</sup>

22 Changes to the SGAT are effective upon approval or after 60 days, whichever occurs first, not upon filing with the Commission. While Qwest's interpretation in its Petition for Clarification is reasonable, its assumption of a full 60-day review period may not be correct. Qwest must begin making Tier 1 and Tier 2 payments based upon the first full month of reported data following the effective date of changes to the SGAT, including Exhibit K, the QPAP. For example, assuming that the Commission approves the February 17, 2004, compliance filing by February 27, 2004, Qwest would begin making payments for March 2004

---

<sup>3</sup> Tier 1 payments are made to individual CLECs when Qwest fails to meet performance standards when providing service to a particular CLEC. *30<sup>th</sup> Supplemental Order, Docket Nos. UT-003022 and UT-003040, ¶ 64.* Tier 2 payments are made to states when Qwest fails to meet performance standards that are critical to CLECs' ability to compete with Qwest, and for measures that are reported on a regional basis. *Id., ¶ 80.*

performance in May 2004, allowing for data to be processed and payments prepared during April 2004, as suggested by Staff. If the Commission approves the compliance filing in March, then the reporting and payment dates would slip by one month.

23 This decision is consistent with Qwest's interpretation in its Petition for Clarification. While the timing for implementation stated above is not consistent with Qwest's request in its Petition for Clarification, it appears to meet Qwest's needs. Qwest initially claims to need additional time to implement the new EELs standards. In its Motion for Leave to Reply, however, Qwest states that it can implement the new standards in time to begin reporting results on April 1, 2004, presumably for performance in March 2004.

24 **OTHER PID CHANGES.** On January 29, 2004, Qwest filed a letter with the Commission advising the Commission of a change in the Joint LTPA Status Report to the Commission filed on January 12, 2004. In the status report, the parties advised the Commission that certain administrative PID changes would be filed with the Commission before the end of January 2004. Based upon the Commission's Order No. 05 directing additional changes to the PIDs, Qwest and all other parties agreed to make the changes in one filing on February 17, 2004. Because it is unclear whether permission is required from the Commission to make this change in filing dates, Qwest seeks permission in its letter.

25 Although there is no need to seek permission from the Commission to change a filing date the parties volunteered to the Commission, the Commission appreciates being advised of the change in filing dates.

#### IV. FINDINGS OF FACT

26 Having discussed above in detail the documentary evidence received in this proceeding concerning all material matters, and having stated findings and



conclusions upon issues at impasse among the parties and the reasons and bases for those findings and conclusions, the Commission now makes and enters the following summary of those facts. Those portions of the preceding detailed findings pertaining to the ultimate findings stated below are incorporated into the ultimate findings by reference.

- 27 (1) Qwest Corporation is a Bell operating company within the definition of 47 U.S.C. section 153(4), and incumbent Local Exchange Company, or ILEC, providing local exchange telecommunications service to the public for compensation within the state of Washington.
- 28 (2) The Commission is an agency of the State of Washington vested by statute with the authority to regulate the rates and conditions of service of telecommunications companies within the state, and to take actions, conduct proceedings, and enter orders as permitted or contemplated for a state commission under the Telecommunications Act of 1996, including the review of Qwest's Statement of Generally Available Terms and Conditions (SGAT) under Section 252(f) of the Act.
- 29 (3) Qwest's Performance Assurance Plan, or QPAP, is attached as Exhibit K to Qwest's SGAT. Under Section 16 of the QPAP the Commission reviews certain performance measures and PIDs every six months following FCC approval of Qwest's Section 271 application in Washington State.
- 30 (4) The performance measures, or PIDs, upon which Qwest reports its performance and makes QPAP payments for failure to meet standards are included in Exhibit B to the SGAT.
- 31 (5) The FCC approved Qwest's Section 271 application for Washington State on December 23, 2002.

- 32 (6) The first six-month review period began on June 23, 2003, and closed at the end of December 2003.
- 33 (7) In paragraph 118 of Order No. 05 in this proceeding, the Commission required Qwest, within 30 days of the service date of the Order, to “incorporate in SGAT Exhibits B and K the standards and payment opportunities for enhanced electronic links to which Qwest stipulated in Colorado, and that the Colorado Commission approved for reporting and payment purposes in the Colorado performance assurance plan.”
- 34 (8) The compliance filing required by paragraph 118 of Order No. 05 must be filed with the Commission by February 17, 2004.

## V. CONCLUSIONS OF LAW

35 Having discussed above in detail all matters material to this decision, and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the ultimate decisions of the Commission are incorporated by this reference.

- 36 (1) The Commission has jurisdiction over the subject matter of this proceeding and the parties to the proceeding.
- 37 (2) It is reasonable for Qwest to gather and report data and make payments for performance under performance measures on a full calendar month basis.
- 38 (3) The 60-day review period of 47 U.S.C. § 252(f)(3)(B) applies to all filings that modify Qwest’s SGAT, including Qwest’s compliance filing in this proceeding.

- 39 (4) Changes to the SGAT are effective upon approval or after 60 days,  
whichever occurs first, not upon filing with the Commission.

## VI. ORDER

### THE COMMISSION ORDERS:

- 40 (1) Qwest must begin making Tier 1 and Tier 2 payments based upon the first  
full month of reported data following the effective date of the changes to  
Exhibits B and K of the SGAT required by paragraph 118 of Order No. 05.

Dated at Olympia, Washington, and effective this 6th day of February, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK OSHIE, Commissioner