

[Service Date April 7, 2004]

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Second Six-Month) DOCKET NO. UT-043007
Review of Qwest Corporation's)
Performance Assurance Plan) ORDER NO. 02
)
) ORDER DIRECTING TRANSFER
) OF CERTAIN QPAP TIER 2
) FUNDS; PROPOSING
) MODIFICATION OF QPAP
) SECTION 7.5
)
.....)
In the Matter of the Investigation Into) DOCKET NO. UT-003022
)
U S WEST COMMUNICATIONS,)
INC.'s)
)
Compliance With Section 271 of the)
Telecommunications Act of 1996)
.....)
)
In the Matter of) DOCKET NO. UT-003040
)
U S WEST COMMUNICATIONS,) 48TH SUPPLEMENTAL ORDER;
INC.'s) PROVIDING NOTICE OF
) INTENT TO AMEND 30TH and
Statement of Generally Available) 47TH SUPPLEMENTAL ORDERS
Terms Pursuant to Section 252(f) of the)
Telecommunications Act of 1996)
.....)

SYNOPSIS. *In this Order, the Commission directs Qwest to transfer \$625,000 in QPAP Tier 2 payments from the Qwest escrow account (established to hold Washington Tier 2 payments) to the Public Service Revolving Fund within 30 days of service of this Order. The Commission also proposes to modify Section 7.5 of the QPAP in Docket No.*

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UT-043007 to provide that Qwest must deposit any Tier 2 payments in the Public Service Revolving Fund, rather than an escrow account, and provides notice of its intent to amend the 30th and 47th Supplemental Orders in Docket Nos. UT-003022 and UT-003040 to address the issue of the proper placement of Tier 2 funds.

I. BACKGROUND

- 1 **NATURE OF THE PROCEEDING.** In Docket No. UT-043007, the Washington Utilities and Transportation Commission (Commission) conducts its second six-month review of Qwest Corporation's (Qwest) Performance Assurance Plan, or QPAP. Under Section 16 of the QPAP, the Commission conducts a review of performance measures and performance indicator definitions (PIDs) in the QPAP every six months following the December 23, 2002, approval by the Federal Communications Commission (FCC) of Qwest's Section 271 application for the state of Washington.
- 2 In Docket Nos. UT-003022 and UT-003040, the Commission conducted a review of Qwest's compliance with Section 271 of the Telecommunications Act of 1996, making a recommendation to the FCC concerning Qwest's Section 271 application for the state of Washington. The Commission also approved a statement of generally available terms (SGAT) for Qwest for the state of Washington. The QPAP is included as Exhibit K to the Washington SGAT.
- 3 **PROCEDURAL HISTORY.** The Commission approved the QPAP during the Commission's review of Qwest's compliance with Section 271 of the Telecommunications Act. *See 39th Supplemental Order, Docket Nos. UT-003022 and UT-003040 (July 1, 2002).* During that proceeding, the Commission ordered Qwest to modify its proposed language for Section 7.5 of the QPAP to include

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language requiring Qwest to maintain an escrow account and deposit Tier 2 funds into that account, as the Commission had not yet determined the proper placement of the funds or whether to participate in a multi-state QPAP review process. *See 30th Supplemental Order, Docket Nos. UT-003022 and UT-003040, ¶ 162.*

- 4 In paragraph 18 of the 47th Supplemental Order in Docket Nos. UT-003022 and UT-003040 and Order No. 01 in Docket No. UT-033020, the Commission's first six-month review proceeding, the Commission stated its intent to participate in a multi-state collaborative review process, known as the Long-Term PID Administration (LTPA) process. The Commission also stated that it was still determining the proper placement of Washington state Tier 2 payments.
- 5 On January 27, 2004, the Commission issued a Prehearing Conference Notice in Docket No. UT-043007, providing notice to all competitive local exchange carriers in Washington of a prehearing conference on February 11, 2004, initiating the Commission's second six-month review proceeding. Qwest, Covad Communications Company (Covad), Eschelon Telecom Inc., WorldCom, Inc., d/b/a MCI, Inc (MCI), and Commission Staff participated in the conference held on February 11, 2004.
- 6 On February 18, 2004, the Commission entered Order No. 01, a prehearing conference order, which established a procedural schedule for this proceeding. Order No. 01 provides that the parties will file an agreed statement of issues with the Commission by April 9, 2004, simultaneous initial briefs with the Commission on April 30, 2004, and simultaneous reply briefs on May 14, 2004.

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II. MEMORANDUM

- 7 **A. Tier 2 Payments Under the QPAP.** When Qwest fails to meet certain performance measures under the QPAP, the QPAP provides that Qwest must make payments to CLECs (Tier 1 payments) and the states (Tier 2 payments). *See QPAP, Sections 2.1 and 2.1.1.* Section 7.0 of the QPAP governs Tier 2 payments to the State. Section 7.5 of the QPAP provides that:

Payments to a state fund shall be used for any purpose determined by the Commission that is allowed to it by state law. *Qwest will maintain an identified escrow account for the State of Washington for the purposes of conducting audits or QPAP reviews and deposit any payments of Tier 2 funds for Washington State into that account, pending Commission review of the proper placement of those funds based upon its decision whether to participate in a multi-state process.* If the Commission is not permitted by state law to receive or administer Tier 2 payments, the payments shall be made to the state general fund or to such other source as may be provided under state law.

(Emphasis added).

- 8 As discussed above, the Commission directed Qwest in the 30th Supplemental Order and 47th Supplemental Order to establish and maintain an escrow account for the purpose of conducting audits or QPAP reviews and required Qwest to deposit any Tier 2 payments for Washington State into that account until the Commission determined the proper placement of the funds or whether to participate in a multi-state process.

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9 On May 1, 2003, Qwest filed a letter notifying the Commission that Qwest had “established a temporary holding account, i.e., a commercial bank account, with U S Bank National Association” for the deposit of Tier 2 payments due to the State of Washington under the QPAP. In the letter, Qwest also requested that the Commission finalize a Washington Tier 2 Account by accepting Qwest’s proposed Memorandum of Understanding and identifying a “commission appointed designate to manage matters associated with the administration of the Washington Tier 2 Fund.” Since March 2003, Qwest has made payments totaling approximately \$1,160,000 to the temporary holding account. In paragraph 18 of the 47th Supplemental Order in UT-003022 and UT-003040 and Order No. 01 in Docket No. UT-033020, the Commission stated that it would respond to Qwest’s May 1, 2003, letter after determining the proper placement of Tier 2 payments.

10 **B. Transfer of Tier 2 Payments to the Public Service Revolving Fund.** On April 1, 2004, Governor Locke signed into law Chapter 276, Laws of 2004 PV, (Engrossed Substitute House Bill 2459), the 2004 Supplemental Operating Budget. Section 130 of that bill increases the Legislature’s original 2003-2005 operating budget appropriation for the Commission. In its Budget Notes accompanying the supplemental operating budget, the Legislature indicated that \$625,000 of the increased appropriation for the Commission is provided for the additional workload created by the FCC’s requirements in the Section 271 review process for performance standards. This additional workload results from the Commission’s actions under the QPAP in conducting periodic reviews and audits of the QPAP.

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As a result of the enactment of Chapter 276, Laws of 2004 PV, the Commission directs Qwest, within 30 days of the effective date of this Order, to transfer \$625,000 in Tier 2 payments from the escrow account established under Section 7.5 of the QPAP to the Public Service Revolving Fund (PSRF), the account within the state treasury established to fund Commission expenses.

- 12 **C. Modification of Section 7.5 of the QPAP.** Enactment of Chapter 276, Laws of 2004 PV also prompts the Commission to clarify the proper placement of Tier 2 payments. The Commission finds that Tier 2 payments due to Washington State under the QPAP are appropriately placed in the Public Service Revolving Fund, and that Section 7.5 of the QPAP should be modified to require Tier 2 payments to be deposited in the PSRF.
- 13 By this Order, the Commission provides notice, pursuant to RCW 80.04.210 and WAC 480-07-875, of its intent to amend the 30th and 47th Supplemental Orders in Docket Nos. UT-003022 and UT-003040 to identify the proper placement of Tier 2 payments. The Commission also provides notice in Docket No. UT-043007 of the Commission's proposal to modify Section 7.5 of the QPAP. The Commission directs the parties to add this proposal to the list of issues the parties must address in the second six-month review proceeding.
- 14 Under section 16.1 of the QPAP, the Commission conducts a review every six months to determine if measures should be added to, deleted from, or modified in the QPAP; whether benchmark standards should be modified or replaced by parity standards; and whether payment classifications should be modified. Section 16.1 of the QPAP also provides that "Parties or the Commission may suggest more fundamental changes to the plan, but unless the suggestion is

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highly exigent, the suggestion shall either be declined or deferred until the biennial review.”

15 The proposed change to Section 7.5 of the QPAP is not related to a change to a performance measure, but is a more “fundamental change” to the plan. The Commission asserts that the change is highly exigent, as it is necessary for the Commission to clarify the proper placement of the funds to enable their expenditure for authorized purposes, and to relieve Qwest of the administration of the escrow account, without waiting another year for the biennial review.

16 The Commission proposes that Section 7.5 of the QPAP be modified as follows:

Payments to a state fund shall be used for any purpose determined by the Commission that is allowed to it by state law. Qwest ~~will maintain an identified escrow account for the State of Washington for the purposes of conducting audits or QPAP reviews and must deposit any payments of Tier 2 funds for Washington State into the Public Service Revolving Fund, the account within the Washington State treasury established to fund Commission expenses that account, pending Commission review of the proper placement of those funds based upon its decision whether to participate in a multi-state process. If the Commission is not permitted by state law to receive or administer Tier 2 payments, the payments shall be made to the state general fund or to such other source as may be provided under state law.~~

17 The Commission intends that Tier 2 payments be used to pay for Commission expenses in implementing the federal Telecommunications Act of 1996, including six-month review proceedings and participation in multi-state LTPA

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and audit processes, other matters deriving from the section 271 proceeding, arbitration proceedings, the Triennial Review proceedings, and any other matters relating to the Act.

III. FINDINGS OF FACT

- 18 Having discussed above in detail the oral and documentary evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues at impasse between 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.
- 19 (1) Qwest Corporation, formerly known as U S WEST Communications, Inc., is a Bell operating company (BOC) within the definition of 47 U.S.C. section 153(4), providing local exchange telecommunications service to the public for compensation within the state of Washington.
- 20 (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 review Qwest's Statement of Generally Available Terms, or SGAT, under section 252(f)(2) of the Act.
- 21 (3) Qwest's Performance Assurance Plan (QPAP) is included in the SGAT as Exhibit K. Section 16 of the QPAP provides for a review of the PIDs every six months to determine if any adjustments should be made to

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performance measures, benchmark or parity standards, or payment structures. Section 16.1 of the QPAP allows for review of other more fundamental provisions of the QPAP if the matter is “highly exigent.”

- 22 (4) On April 1, 2004, Governor Locke signed into law Chapter 276, Laws of 2004 PV, (Engrossed Substitute House Bill 2459), the 2004 Supplemental Operating Budget, allowing an increase in the 2003-2005 operating budget appropriation for the Commission. The Budget Notes accompanying the supplemental operating budget specify that \$625,000 of the increased appropriation for the Commission is provided for the additional workload created by the FCC’s requirements in the Section 271 review process for performance standards, including periodic reviews and audits of the QPAP.

IV. CONCLUSIONS OF LAW

- 23 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.

- 24 (1) Tier 2 payments due to Washington State under the QPAP are appropriately placed in the Public Service Revolving Fund, the account within the state treasury established to fund Commission expenses.

- 25 (2) The proposed change to Section 7.5 of the QPAP is appropriately brought within the six-month review proceeding in Docket No. UT-043007 under

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Section 16.1 of the QPAP. While the proposed change is not related to a performance measure, and is a more “fundamental change” to the plan, the change is highly exigent. The proposed change is necessary for the Commission to clarify the proper placement of Tier 2 payments, to enable authorized expenditure of the funds, and to relieve Qwest of the administration of the escrow account, without waiting another year for the biennial review.

V. ORDER

THE COMMISSION ORDERS:

- 26 (1) Within 30 days of the effective date of this Order, Qwest Corporation must transfer \$625,000 in Tier 2 payments from the escrow account established under Section 7.5 of the QPAP to the Public Service Revolving Fund (PSRF), the account within the state treasury established to fund Commission expenses.
- 27 (2) Parties in Docket UT-043007 must include as an issue in that proceeding the following proposal to modify Section 7.5 of the QPAP:

Payments to a state fund shall be used for any purpose determined by the Commission that is allowed to it by state law. Qwest ~~will maintain an identified escrow account for the State of Washington for the purposes of conducting audits or QPAP reviews and~~ must deposit any payments of Tier 2 funds for Washington State into the Public Service Revolving Fund, the account within the Washington State treasury established to fund

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~~Commission expenses that account, pending Commission review of the proper placement of those funds based upon its decision whether to participate in a multi-state process. If the Commission is not permitted by state law to receive or administer Tier 2 payments, the payments shall be made to the state general fund or to such other source as may be provided under state law.~~

28 **NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810(3)..**

Dated at Olympia, Washington, and effective this 7th day of April, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner