

Exhibit T-__ (TLS-1T)
Docket No. UT-043007
Witness: Thomas L. Spinks

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Second Six Month Review)
of Qwest Corporation's Performance) DOCKET NO. UT-043007
Assurance Plan)
)
)
_____)

TESTIMONY OF

THOMAS L. SPINKS

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION STAFF

August 13, 2004

1 **Q. Please state your name and business address.**

2 A. My name is Thomas Spinks. My business address is 1300 South Evergreen
3 Park Drive Southwest, P.O. Box 47250, Olympia, Washington 98504. My e-
4 mail address is tspinks@wutc.wa.gov.

5

6 **Q. By whom are you employed and in what capacity?**

7 A. I am employed by the Washington Utilities and Transportation Commission
8 as a Regulatory Consultant.

9

10 **Q. Please state your qualifications.**

11 A. My qualifications are included as Exhibit TLS-2

12

13 **Q. What is the purpose of your testimony?**

14 A. The purpose of my testimony is to respond to the testimony of Qwest and
15 CLECs regarding the seven issues raised in the second six month review of
16 Qwest's Performance Assurance Plan (QPAP).

17

18 **Q. What are the Staff's recommendations regarding the seven issues?**

19 A. The Staff recommendations are as follows:

- 1 1. The Line Splitting parity measure - Staff recommends the Commission set
2 Basic Residential and Business Line (Res/Bus POTs) as the parity
3 measure.
- 4 2. Should the Loop Splitting product be added to certain PIDs? - Staff
5 recommends the Commission direct Qwest to begin reporting on the
6 Loop Splitting product with a diagnostic standard at the time CLECs
7 order the product, in any quantity, for three consecutive months.
- 8 3. Should the xDSL-I product be added to certain PIDs in Exhibit B with a
9 standard other than diagnostic? – Staff recommends the Commission
10 direct Qwest to add the xDSL-I product to the identified PIDs in Exhibit B
11 with the standards shown on page 48 of Eschelon witness Mr. Smith’s
12 July 23, 2004 testimony.
- 13 4. What Tier and payment level should be assigned to PO-20 and should
14 there be a low volume exception and a burn in period? - Staff
15 recommends the Commission add PO-20 to the QPAP as a medium Tier
16 II, medium Tier I payment allowing no “free misses” and without a burn-
17 in period.

- 1 5. Does the QPAP require modification as a result of adding PO-20? - Staff
2 recommends the Commission modify the wording in the QPAP to
3 accommodate the revised PO-20 as necessary.
- 4 6. Should Qwest provide CLECs with monthly aggregate product level
5 reports? Staff recommends the Commission not require Qwest to produce
6 such reports on a monthly basis. However, Qwest should produce such
7 reports for CLECs on a request basis no more than four times a year.
- 8 7. Should Qwest be allowed “one free miss” for OP-3? Staff recommends
9 the Commission not allow Qwest “one free miss” for this PID.

10

11 **Q. What is the dispute regarding the parity measure to be used for Line**
12 **Splitting?**

13 **A.** The dispute over Line Splitting is whether Qwest DSL or Res/Bus POTs
14 should be used to gauge Qwest’s Line Splitting performance for PIDs OP-5A,
15 MR-3, MR-4, MR-6 and MR-8.

16

1 **Q. What is Qwest's position?**

2 **A.** Qwest believes that the Qwest DSL product is the most appropriate measure
3 because it best meets the criteria Qwest sets forth as the standard by which
4 the Commission should choose a parity measure.

5

6 **Q. What criteria does Qwest propose for choosing the parity measure?**

7 **A.** Qwest witness Mr. Buhler identifies four key elements to consider in
8 choosing a parity measure. They are: 1) The parity measure should use the
9 same processes and systems as the performance measure, 2) The parity
10 measure should serve the same customer as the performance measure, 3) The
11 parity measure should have the same product characteristics as the
12 performance measure, and 4) The parity measure should use the same
13 technology as the performance measure.

14

15 **Q. Does Staff agree with the proposed criteria?**

16 **A.** The proposed criteria are relevant but not necessarily determinative. In
17 terms of relative importance, the first criterion, that the same underlying
18 systems and processes be used, is clearly the most important consideration
19 and both DSL and Res/Bus POTs meet that test. Second, there are

1 considerations outside the scope of Qwest's four criteria that also weigh in
2 the Staff recommendations.

3

4 **Q. Why does Staff believe that Qwest's first criterion is clearly most**
5 **important of the four criteria?**

6 **A.** The aspects of performance that are being measured are comprised largely of
7 the ability of Qwest to correctly process, provision an order to provision or
8 maintain the Line Splitting product. The same systems used for provisioning
9 or maintaining a POTs line are also used for provisioning or maintaining the
10 line splitting product. Therefore, the specific end product being provided is
11 not as important as whether or not common systems are used to provision or
12 maintain the product. Qwest's "same end-user" criterion has little to do with
13 the underlying functions that need to be performed in order to process and
14 provision a UNE. The type of technology criterion can be important if the
15 product must be designed but in this case, line splitting is not a design
16 product so the technology type is not a critical issue in this case. For instance,
17 staff's understanding is that when a Central Office technician repairs a faulty
18 Res/Bus circuit instead of a DSL circuit due to a faulty circuit card, the only

1 difference is the type of circuit card that is replaced. Hence, Qwest's criteria
2 are only relevant in part as applied to the case at hand.

3

4 **Q. What factors or issues, in addition to the Qwest criteria, does Staff believe**
5 **are relevant?**

6 **A.** Several of the issues raised in this proceeding are directly related to the
7 FCC's Triennial Review Order (TRO). The TRO proposes to phase out Line
8 Sharing over a four year period and requires ILECs like Qwest to modify
9 their OSS capability to facilitate Line Splitting for provisioning services that
10 use the high frequency portion of loop bandwidth. (TRO at ¶ 252, 264) These
11 changes have in turn, led to requests from CLECs for Qwest to establish a
12 Line Splitting UNE with performance standards and incorporate the product
13 into the QPAP even though there are currently low levels of demand for the
14 product. Putting the new product into the QPAP at this time helps provide
15 incentive for Qwest to provide accurate and timely ordering and provision
16 for the new products during the transition from Line Sharing. A second
17 factor is the fact that Res/Bus POTs is currently the standard for Line Sharing
18 for the PIDs at issue here in all states except Colorado and Qwest did not
19 request the LTPA to consider any changes to that standard. CLECs are

1 concerned that the parity standards for Line Sharing and Loop Splitting be
2 the same to preclude the potential for Qwest to discriminate in its treatment
3 of orders for the products. These two factors, competitive importance and the
4 desirability of having the same standard for the products, were also
5 considered by Staff in determining that Res/Bus POTs should be used as the
6 parity measure.

7

8 **Q. Does Staff still believe that Res/Bus POTs standard is appropriate?**

9 **A.** Yes, Staff does not believe the LTPA facilitator somehow erred in setting the
10 standard at parity with Res/Bus POTs. But based on Colorado's acceptance of
11 DSL as the parity measure for PIDs MR-3, MR-4, MR-6 and MR-8, Staff
12 acknowledges that Qwest DSL could also serve as the appropriate standard
13 for Line Splitting if the Line Sharing standard was also DSL, but it is not.
14 Staff is troubled by Qwest's not proposing to change the standard for Line
15 Sharing from Res/Bus POTs to Qwest DSL as shown in the LTPA master
16 issues matrix, then asking individual state commissions to use the DSL
17 standard after it ended its participation in the multistate collaborative. In
18 any event, if the Commission is inclined to accept Qwest's arguments to use
19 DSL as the parity standard, Staff recommends the Line Sharing standard also

1 be changed from Res/Bus POTs to DSL so that both products are measured
2 using the same parity standard.

3

4 **Q. Please explain the Staff recommendation regarding Loop Splitting.**

5 **A.** Staff's recommends that Qwest begin reporting on Loop Splitting with a
6 diagnostic standard at such time that volumes begin to materialize for this
7 product in order to balance the concerns of CLECs that Loop Splitting
8 metrics be in place sooner rather than later with Qwest concerns that no
9 volumes currently exist for the product. Staff is proposing a three
10 consecutive month threshold to begin reporting because we believe it would
11 serve as sufficient indication that the product is being used on an ongoing
12 basis such that reporting should begin.

13

14 **Q. Please explain the Staff recommendation regarding xDSL-I .**

15 **A.** Staff disagrees with the standard Qwest proffers for whether products
16 should be added to the QPAP PIDs. Qwest argues that 1) since there is no
17 evidence that Qwest is or even may be discriminating against CLECs, there is
18 no justification for imposing a reporting requirement, 2) the product is
19 competitively insignificant, and 3) xDSL-I was not a product for which a PID

1 was required during the 271 proceedings and nothing of significance has
2 changed since that time. (Exhibit DWB-1T, pp. 29-30). First, Staff's position is
3 that the QPAP is not a tool to punish discrimination after the fact but rather
4 to serve as an incentive to Qwest to perform well in its provision of products
5 and services to competitors. The purpose of the plan is to prevent
6 backsliding. Second, it is not for Qwest to judge whether CLEC use or
7 potential use of xDSL is or will be competitively significant. Staff finds it
8 hard to believe that CLECs would waste their and Qwest's time on putting
9 this product into the QPAP if it had no competitive strategy that involved
10 the product. Finally, as the Commission noted at ¶145 of the Thirtieth
11 Supplemental Order, the FCC expects state commissions to play a prominent
12 role in modifying and improving the performance metrics in performance
13 assurance plans. PAPs are dynamic plans that change with conditions.

14
15 **Q. Which parity standard should be used for xDSL-I loops?**

16 **A.** The Commission should accept the xDSL-I standards identified by Eschelon
17 witness Mr. Smith in his July 23, 2004 testimony. (Ex RLS-1T, page 48.) As
18 Eschelon notes, these are the same standards adhered to by Qwest in its
19 standard interval guide (SIG) and found appropriate in the LTPA facilitator's

1 recommendation. Qwest has proposed using a DSL standard which it claims
2 is the “next best fit” to its IDSL retail service which is no longer offered.
3 However, Qwest has not provided any evidence in this case to justify the
4 proposed DSL standard as a parity standard for xDSL-I. Qwest also did not
5 object to the ISDN standard in its comments to the facilitator on the xDSL-I
6 impasse statements.

7

8 **Q. What are the parties’ positions regarding the payment level assigned to**
9 **PO-20 for Tier I?**

10 **A.** Qwest witness Mr. Buhler testifies that PO-20 should be assigned a Tier I
11 Low payment level because the errors in PO-20 include a number of items
12 where failures 1) are not end-user affecting and create no CLEC harm; 2)
13 were not detected or reported by the CLEC; 3) the impact was eliminated by
14 Qwest before a customer reports a problem; or 4) are predominantly for
15 feature-only issues. (Ex.__(DWB-1T), page 56, lines 4-13.) Eschelon witness
16 Mr. Smith testifies that PO-20 should be designated as a Tier I High payment
17 because its companion measure OP-5 has a Tier I High payment and there is
18 no evidence that PO-20 misses are mostly feature-only orders, and because
19 PO-20 misses cause harm to end-users, as well as a CLECs ability to compete

1 and competition generally. Eschelon provided a number of examples in
2 support of the assertion that harm occurs to both the CLEC's ability to
3 compete and to end-users. He also notes that both the LTPA facilitator and
4 the Colorado special master found that errors in PO-20 cause harm to end-
5 users.

6

7 **Q. What is Staff's recommendation regarding PO-20 Tier I assignment?**

8 **A.** Staff recommends that PO-20 failures to meet the standard be subject to Tier
9 I Medium payments. The existing PO measures all carry a Tier I Low
10 payment because, as Qwest notes, misses do not have significant
11 consequences. The PO-20 manual service order accuracy PID is an exception
12 to the pre-order PIDs as shown by Eschelon's examples where clear harm is
13 being caused to both end-users and Eschelon's ability to compete. Qwest
14 testimony, however, claims that no harm to end-users occur in many cases.
15 Considering that the Tier I High payment level addresses cases where
16 significant harm is expected to occur and the low payment level addresses
17 cases where harm is not expected to be significant, and given the fact that
18 PO-20 failures can cause harm, but not in every circumstance, the
19 appropriate remedy level should be set at the Tier I medium payment level.

1 This recommendation is consistent with the PO-20 medium payment level
2 for Tier I recommended by the special master for the Colorado PAP.

3

4 **Q. Should PO-20 also be subject to Tier II payments, and if so, at what level?**

5 **A.** PO-20 should also be subject to Tier II payments. Eschelon’s testimony and
6 exhibits regarding the origin of the manual service order accuracy issue
7 demonstrate that the issue was very important to address prior to Qwest
8 being able to obtain 271 approval. Staff views PO-20 as a counterpart to PO-
9 2. The PO-2 PID addresses failures of electronic orders to flow through,
10 while PO-20 PID addresses failures that occur once an order drops out of the
11 flow-through process and requires human intervention to complete the order
12 process. In order that Qwest have adequate incentives to minimize failures
13 in its manual handling of orders, which the Colorado special master found to
14 be both foreseeable and preventable, PO-20, like PO-2b, should also be
15 designated for Tier II payments.

16

1 **Q. Should Tier II payments be designated only in cases where end-user harm**
2 **can be demonstrated?**

3 **A.** No. In the Thirtieth Supplemental Order in Docket UT-003022, the QPAP
4 Order, the Commission explained that certain performance measures were
5 subject to Tier II payments for two reasons. These were 1) when
6 performance results were available only on a regional basis, or 2) because of
7 their importance to CLEC's ability to compete. (Order at ¶80) Hence, the
8 criteria for whether a measure should be classified in the Tier II category is
9 not whether the measure is end-user affecting, but whether failures to meet
10 the standard for the measure impede the CLEC's ability to compete. Staff
11 believes that Eschelon's testimony demonstrates that PO-20 failures result in
12 both harm to end-users as well as harm to the CLEC's ability to compete.

13
14 **Q. Which Tier II payment level should be assigned to PO-20?**

15 **A.** For purposes of initially setting the Tier II level, Staff accepts the proposal of
16 Eschelon to set the payment at Tier II Medium per Table 7.3 of the QPAP
17 which sets a maximum per measurement cap on Tier II Medium payments at
18 \$30,000. Staff is not proposing that the Tier II payment level be set at the

1 High uncapped level, as it is for PO-2b, in recognition of Qwest’s testimony
2 regarding the variable nature of PO-20 failures.

3

4 **Q. Qwest states that the reporting structure for the new PO-20 measure is not**
5 **compatible with the Tier II per-measurement structure in Section 7.4 of the**
6 **QPAP. Please comment.**

7 **A.** In the Forty-Third Supplemental Order, the Commission approved Qwest’s
8 request to establish the PID PO-20 as a Tier II per-measurement payment in
9 Table 7.4, subject to review and modification in both the collaborative
10 process and during six-month reviews. Qwest states that the new expanded
11 PO-20 cannot be subject to such a payment measure anymore because of the
12 state-specific reporting of the measure. Eschelon is proposing that PO-20
13 Expanded be included in Section 7.3.1 of Exhibit K which contain Tier II
14 measures subject to per-occurrence payments with caps. The Qwest concern
15 regarding the per-measurement incompatibility is therefore moot.

16

1 **Q. Why does Staff recommend that Qwest not be permitted to have a “burn**
2 **in” period for PO-20?**

3 **A.** Staff supports the need for a burn-in period for new measures generally but
4 questions whether Qwest needs a burn-in period in Washington because the
5 burn-in of the new PO-20 has already occurred in Colorado. Staff does not
6 believe it is necessary to burn-in each new measure in every state because
7 Staff believes the same systems and programs that produce the data for PO-
8 20, which creates the need for a burn-in period, are used in calculating
9 results for all states. In addition, as Eschelon point out, Qwest has been
10 generating the data for burning in the new PO-20 since January and doesn’t
11 need additional time in this case.

12
13 **Q. What is Staff’s position regarding the request for “one free miss” for PO-**
14 **20?**

15 **A.** Staff does not agree with Qwest’s proposed “one free miss.” Section 2.4 of
16 the QPAP already ensures that Qwest is not held to a 100 percent standard.
17 Qwest’s testimony states that under Section 2.4, the only way a single order
18 error would not cause a miss of the PO-20 standard in low-volume
19 conditions is if all other months used to collect the larger volumes

1 experienced perfect performance. (Exhibit DWB-1T, pp.60-61) Staff does not
2 find this argument compelling because Qwest has not made any showing
3 that PO-20 volumes are or will be low. Qwest is not asking the
4 Commission, as it seems to saying in its testimony, that a standard of
5 perfection should not be demanded of it because no such standard exists for
6 Qwest in the QPAP. Finally, if the Commission were to grant the request for
7 “one free miss” for volumes of 10 or less orders it would mean Qwest would
8 be permitted to miss anywhere between 10 percent and 100 percent of a
9 CLEC’s orders month after month without making any payment to the
10 CLEC. This result would not be congruent with the purpose of the QPAP.

11

12 **Q. Does Staff agree with Qwest’s proposed changes to Exhibits K and B1 as**
13 **shown in Mr. Buhler’s Ex.__(DWB-5)?**

14 **A.** Yes, the proposed changes are necessary to remove references to the old PO-
15 20 measure and to remove the Tier II per-measurement standards and
16 payment amounts for PO-20. There are two caveats to Staff’s response. First,
17 Ex.__(DWB-5) refers to deleting seven rows in Table 5 on page 9 of Exhibit K.
18 If one counts down seven lines, one line of PO-20 information remains. So
19 rather than state it as a number of rows, Staff would simply remove language

1 relating to PO-20 from Table 5. The second caveat is that Staff believes
2 additional language will need to be added to Exhibit K and Staff's agreement
3 to the PO-20 wording is not intended to suggest the Exhibit DWB-5 changes
4 are the only changes to wording which will need to be made to Exhibit K.

5

6 **Q. Please explain the Staff recommendation regarding product level**
7 **reporting.**

8 **A.** As Staff understands this request, Qwest is being asked to produce a report
9 that provides a further breakdown of the current PID reports to include
10 reporting for each PID, the individual product performance results. For
11 example, the old PO-20 measure included four products. They are Resale
12 POTs, UNE-P, Analog loops and Non-loaded loops. The current report
13 provides aggregate results for all the products in PO-20, while the requested
14 reporting would show aggregate results for PO-20 Resale POTs, PO-20 UNE-
15 P, PO-20 Analog loops, and PO-20 Non-loaded loops. Staff believes that this
16 level of reporting has two important uses. First, Qwest could and likely does
17 produce such data in order to examine performance failures by product in
18 order to see if a particular product is creating more failures than others as
19 part of a root cause analysis. Second, CLECs could use such information to

1 detect whether problems are occurring between services within a PID that is
2 otherwise masked by the product aggregation. The question here is whether
3 such reports should be regularly produced as a monthly report or produced
4 on a request or "as needed" basis. Staff believes the reports should be
5 produced on a request basis in a timely manner. Staff recommends that the
6 QPAP reports Section 14 be altered to permit CLECs to request product
7 specific results once every three months.

8

9 **Q. Please explain the Staff recommendation regarding one free miss for OP-3.**

10 **A.** Staff is recommending no free misses for the OP-3 PID for the same reasons
11 stated earlier in this testimony regarding the one free miss proposal for PO-
12 20.

13

14 **Q. Does this conclude your testimony?**

15 **A.** Yes.