

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Second Six-Month	)	
Review of Qwest Corporation's	)	DOCKET NO. UT-043007
Performance Assurance Plan	)	
	)	CLEC Narrative (Settlement of
	)	Disputed Issues)
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	)	
	)	
.....	)	

**Parties to the Settlement Agreement**

1. The Parties to the Settlement of Disputed Issues (“Settlement Agreement” or “Stipulation”) are Qwest Corporation (“Qwest”), MCI, Inc. (“MCI”), Eschelon Telecom of Washington, Inc. (“Eschelon”) and Covad Communications Company (“Covad”), (collectively, the “Stipulating Parties”). In addition, the Staff of the Washington Utilities and Transportation Commission (“WUTC” or “Commission”) has indicated that it does not oppose the Stipulation, although Staff intends to continue to pursue the issue of a Tier 2 designation for PO-20 (as allowed by the Stipulation).

**Scope of the Underlying Dispute**

2. In this proceeding, the Commission conducts its second six-month review of Qwest’s Performance Assurance Plan, or 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.

3. On June 25, 2004, the Parties filed a Final Issues List and matrix detailing the issues and Parties' positions on the issues in this Second Six-Month Review. The issues included the following:

- Line Splitting: what standard should be used for this product for the MR-3, 4, 6 and 8 and the OP-5 PIDs?
- Loop Splitting: should this product be added to the PO-5, OP-3 through 6, OP-15, MR-3, MR-4, MR-6, 7 and 8 PIDs, and if so, what standard should apply?
- XDSL-i products: should these products be added to the PIDs, and if so how should this be done and what standard should apply, and if not what alternative to adding the products to the PIDs should be approved?
- PO-20: How will the new PO-20 be incorporated into Exhibit B, to what tier should this new PID be assigned, and should Qwest be allowed a low volume exception and a burn-in period for implementation?
- What changes if any should be made to modify the QPAP for Qwest's May 6, 2004 filing that changed Exhibit B to reflect LTPA agreements?
- Should Qwest be required to publish its aggregate payments under QPAP? (Eschelon)
- Should a low-volume exception to QPAP payment requirements exist for the line splitting product as measured by the OP-3 PID? (Qwest)

#### **Scope of the Settlement and its Principal Aspects**

4. The Stipulating Parties have agreed, and respectfully recommend, that the Commission issue its Order approving the disposition of the above listed issues, as described in the Settlement Agreement filed simultaneously with this Narrative. The Settlement is intended to be a resolution of the issues that existed between the Stipulating Parties in this proceeding, with the exception of the Tier 2 designation for PO-20. Regarding the Tier 2 designation for PO-20, MCI, Eschelon, and Covad ("CLECs") have agreed that they will not request or, if already requested, will withdraw their request for a Tier 2 designation, but the Stipulation provides that the Staff may continue to pursue the Tier 2 designation issue, if

desired. (*See* footnote 3 to the Stipulation.). The Stipulation represents a compromise.<sup>1</sup> Although the Parties may have advocated different positions if the matter went to hearing, public policy favors a mutual resolution of disputes in a situation such as this, in which the Stipulating Parties, at arms' length and with full knowledge of the facts, entered into a voluntary settlement that provides administrative efficiencies while remaining consistent with the Federal Telecommunications Act of 1996 ("the Act") and this Commission's prior orders regarding the QPAP.

### **The Settlement Serves the Interests of the Parties and the Public Interest**

5. The terms of the Stipulation serve the public interest and the interests of the Parties. The CLEC Stipulating Parties are satisfied that the resolution of the issues will enable them to avoid the costs and resource constraints of litigating these issues without sacrificing their ability to provide satisfactory service quality to their end user customers. Other than the specific exceptions set forth in the Settlement Agreement, the Stipulating Parties have entered into this Stipulation with the intent that it be submitted to and recommended by these same Parties to the other commissions in Qwest's local region. Consequently, the Stipulating Parties and other commissions will avoid expensive and time consuming litigation throughout the Qwest region. Although a hearing may be required to address the remaining issues between Staff and Qwest, the hearing will be streamlined by the absence of the Stipulating Parties and their respective disputes.

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<sup>1</sup>For example, CLECs do not agree that Qwest's retail analogues are appropriate, but will not object to them in this one instance to resolve this disputed issue. All parties will reserve their rights to their positions as to the proper retail analogue in other contexts (and will not state CLECs agreed that these analogues are appropriate for other wholesale products).

### **Legal Points**

6. The Commission should approve the Stipulation to further the goals established by the Commission when adopting the PIDs and QPAP. The enhancements adopted in the Stipulation will be implemented earlier because of the Stipulation, than if extended proceedings were required.
7. If the Commission finds it necessary, each CLEC Stipulating Party to the Settlement Agreement is willing to present a witness to testify in support of the proposal and answer questions concerning the details of the Agreement and its costs and benefits. In light of the fact that the settlement is uncontested, the CLEC Stipulating Parties respectfully request that the Commission approve the Settlement Agreement without a hearing. To the extent the Commission finds a hearing to be necessary, however, the CLEC Parties request that it allow them to participate via the Commission's conference bridge.
8. As the settled issues are undisputed, the Commission should approve the Stipulation in the interest of administrative efficiency. The Commission will benefit from this Stipulation, as it will reduce the Commission's time and resources necessary to resolve this proceeding.

Dated this 27<sup>th</sup> day of August 2004.

The below signatories authorize MCI's counsel to sign this pleading on their behalf.

**MCI**

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