

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

In the Matter of the Second Six-Month) DOCKET NO. UT-043007
Review of)
) ORDER NO. 10
QWEST CORPORATION'S)
) ORDER APPROVING AND
Performance Assurance Plan) ADOPTING SETTLEMENT
) AGREEMENT; APPROVING
) PETITION TO MODIFY SGAT
) EXHIBITS B AND B-1 AND, IN
) PART, EXHIBIT K AND
) INTERCONNECTION
) AGREEMENTS CONTAINING
) EXHIBITS B, B-1 AND K
.....)
In the Matter of the Petition of) DOCKET NO. UT-043088
)
QWEST CORPORATION,) ORDER NO. 01
)
To Modify its Statement of Generally) ORDER APPROVING PETITION TO
Available Terms and Condition) MODIFY SGAT EXHIBITS B AND
) B-1 AND, IN PART, EXHIBIT K
) AND INTERCONNECTION
) AGREEMENTS CONTAINING
.....) EXHIBITS B, B-1 AND K

1 **SYNOPSIS.** *In this Order, the Commission approves a settlement agreement resolving issues in this proceeding between Qwest, MCI, Eschelon, and Covad as consistent with the law and the public interest. The Commission also approves Qwest's request to modify SGAT Exhibit B and delete SGAT Exhibit B-1, and approves, in part, Qwest's request to modify SGAT Exhibit K, as consistent with the Settlement Agreement.*

BACKGROUND

- 2 **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. 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 In Docket No. UT-043088, the Commission considers proposed changes to Exhibits B, B-1, and K to Qwest's Statement of Generally Available Terms and Conditions (SGAT), which Qwest filed with the Commission on August 27, 2004.
- 4 **Appearances.** Douglas N. Owens, attorney, Seattle, Washington, represents Qwest. Karen Shoresman Frame, Senior Counsel, Denver, Colorado, represents Covad Communications Company (Covad). Karen Clauson, attorney, Minneapolis, Minnesota, represents Eschelon Telecom, Inc. (Eschelon). Michel Singer Nelson, Senior Regulatory Attorney, Denver, Colorado, represents WorldCom, Inc., d/b/a MCI, Inc. (MCI). Gregory J. Trautman, Assistant Attorney General, Olympia, Washington, represents Commission Staff.
- 5 **Procedural History.** The Commission initiated the second six-month review proceeding through a January 27, 2004, notice of prehearing conference. The Commission held prehearing conferences before Administrative Law Judge Ann E. Rendahl on February 11, 2004, May 19, 2004, and June 28, 2004, to take appearances of the parties, identify and narrow the issues, establish and modify the schedule for the proceeding, and address other administrative matters. The

Administrative Law Judge entered Prehearing Conference Order Nos. 01, 04, and 06 summarizing the decisions reached during the conference.

- 6 On April 7, 2004, the Commission entered Order No. 02 in the six-month review proceeding, an order that, among other matters, proposed modification to QPAP Section 7.5. In Order No. 03, entered on May 11, 2004, the Commission approved Qwest's petition to modify SGAT Exhibit K as proposed in Order No. 02.
- 7 On June 22, 2004, upon request of the parties, the Commission entered a protective order, Order No. 05 in the six-month review proceeding.
- 8 On June 25, 2004, Qwest filed a final issues list with the Commission in the six-month review proceeding, identifying nine issues for resolution and noting agreement on three issues. Issues 8 and 9 on the list were rejected during the June 28, 2004, prehearing conference for consideration in the proceeding. *See Order No. 06, ¶¶ 4, 5.*
- 9 On June 30, 2004, the Commission approved in Order No. 07 in the six-month review proceeding certain modifications to Exhibit B to the SGAT, and approved, in part, certain modifications to SGAT Exhibit K. In Order No. 08, entered on August 19, 2004, the Commission approved the compliance filing required by Order No. 07.
- 10 On July 23, 2004, Qwest, Eschelon, and MCI filed direct testimony in the six-month review proceeding. Commission Staff filed responsive testimony on August 13, 2004.

- 11 On August 27, 2004, Qwest, MCI, Eschelon, and Covad filed with the Commission a Settlement of Disputed Issues (Settlement Agreement) that resolves all issues in the six-month review proceeding between the settling parties. Qwest and MCI, Eschelon, and Covad (the settling competitive local exchange carriers, or CLECs) filed separate narrative summaries of the Settlement Agreement. On the same day, Staff filed a statement of position on the settlement, indicating that it does not oppose the Settlement Agreement generally, but objects to one aspect of the settlement.
- 12 Also on August 27, 2004, Qwest filed a petition with the Commission in Docket No. UT-043088 pursuant to 47 U.S.C. § 252(f) requesting that the Commission allow modifications to SGAT Exhibits B, B-1, and K to implement the terms of the Settlement Agreement. Qwest requests that the Commission allow modifications to become effective no later than 60 days after submitting the changes to the Commission, *i.e.*, October 26, 2004, but preferably no later than October 1, 2004.
- 13 By notice dated August 31, 2004, the Commission convened a prehearing conference on September 8, 2004, to address the Settlement Agreement, proposed SGAT changes, scheduling issues, and whether the Commission should initiate the next six-month review proceeding. During the conference, Eschelon withdrew its direct testimony, filed on July 23, 2004, and raised several concerns over the SGAT filing. On September 14, 2004, the Commission entered Order No. 09, a prehearing conference order, modifying the procedural schedule, and deferring the next six-month review proceeding until January 2005.

MEMORANDUM

A. THE SETTLEMENT

14 The Settlement Agreement between Qwest and the settling CLECs is a comprehensive resolution of the remaining seven issues in the six-month review proceeding set forth in the final issues list filed on June 25, 2004, except for the Tier 2 designation for PID PO-20. *Settlement Agreement at 1; n.3; see CLEC Narrative, ¶ 4.* Specifically, Qwest and the settling CLECs resolve the pending issues in the following manner:

- Issue No. 1: Line Splitting. The standard for the Line Splitting product for PIDs MR-3, MR-4, MR-6, MR-8, and OP-5A is parity with Qwest DSL. This new standard will apply to performance data beginning September 1, 2004.
- Issue No. 2: Loop Splitting. Loop Splitting will be included in PIDs PO-5, OP-3 through OP-6, MR-15, MR-3, MR-4, and MR-6 through MR-8, and Qwest will begin reporting on the Loop Splitting product with a diagnostic standard at the time CLECs order the product, in any quantity, for three consecutive months.
- Issue No. 3: x-DSL Loops. x-DSL loops will be included in the Ordering and Provisioning and Maintenance and Repair PIDs with the following standards: 90% for OP-3; 6 business days for OP-4; parity with Qwest DSL for OP-5A; diagnostic for OP-5B, OP-5R, and OP-5T; parity with Qwest DSL with dispatch for OP-6; parity with Qwest IDSL for MR-3, MR-4, MR-6, MR-7, and MR-8; and diagnostic for MR-10. These new standards will apply to performance data beginning on September 1, 2004.

- Issue No. 4: Implementation of Expanded PID PO-20.
 - A: Incorporation of PID in Exhibit B. In Order No. 07 in Docket No. UT-043007 and Order No. 1 in Docket No. UT-043068, the Commission incorporated expanded PID PO-20 into Exhibit B to the Washington SGAT.
 - B: Tier Assignment. Expanded PID PO-20 will be designated for Tier 1 Medium payments in Exhibit K to the Washington SGAT. While the CLECs and Qwest agree that no Tier 2 designation is necessary, the CLECs and Qwest agree that Staff and Qwest will address this issue independent of the settlement.
 - C: Low Volume Exception. A standard of “no more than one order with PO-20 errors” will be assigned to PID PO-20, applicable when CLEC volumes are lower than seventeen in a month during the time the 97% benchmark applies, lower than thirteen in a month during the time the 96% benchmark applies, and lower than ten in a month during the time the 95% benchmark applies. Different standards will apply in Colorado and Minnesota.
 - D: Stabilization or Burn-in Period. Qwest will be allowed a stabilization or burn-in period of up to three months on each of four implementation phases, during which payments are not required for misses in the phase being burned in, but payments are required for misses that exceed the applicable benchmark in the previous phase and that are reported based on the PID requirements for the previous phase.

- Issue No. 5: Changes to Exhibit K and B-1 to implement PID-PO-20.

Qwest will in all states in Qwest’s local service region, except Colorado, file to add expanded PID PO-20 to Tier 1 Medium (in Minnesota Tier 1B),

and without a Tier 2 assignment, in Attachment 1 to Exhibit K, and will include a footnote to the amended Attachment 1 to reflect the agreement on the “burn in period” and low volume relief for Issues 4(C) and (D). Qwest will simultaneously make a filing to change Exhibit K to remove references in Section 7.4 of Exhibit K to PID PO-20, eliminating Tier 2 payments. Qwest will simultaneously file to delete Exhibit B-1 in those states that have such an exhibit, and will request the Commission in each state to issue its order approving all such changes with an effective date no later than October 1, 2004.

- Issue No. 6: Aggregate Reporting. Beginning with September 2004 performance data, Qwest will publish on its website for each state the payment report by major PID category that Qwest currently files with each state Commission for that state; and Qwest will make available a report similar to that which it provides individual CLECs in Tab 2 of the CLEC payment report showing QPAP payments at the PID/Product submeasure level, and will total the payments for the state for each submeasure and/or product.
- Issue No. 7: Low Volume Exception for Line Splitting. No low volume exception will exist for PID OP-3 for Line Splitting.

15 The only issue that remains in dispute is whether the Commission should require Tier 2 payments for PID PO-20. The settling CLECs assert that they do not request a Tier 2 designation for PID PO-20, and if they have done so, they withdraw that request. *CLEC Narrative*, ¶ 4; *see also Qwest Narrative*, ¶ 4. The settling CLECs and Qwest state that the Settlement Agreement allows for Commission Staff to pursue the issue of Tier 2 designation for PO-20. *CLEC Narrative*, ¶¶ 1, 4; *Qwest Narrative*, ¶ 1.

- 16 Staff supports the Settlement Agreement except to the extent it proposes to eliminate Tier 2 payments for PID PO-20. *Staff Position at 1-2*. At the prehearing conference held on September 8, 2004, Staff clarified that it does not object to the removal of language relating to per-measurement Tier 2 payments for PID PO-20 in Section 7.4 of Exhibit K, as proposed in Qwest's August 27, 2004, SGAT filing. Staff will pursue the issue of whether to require new per-occurrence Tier 2 payments for PID PO-20 independent of the Settlement Agreement. *See Id. at 2*. Staff encourages Commission approval of the Settlement Agreement to allow Qwest to meet the implementation deadlines set forth in the agreement. *Id. at 1*.
- 17 Qwest and the settling CLECs enter into the Settlement Agreement to avoid the costs and resource constraints of litigating the issues, and to resolve the disputes in a way that will not sacrifice the CLECs' ability to provide quality service to their end user customers. *CLEC Narrative, ¶ 5; Qwest Narrative, ¶ 5*. While the CLECs may have advocated different positions if the issues were to proceed to a hearing, the CLECs assert that public policy favors mutual resolution of disputes that provide administrative efficiencies and yet remain consistent with the law and public policy. *CLEC Narrative, ¶4*. Qwest and the settling CLECs assert that the modifications to Exhibits B, B-1, and K of the Washington SGAT will be implemented earlier due to the Settlement Agreement than if the parties continued to litigate the issues in this proceeding. *Qwest Narrative, ¶ 6; CLEC Narrative, ¶ 6*.
- 18 The Settlement Agreement provides that the parties will submit and recommend to other commissions in Qwest's 14-state region the agreements reached in the Settlement Agreement. *Settlement Agreement at 2*. The settling parties assert that this regional effort will avoid the expense and time of litigation throughout Qwest's region. *CLEC Narrative, ¶ 5*.

- 19 The settling CLECs assert that the Settlement Agreement furthers the goals the Commission established when adopting the existing PIDs and the QPAP. *CLEC Narrative, ¶ 6*. The CLECs and Qwest assert that the Settlement Agreement is consistent with the Federal Telecommunications Act of 1996 and the Commission's prior orders concerning the QPAP. *CLEC Narrative, ¶ 4; Qwest Narrative, ¶ 4*. Qwest also asserts that the parties submit the proposed changes to Exhibit K pursuant to Section 6.1 of the QPAP. *Qwest Narrative, ¶ 6*. Qwest asserts that the Settlement Agreement is consistent with the Commission's guiding principle in approving the QPAP: The preservation of competition, *i.e.*, the prevention of backsliding by Qwest in opening the markets to competition, after Qwest's entry into the long distance business. *Id.*
- 20 In its narrative description of the Settlement Agreement, Qwest describes each substantive provision of the Settlement Agreement and asserts that the provisions meet the Commission's guiding principle under the QPAP. Providing standards for line splitting, loop splitting, and x-DSL I will allow Qwest's performance under these products to be appropriately measured and reported. *Id.* Qwest asserts that the terms for implementing expanded PID PO-20 meet these principles, as PID PO-20 is given a Tier 1 medium assignment for payment like most other Pre-Order / Order measurements, and is not given a Tier 2 assignment. *Id.* Qwest asserts that the resolution is appropriate because the settling parties have reached a compromise on the issues. *Id.* Qwest asserts that the resolution of the issues of a burn-in period and low volume relief are consistent with the determination of the Colorado Commission. *Id.* Finally, Qwest asserts that the resolution on aggregate reporting satisfies the CLECs' request for such information. *Id.*

- 21 **Discussion and Decision.** Based on the information provided in the Settlement Agreement, accompanying narrative statements by Qwest and the settling CLECs, Staff's statement of position, and the parties' statements during the September 8, 2004, prehearing conference, the Commission finds pursuant to WAC 480-07-740(1)(d) that a settlement hearing would not assist it in determining whether to approve the proposed settlement agreement. The ultimate determination to be made by the Commission in this proceeding is whether approving the settlement agreement is "lawful, the settlement terms are supported by an appropriate record, and [whether] the result is consistent with the public interest in light of all the information available to the commission." *WAC 480-07-750(1)*.
- 22 As described above, Qwest and the settling CLECs resolved issues concerning whether to include line splitting, loop splitting, and x-DSL products to certain performance measures, and if so, what standards would apply. They agreed that a low-volume exception to QPAP payments should not apply to the line splitting product measured by PID OP-3. Qwest and the settling CLECs resolved their disputes concerning how to implement the new PID PO-20 into Exhibits B and K to the SGAT, and Qwest has agreed to publish reports of its aggregate payments to CLECs under the QPAP. While the parties may have pursued a different result in litigation, the compromises reached in the Settlement Agreement are reasonable and in the public interest.
- 23 Staff supports approval of the Settlement Agreement, seeking only the opportunity to address independently of the Settlement Agreement the issue of whether the Commission should assign a Tier 2 payment for PID PO-20. Qwest and the settling CLECs concur in Staff's request, and the Settlement Agreement, narrative statements, and statements during the September 8, 2004, prehearing conference support this resolution. This issue will be addressed separately

pursuant to the procedural schedule set forth in Order No. 09 in the six-month review proceeding.

- 24 In order to implement the provisions of the Settlement Agreement, Qwest agrees to seek expeditious approval of modifications to SGAT Exhibits B, B-1, and K. These modifications are addressed below in Section B of this Order.
- 25 The Settlement Agreement is consistent with the goals of Section 271 of the Telecommunications Act of 1996 and the Commission's orders approving Qwest's QPAP in Washington state. The Settlement Agreement is in the public interest, as it reduces the expense, uncertainty and delay of litigation, not only in this state, but also throughout Qwest's 14-state region. More importantly, the Settlement Agreement adds products to performance measurements with accompanying standards, and provides for reporting of Qwest's performance in providing services and products to competitors, with the incentive to avoid payments to CLECs for missing these performance measurements. The Settlement Agreement also provides information the CLECs requested from Qwest concerning aggregate reporting of Qwest's overall performance under the performance measures to all CLECs.
- 26 The information provided in the Settlement Agreement, accompanying narrative statement, and the record in the six-month review proceeding support the agreements reached in the settlement as well as the Commission's approval of the Settlement Agreement. The parties expressed the basis and justification for the settlement in the agreement itself, the narrative statements, and statements by the parties in the September 8, 2004, prehearing conference.
- 27 Based on the record developed in the six-month review proceeding, we find that, with the exception of the question of whether to assign a Tier 2 payment to PID

PO-20, the issues pending in Docket No. UT-043007 are adequately addressed and resolved by the terms of the Settlement Agreement. Under these circumstances, we are satisfied that the Settlement Agreement is lawful, appropriate, and consistent with the public interest. We approve and adopt the Settlement Agreement as full and final resolution of all issues pending in this proceeding, except the issue concerning the PO-20 Tier 2 assignment. This issue will be addressed separately through the procedural schedule adopted in Order No. 09 in the six-month review proceeding.

B. QWEST'S PROPOSED SGAT CHANGES

28 Qwest's August 27, 2004, filing to modify the Washington SGAT requests modifications to Exhibits B and K, and deletion of Exhibit B-1 to the SGAT. *Qwest's Notice at 1.* Qwest asserts that the requested changes result, in part, from work during Long Term PID Administration (LTPA)¹ collaborative sessions as well as agreements reached between Qwest and the settling CLECs set forth in the Settlement Agreement discussed above in this Order. *Id. at 1-2.* Specifically, the modifications include implementing specific provisions of the Settlement Agreement, including adding the expanded PID PO-20 to SGAT Exhibit K, deleting Exhibit B-1, which contains the old PID PO-20, from the SGAT, and removing references in Exhibit K to the older version of PID PO-20. *Id. at 2.*

29 Qwest requests that the Commission enter an order allowing the proposed changes to SGAT Exhibits B, B-1, and K to become effective no later than October 1, 2004.

¹ The LTPA collaborative is a regional collaborative effort by Qwest, CLECs, and state commission staff to refine and develop the PIDs used to assess Qwest's performance in opening the local exchange market to competition.

- 30 Exhibit B to the SGAT comprises Qwest's Service Performance Indicator Definitions, or PIDs. Qwest's filing in these dockets replaces the current 14-State 271 PID Version 7.1 with Version 8.0. This new version of Exhibit B is modified to implement the provisions of the Settlement Agreement relating to line splitting, loop splitting, and x-DSL. Specifically, Exhibit B is modified to:
- Adopt a standard of parity with Qwest DSL for line splitting under PIDs MR-3, MR-4, MR-6, and OP-5A;
 - Include loop splitting as a separately reported product under PIDs PO-5, OP-3 through OP-6, OP-15, MR-3, MR-4, and MR-6 through MR-8, with a diagnostic standard; and
 - Adopt certain standards for the x-DSL product, *i.e.*, a standard of 90% for PID OP-3; a standard of six business days for PID OP-4; a standard of parity with Qwest DSL for PID OP-5A; a diagnostic standard for PIDS OP-5B, OP-5R and OP-5T; a standard of parity with Qwest IDSL with dispatch for PID OP-6; a standard of parity with Qwest IDSL for PIDs MR-3, MR-4, MR-6 and MR-8; and a diagnostic standard for PID MR-10.
- 31 The Commission approved an earlier version of PID PO-20 in Exhibit B-1 to the Washington SGAT on December 13, 2002, in the 45th Supplemental Order in Docket Nos. UT-003022 and UT-003040. On July 30, 2004, the Commission approved the new expanded PID PO-20 in Exhibit B in Order No. 07 in Docket No. UT-043007 and Order No. 01 in Docket No. UT-043068. Qwest proposes in its August 27, 2004, filing to eliminate Exhibit B-1 from the SGAT, eliminate provisions in Exhibit K relating to the old PID PO-20, and add provisions in Exhibit K to reflect the new expanded PID PO-20, consistent with the Settlement Agreement. *Id. at 2.*
- 32 Exhibit K to the SGAT is Qwest's Performance Assurance Plan, or QPAP. Qwest proposes modifications to Exhibit K to designate the expanded PID PO-20 as a

measure with Tier 1 Medium payments and no Tier 2 payments, establish a low-volume differentiated benchmark for PID PO-20, and allow measurement stabilization for PID PO-20 for a three-month period prior to each implementation phase. *Id. at 4.* Qwest explains that this will allow Qwest to make any required payments during the three-month burn-in period for PID PO-20 based upon the standard for the prior phase, but under the standard in Exhibit B-1 for the first phase of implementation. *Id.*

33 The performance measure will be implemented in four phases. *Id. at 4.* Qwest asserts that any required payments will be made under the existing Exhibit B-1 ending with July 2004 data reported in August 2004. *Id. at 3.* The revisions to the QPAP will apply to Phase 1 beginning with August 2004 data reported in October 2004 on an ongoing basis. *Id. at 4.* In Phase 1, reporting will occur on the existing PID PO-20 in Exhibit B-1, as well as on the new PID PO-20 in Exhibit B, version 7.1. *Id. at 3.* Three months after the implementation of Phase 2, the QPAP will apply to both Phase 1 and Phase 2 on an ongoing basis. *Id. at 4.*

34 During the September 8, 2004, prehearing conference, Eschelon raised three concerns with Qwest's proposed changes to Exhibit K. First, Eschelon expressed concern that Qwest proposes to remove language in Section 7.4 of Exhibit K relating to per-measurement Tier 2 payments for the old PID PO-20, and that such a proposal is contrary to the terms of the Settlement Agreement and accompanying narratives. Specifically, the settling CLECs state that they do not request a Tier 2 designation for PO-20, and if they have done so, they withdraw that request. *CLEC Narrative, ¶ 4.*

35 Second, Eschelon asserts that, while Qwest has committed in the Settlement Agreement to publishing the aggregate reporting of performance for CLECs, Qwest has not included any language in Exhibit K to document that agreement.

- 36 Finally, Eschelon, asserts that footnote c of Attachment 1 to Exhibit K regarding the burn-in or stabilization period for PID PO-20 mentions only when Qwest does not have to make payments, and should include language regarding when Qwest must make payments.
- 37 During the conference, Staff stated that Exhibit K would be clearer if language were added to Section 13 or Section 14.5 to reflect the agreement on aggregate reporting, but does not object to Qwest's proposed changes in Exhibit K to remove language in Section 7.4 concerning Tier 2 payments for PID PO-2, or the language in footnote c of Attachment 1. Eschelon agreed during the conference to defer to Staff on the issue of language regarding Tier 2 payments.
- 38 Qwest asserted that the terms of the Settlement Agreement require removal of language in Section 7.4 relating to per-measurement Tier 2 payments for PID PO-20, and that Staff may raise separately the issue of requiring per-occurrence Tier 2 payments. Qwest stated that it does not believe it is necessary to memorialize in Exhibit K the agreement regarding aggregate reporting. Qwest also asserted that the language in footnote c is sufficient: Section 6 of Exhibit K imposes the requirement to make payments during the burn-in period for PID PO-20, while the exceptions to that requirement are noted in footnote c.
- 39 **Discussion and Decision.** Qwest's proposed changes to SGAT Exhibit B, version 8.0, Exhibit K, and the proposal to delete Exhibit B-1, were a result of discussions during the LTPA collaborative process as well as the Settlement Agreement between Qwest and the settling CLECs. All parties to Docket No. UT-043007 agree with the proposed changes, except for the language in Qwest's proposed footnote c in Attachment 1 to Exhibit K, and the lack of language in Exhibit K memorializing the parties' agreement concerning aggregate reporting.

- 40 Qwest's proposed changes to Exhibit B, which include the agreements relating to adding line splitting, loop splitting and x-DSL to various PIDs, as well as standards for these products, are not contested by any party and are reasonable. The inclusion of additional products and standards in the PIDs will allow Qwest, the CLECs and the Commission to measure whether Qwest is continuing to open the local market to competition, and will require payments in the event Qwest does not meet the performance standards. The Commission approves the proposed changes to Exhibit B.
- 41 Qwest's proposal to delete or eliminate Exhibit B-1 to the Washington SGAT is reasonable. The Commission has approved the inclusion of a new expanded PID PO-20 in Exhibit B. Qwest has requested, as a part of the August 27, 2004, proposed SGAT changes, approval of provisions to implement the new expanded PID PO-20 in Exhibit K. No party objects to the deletion or elimination of Exhibit B-1 to the Washington SGAT. Given that deleting Exhibit B-1 is an administrative change and does not result in removing a performance measure from Exhibit B or Exhibit K, the Commission approves the proposal to delete Exhibit B-1 from the Washington SGAT.
- 42 Qwest's proposed changes to Exhibit K, the QPAP, relate solely to implementing the resolution in the Settlement Agreement of Issues 4 and 5 concerning the new expanded PID PO-20. Specifically, Qwest modifies Exhibit K to include Tier 1 Medium payments for the PID in Attachment 1 to Exhibit K, removes references in Section 7.4 for Tier 2 payments, and includes footnote c in Attachment 1 to reflect the agreement on the burn in period and low volume exception.
- 43 The only disagreement between the parties over the proposed changes to Exhibit K concerns language in footnote c to Attachment 1 addressing the burn-in or

stabilization period, and Eschelon's concern over the lack of language in Exhibit K reflecting the agreement on aggregate reporting.

- 44 Upon review, Qwest's proposed footnote c in Attachment 1 to Exhibit K creates an ambiguity concerning Qwest's obligations to make Tier 1 payments during the burn-in period. Section 4-D of the Settlement Agreement provides that "payments are not required for 'misses' in the Phase being 'burned in,' but payments are required for 'misses' that exceed the applicable benchmark in the previous Phase and that are reported based on the PID requirements for the previous phase." *Settlement Agreement at 4-5*. The portion of footnote c addressing the stabilization or burn-in period provides "For each phase beginning with Phase 1, there will be no more than a 3-month measurement stabilization period for all fields introduced in that phase. Performance results that include all such fields are not subject o payments during the measurement stabilization period."
- 45 Qwest asserts that the obligation for payment during the burn-in period is set forth in Section 6 of Exhibit K. Section 6.1 of Exhibit K states that "Tier 1 payments to CLEC shall be made solely for the performance measurements designated as Tier 1 on Attachment 1." PID PO-20 is included in the revised Attachment 1 as subject to Tier 1 Medium Per-Occurrence payments, but there is no other reference in Exhibit K to payments during the burn-in period. The provisions of PID PO-20 in Exhibit B do not establish the payment requirements for the burn-in period, but merely establish the phases of implementation, the products and fields that apply in each phase, and the standard to be applied. Qwest must modify the language in footnote c of Attachment 1 to Exhibit K to more closely mirror the provisions of the Settlement Agreement.

- 46 Qwest's proposed changes to Exhibit K do not include language implementing the provisions of the Settlement Agreement in which Qwest agrees to publish on Qwest's website for each state the payment report by major PID category that Qwest currently files with each state Commission for that state and to make available a report similar to that which it provides individual CLECs in Tab 2 of the CLEC payment report showing QPAP payments at the PID/Product submeasure level, and totaling the payments for the state for each submeasure and/or product. Qwest asserts that language implementing this agreement is not necessary, while Eschelon and Staff assert that it would be clearer if there were language in Section 13 or a new Section 14.5 documenting the agreement.
- 47 Section 13 of Exhibit K addresses limitations on the obligations in the QPAP, while Section 14 addresses reporting requirements. If language were included in Exhibit K to document the agreement, it should be included as a new Section 14.5 rather than in Section 13. Given Qwest's commitment in the Settlement Agreement to provide aggregate reporting, the presence of the agreement in a written settlement, and the Commission's approval of the Settlement Agreement in this Order, it does not appear necessary at this time to include a new Section 14.5 in Exhibit K to document the agreement. This decision does not foreclose the parties from seeking, at a later time, inclusion of a new Section 14.5 in Exhibit K documenting the agreement.
- 48 Qwest must file within 30 days of the service date of this Order a new version of the Qwest Washington SGAT Eighth Revision, Sixth Amended Exhibit K, modifying the language in footnote c of Attachment 1 to clarify Qwest's payment obligations during the burn-in period of each phase to implement PID PO-20.
- 49 The Commission approves the August 27, 2004, proposed changes to SGAT Exhibits B and B-1, and approves the proposed changes to Exhibit K, except for

the language in footnote c of Attachment 1 relating to the stabilization period. The modifications to SGAT Exhibits B, B-1, and K modify existing interconnection agreements that currently contain Exhibits B, B-1, and K as exhibits. Qwest posts PID changes to its website for performance information, and notifies all LTPA participants of changes made to Exhibits B, B-1, and K. Consistent with prior SGAT filings, all existing interconnection agreements that currently contain Exhibits B, B-1, and K as exhibits should be modified to include the August 27, 2004, proposed changes to SGAT Exhibit B, B-1, and K as approved in this Order.

FINDINGS OF FACT

50 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.

51 (1) Qwest Corporation is a Bell operating company within the definition of 47 U.S.C. § 153(4), and incumbent Local Exchange Company, or ILEC, providing local exchange telecommunications service to the public for compensation within the state of Washington.

52 (2) Covad Communications Company, Eschelon Telecom, Inc., and WorldCom, Inc., d/b/a MCI, Inc., are local exchange carriers within the definition of 47 U.S.C. § 153(26), providing local exchange telecommunications service to the public for compensation within the

state of Washington, or are classified as competitive telecommunications companies under RCW 80.36.310 - .330.

- 53 (3) The Washington Utilities and Transportation 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.
- 54 (4) On August 27, 2004, Qwest Corporation, Covad Communications Company, Eschelon Telecom, Inc., and WorldCom, Inc., d/b/a MCI, Inc., filed with the Commission a Settlement of Disputed Issues (Settlement Agreement) that resolves all issues in Docket No. UT-043007 between the settling parties.
- 55 (5) Also on August 27, 2004, Qwest Corporation filed a Notice of Deletion of Exhibit B-1 and Modifications to Exhibit B and Exhibit K to the Statement of Generally Available Terms and Conditions in Docket No. UT-043088.
- 56 (6) Staff supports the Settlement Agreement except to the extent it proposes to eliminate Tier 2 payments for PID PO-20. Staff does not object to the removal of language relating to per-measurement Tier 2 payments for PID PO-20 in Section 7.4 of Exhibit K, as proposed in Qwest Corporation's August 27, 2004, filing.
- 57 (7) The Settlement Agreement allows for Staff to raise the issue of Tier 2 payments for PID PO-20 independent of the settlement, and the

Commission has established a procedural schedule to address this remaining issue in Docket No. UT-043007.

- 58 (8) Eschelon Telecom, Inc., objects to language in footnote c of Attachment 1 to Exhibit K, as proposed by Qwest Corporation, and objects to the omission of language in Exhibit K to document the provision in the Settlement Agreement concerning aggregate reporting.

CONCLUSIONS OF LAW

59 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.

- 60 (1) The Commission has jurisdiction over the subject matter of this proceeding and the parties to the proceeding.
- 61 (2) The Settlement Agreement between Qwest Corporation, Covad Communications Company, Eschelon Telecom, Inc., and WorldCom, Inc., d/b/a MCI, Inc., is consistent with the Telecommunications Act of 1996 and the Commission's orders approving Qwest's Performance Assurance Plan.
- 62 (3) The Settlement Agreement is in the public interest, as it reduces the expense, uncertainty and delay of litigation, not only in this state, but also throughout Qwest Corporation's 14-state region. More importantly, the Settlement Agreement adds products to performance measurements with

accompanying standards, and provides for reporting of Qwest Corporation's performance in providing services and products to competitors, with the incentive to avoid payments to CLECs for failing to meet these performance measurements.

- 63 (4) 47 U.S.C. 252(f) requires Bell operating companies to file with state commissions a statement of generally available terms and conditions and authorizes state commission review of, and action on, the filing no later than 60 days after the filing date.
- 64 (5) The modifications to Exhibit B to Qwest Corporation's Statement of Generally Available Terms and Conditions, as filed by Qwest Corporation on August 27, 2004, are reasonable as they will allow Qwest Corporation, CLECs and the Commission to measure whether Qwest Corporation is continuing to open the local market to competition, and will require payments in the event Qwest Corporation does not meet the performance standards.
- 65 (6) The deletion of Exhibit B-1 to Qwest Corporation's Statement of Generally Available Terms and Conditions, as filed by Qwest Corporation on August 27, 2004, is reasonable as deleting the exhibit is an administrative change and does not result in removing a performance measure from Exhibit B or Exhibit K to the Statement of Generally Available Terms and Conditions.
- 66 (7) With the exception of language in footnote c of Attachment 1 to Exhibit K, the modifications to Exhibit K to Qwest Corporation's Statement of Generally Available Terms and Conditions, as filed by Qwest Corporation

on August 27, 2004, implement the terms of the Settlement Agreement concerning PID PO-20, and are reasonable.

- 67 (8) It is not necessary to include a new Section 14.5 in Exhibit K of the Statement of Generally Available Terms and Conditions to memorialize the provision of the Settlement Agreement to provide aggregate reporting, as Qwest Corporation's commitment to provide aggregate reporting is set forth in a written settlement, and the reporting is required by the terms of this Order approving the Settlement Agreement.

ORDER

THE COMMISSION ORDERS:

- 68 (1) The Settlement Agreement between Qwest Corporation, Covad Communications Company, Eschelon Telecom, Inc., and WorldCom, Inc., d/b/a MCI, Inc., is approved and adopted as a complete resolution of issues between Qwest Corporation, Covad Communications Company, Eschelon Telecom, Inc., and WorldCom, Inc., d/b/a MCI, Inc., in Docket No. UT-043007.
- 69 (2) Qwest Corporation's request to modify Exhibit B to the Statement of Generally Available Terms and Conditions, as filed on August 27, 2004, is approved as the Sixth Amended Exhibit B.
- 70 (3) All existing interconnection agreements that currently contain Exhibit B as an exhibit are modified to include the Sixth Amended Exhibit B.

- 71 (4) Qwest Corporation's request to delete Exhibit B-1 to the Statement of Generally Available Terms and Conditions, as filed on August 27, 2004, is approved.
- 72 (5) All existing interconnection agreements that currently contain Exhibit B-1 as an exhibit are modified to delete the exhibit.
- 73 (6) Qwest Corporation's request to modify Exhibit K to the Statement of Generally Available Terms and Conditions, as filed on August 27, 2004, is approved as the Sixth Amended Exhibit K, except for the portion of footnote c to Attachment 1 of Exhibit K relating to stabilization periods for implementing PID PO-20.
- 74 (7) Qwest Corporation must file within 30 days of the service date of this Order an original and one copy of the Qwest Washington SGAT Eighth Revision, Sixth Amended Exhibit K, modifying the language in footnote c of Attachment 1 to clarify Qwest's payment obligations during the burn-in period of each phase to implement PID PO-20.
- 75 (8) All existing interconnection agreements that currently contain Exhibit K as an exhibit are modified to include the Sixth Amended Exhibit, as approved by the Commission in this Order.

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- 76 (9) The Commission retains jurisdiction over the subject matter and Qwest Corporation to effectuate the provisions of this Order.

DATED at Olympia, Washington, and effective this 17th day of September, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner