

Exhibit T-\_\_\_ (TLS-9T )  
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 )  
Assurance Plan )  
 )  
 )  
\_\_\_\_\_ )

DOCKET NO. UT-043007

TESTIMONY OF

THOMAS L. SPINKS

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION STAFF

November 8, 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. Have you previously filed testimony in this proceeding?**

11 A. Yes, I filed direct testimony on October 5, 2004.

12

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

14 A. The purpose of my testimony is to reply to the response testimony of Qwest  
15 witness Mr. Mark Reynolds.

16

17 **Q. On page 4, line 11 through page 5 line 18, Mr. Reynolds states that Qwest**  
18 **and the CLECs had agreed to a Tier I payment designation, the CLECs**  
19 **agreed not to pursue a Tier II designation, and that point is important**  
20 **because it means that the CLECs believe the lack of a Tier II payment**  
21 **designation would not hamper their ability to compete. Do you agree?**

1 A. No. I believe the CLECs did not consider the question of a Tier II payment  
2 designation to be “their” issue to advocate for or against in the context of the  
3 settlement discussions.

4  
5 **Q. What support does Staff rely upon for that opinion?**

6 A. During the prehearing conference on the settlement, Ms. Clausen, on behalf  
7 of Eschelon, stated in regard to the PO-20 issue that Tier II payments were  
8 “still an open issue.” (Tr. 115, lines 6-8.) Clearly the CLECs themselves did  
9 not see the settlement as including any disposition of the PO-20 Tier II issue.

10

11 **Q. On page 13, lines 17 - 19, Mr. Reynolds states that “The CLECs should be**  
12 **presumed to know best as between themselves and Staff, how to represent**  
13 **their interests before the Commission on what QPAP payment**  
14 **opportunities are necessary for them to compete.” Please comment.**

15 A. Staff does not believe that the three CLECs that were parties to the settlement  
16 intended for themselves to represent the 137 CLECs registered in the state of  
17 Washington. Rather, staff believes that each CLEC that was a party to the  
18 settlement was acting in its own self-interest. CLECs receive no direct benefit  
19 from Tier II payments and obviously did not believe that issue needed to be  
20 resolved for them to move forward with a settlement that addressed their  
21 more fundamental concerns. Staff is not “independently pursuing the issue”  
22 as Qwest asserts. Staff’s view is that we are pursuing the FCC and state’s

1 interests in ensuring that there are performance monitoring and enforcement  
2 mechanisms in place that would, in combination with other factors, provide  
3 strong assurance that the local market will remain open after the BOC  
4 receives section 271 authorization. (See Thirtieth Supplemental Order at ¶6.)

5  
6 **Q. On page 7, line 14 through page 9, line 8, Mr. Reynolds discusses the**  
7 **Department of Justice quote from your direct testimony and states that the**  
8 **DOJ's comments provide no support for Mr. Spinks' advocacy in the case.**  
9 **Please comment.**

10 **A.** The DOJ's comments on Qwest's first 271 application, as they regard manual  
11 service order accuracy, were included in my testimony to provide support  
12 for the proposition manual service order accuracy is important to a CLEC's  
13 ability to compete. The DOJ looked at many factors assessing RBOC 271  
14 applications and did not weigh in on many issues. Rather, it brought to the  
15 attention of the FCC most important areas where it believed a RBOC fell  
16 short. When the DOJ stated in its comments that "The lack of regularly  
17 reported commercial data on manual accuracy renders the record  
18 incomplete", staff believes the DOJ was expressing a concern regarding the  
19 ability to detect and sanction poor performance as it occurred, one of the  
20 criteria articulated by the FCC in assessing RBOC 271 applications. The  
21 development of PO-20 addressed the ability to detect poor performance and

1 its inclusion in the QPAP as a Tier II measure addressed the sanctioning of  
2 poor performance.

3

4 **Q. On page 5, line 19 through page 6, line 5, Mr. Reynolds states that none of**  
5 **your testimony or exhibits provides any supporting documentation or**  
6 **rationale regarding any type of payment designation for PO-20 -**  
7 **Expanded. Do you agree?**

8 **A.** No. I believe my testimony clearly establishes that manual service order  
9 accuracy is important to a CLEC's ability to compete and that conclusion is  
10 not based on my opinion but rather the statements and actions of the test  
11 vendors, Department of Justice, CLECs themselves, the FCC and this  
12 Commission during the Qwest 271 proceeding. The selection of measures  
13 for inclusion in Tier II is a subjective process. The initial Tier II measures  
14 were essentially arrived at through a consensus process. In the Thirtieth  
15 Supplemental order the Commission found that the PO-2B - Electronic Flow  
16 Through measure should also be included in the QPAP as a Tier II measure  
17 because of its perceived importance on a CLECs ability to compete. In this  
18 instance, the history of the development of this measure shown in my direct  
19 testimony and the LTPA discussions by CLECs regarding their perception of  
20 the impact of manual service order errors on their ability to conduct business  
21 lead staff to conclude that PO-20 also rises to the level of importance  
22 sufficient to have it included in the QPAP as a Tier II measure.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

**Q. On page 9, lines 3 - 19, Mr. Reynolds states that Staff omitted important material regarding Eschelon's discussion of UNE-P errors that is significant to a CLEC's ability to compete. Please comment.**

**A.** Mr. Reynold's discusses Eschelon's pre-order review process and notes that it prevents Qwest errors from having an impact on a customer's service. To Staff's knowledge, Eschelon is the only CLEC in Washington that has such a process. More importantly, his comment raises the question of whether the way to address errors made by Qwest is for all 137 CLECs operating in Washington to incur the added cost of creating such a pre-order review process or whether Qwest should be given sufficient incentive to minimize errors through the operation of a QPAP that acts as a strong and effective deterrent to the benefit of all CLECs operating in Washington.

**Q. Mr. Reynold's concludes his testimony by saying that Qwest is likely to be reticent to try to reach agreements with the CLECs on issues if it is concerned that it will need to later litigate the same issues with Staff. Please comment.**

**A.** Staff was invited to participate in the settlement discussion but could not meet on the proposed date due to a prior commitment. The parties went ahead with the discussion on that date and reached a settlement. Staff fully supported that agreement. Although Qwest says that the settlement included resolution of the Tier II payment designation for PO-20, the CLECs

1 believe the issue was not addressed in the settlement and was “still an open  
2 issue.” Staff has no direct knowledge of the matter since it was not a party to  
3 the discussion. Staff does not believe that our advocacy on the Tier  
4 designation for PO-20 is inappropriate or represents an issue that had been  
5 settled by Qwest and the CLECs.

6

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

8 **A. Yes.**