

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

INITIAL BRIEF OF
COMMISSION STAFF

I. INTRODUCTION

1

At issue in this proceeding is whether the PO-20 Manual Service Order Accuracy performance indicator (PID) in the Qwest Performance Assurance Plan (QPAP) should be designated as a Tier II measure. The QPAP was developed in conjunction with Qwest's entry into the long-distance market under section 271 of the 1996 federal Telecommunications Act ("the Act"), to ensure Qwest's continuing compliance with the Act's requirements opening local markets to competition. Commission Staff recommends that PO-20 be subject to Tier II Medium level payments (i.e., payments made to the State) under the QPAP because, as both this Commission and the U.S. Department of Justice have recognized, manual service order accuracy is highly important to CLECs' ability to compete in Washington.

The evidence submitted by Staff witness Thomas Spinks strongly substantiates this conclusion, and supports Staff's recommendation for a Tier II medium designation, consistent with the Commission's criteria set forth in the Thirtieth Supplemental Order in Docket No. UT-003022.¹

2 Qwest's arguments do not undermine this conclusion in any way. The fact that the PO-20 Expanded PID now qualifies for Tier I payments (i.e., payments made to the CLECs) does not mean that Tier II payments are inappropriate; to the contrary, sixteen of the twenty-five PIDs in the QPAP currently subject to Tier I payments also are subject to Tier II payments. Nor does the fact that three CLECs in this docket agreed to Tier I payments for PO-20—in a settlement that did not include the participation of Commission Staff to represent the interests of the State—preclude Tier II payments. Indeed, counsel for CLEC Eschelon agreed that the settlement did *not* resolve this question, and that from their standpoint, this remains an open issue.

3 Finally, Qwest may argue that it has recently improved its manual service order accuracy. Staff does not dispute this. Indeed, Mr. Spinks noted that Qwest has met or exceeded the benchmark standards for the new PO-20 expanded measure for the last three months in Washington. But this is irrelevant to the

¹ Docket Nos. UT-003022 and UT-003040, *In the Matter of the Investigation Into US West Communications, Inc.'s Compliance With Section 271 of the Telecommunications Act of 1996*, Thirtieth Supplemental Order, ¶ 80 (April __, 2002).

question presented here: whether the Commission should adopt a Tier II designation for P0-20, to help ensure that Qwest has sufficient incentive to continue providing good service to the CLECs and not backslide, which would significantly harm competition in Washington in the future. The Commission should do so.

II. ARGUMENT

A. **The Commission's acceptance of the settlement agreement in this case did not "decide" the issue of whether PO-20 should be subject to Tier II payments.**

4 Qwest appears to argue, in the testimony of its witness Mr. Reynolds, that the settlement agreement it entered into with the CLECs has somehow already decided the issue of whether the PO-20 PID should be subject to Tier II payments. This suggestion must be rejected. First, Staff was not a signatory party to the agreement; and only Staff, among the parties who participated in the settlement discussions, represents the interests of the State of Washington in this proceeding. Among the interests of paramount importance is ensuring that effective competition not be stifled by insufficient remedial measures in the QPAP. Staff is pursuing the both the FCC's and the State's interests in ensuring that "there are performance monitoring and enforcement mechanisms in place that would, 'in combination with other factors, provide strong assurance that the local market will remain open after [the BOC] receives section 271 authorization.'" Docket No UT-003022, *supra*, Thirtieth Supplemental Order, ¶ 6 (citing *In the Matter of Application of*

Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, Memorandum Opinion and Order, CC Docket No. 99-295, FCC 00-404, ¶ 18 (rel. Dec. 22, 1999)).

5 Second, the settlement agreement was entered into by only three of the 137 CLECs that operate in Washington. Qwest certainly cannot say, as Mr. Reynolds acknowledged, that the interests of those three CLECs are the same as the interests of all of the other CLECs operating in this state. TR 205-06. These three CLECs may have concluded, based on their individual interest, that they would be satisfied by Tier I payments alone. This does not mean, however, that the overall competitive market in Washington will not be best ensured by a structure involving both Tier I and Tier II payments (as is the case with sixteen other PIDs in the QPAP.)

6 Third, and quite significantly, it is evident that the settling parties did *not* view the settlement agreement as “deciding” the issue of Tier II payments. Eschelon’s attorney, at the prehearing conference in this matter, flatly stated that the company viewed the question as “still an open issue.” TR 115. In other words, while the CLECs agreed to a Tier I designation, they were fully aware that Staff did not share the view that Tier I payments alone are sufficient, and the settlement agreement is neither inconsistent with nor precludes the inclusion of Tier II payments as well.

B. The Commission has held that Tier II payments are required for PIDs that are important to CLECs' ability to compete in Washington.

7 In the Thirtieth Supplemental Order in Docket UT-003022, the Commission stated, "The QPAP is intended to be a self-executing remedy plan to ensure Qwest's continued compliance with the requirements of Section 271 should the FCC grant an application by Qwest to provide in-region, interLATA service in Washington State." The QPAP is a two-tiered plan, under which Qwest must make payments to CLECs (Tier I payments) or to the state (Tier II payments), or to both CLECs and the state, when Qwest fails to meet certain parity standards or benchmarks. *Id.* at ¶¶ 20-21. Significantly, Tier I and Tier II payments are not mutually exclusive.

As the Commission noted:

Certain performance measures are subject to Tier 2 payments because the performance results are only available on a regional basis, such as Gateway Availability. CLECs receive no payment when Qwest fails to meet these performance standards. *Other performance measures that are subject to individual CLEC payment are also subject to Tier 2 payments because of their importance to the CLECs' ability to compete. These measures are referred to as Tier 2 measures having Tier 1 counterparts.*

Id. at ¶ 80. (Emphasis added.)

8 In the current QPAP, sixteen out of twenty-five PIDS that are subject to Tier I payments are also subject to Tier II payments. *Exhibit K to the QPAP, Attachment 1.* These PIDS are included not because they are measurable only on a regional basis, but rather, because of their importance to a CLEC's ability to compete.

C. The Commission, the OSS test vendors, the ROC Steering Committee, and the U.S. Department of Justice have all recognized the importance of manual service order accuracy to competition in the local service market.

9 As Staff witness Mr. Spinks sets forth in detail in his testimony, there can be no doubt as to the significance of manual service order accuracy to local service competition in Washington. Mr. Spinks has considerable experience in this area, having represented Staff on the US West Section 271 ROC Steering Committee during the test of Qwest's Operational Support Systems (OSS). During the OSS testing in early 2002, third-party tester KPMG issued Observation 3086, in which it documented numerous occasions where failures during testing occurred due to human error, including errors relating to Qwest's manual handling of orders. Test vendors Hewlett-Packard and Liberty also issued observations relating to manual entry errors. (Exhibit T-1 at 2, 7.) KPMG stated:

The inadequacy of Qwest's ISC [Interconnect Service Center] and SDC [Service Delivery Coordinator] personnel training may impede a CLEC's ability to obtain consistent and effective assistance, thereby negatively impacting its ability to conduct business operations.

(Exhibit 3, at 2). The ROC Steering committee also expressed concerns that the performance reports provided by Qwest did not adequately address human error, and "this weakness will become more of an obstacle to a truly competitive market when the demands of the 271 process are no longer bringing the visibility of the test to these issues." (Exhibit 4.)

10

Because of the concerns raised in these observations, Qwest committed to “develop and present a proposal for new PIDs addressing order accuracy.” (Exhibit 6, at 1.) The United States Department of Justice, in connection with Qwest’s first Section 271 application, also noted the importance of manual service order accuracy to meaningful CLEC competition, and stated that it “remains concerned, however, that there is no process that would permit CLECs and regulators to monitor and maintain adequate performance as volumes increase.” FCC Docket No. 02-148, *In the Matter of Qwest Communications International, Inc. Consolidated Applications for Authority to Provide In-Region, InterLATA Services in Colorado, Idaho, Nebraska, and North Dakota*, Evaluation of the United States Department of Justice (July 23, 2002.)

11

Qwest subsequently implemented an aggregate PO-20 measure and submitted it to this Commission for approval. The Commission noted its concerns, observing that “[t]he issue of manual service order accuracy, and Qwest’s failure to address that issue during the OSS test, were serious enough to cause this Commission to request that the FCC give lesser weight to performance date for measure OP-4.” Docket No. UT 003022, *supra*, Forty-Third Supplemental Order, ¶ 8 (citing the Thirty-Ninth Supplemental Order, ¶ 58). The Commission approved the PO-20 measure, but only:

on condition, however, that Qwest work collaboratively with interested CLECs and other members of the ROC TAG to extensively refine and modify the measure prior to any six-month review at this Commission and that the measure be

subject to extensive review and modification during the six-month review.

Id. at ¶ 9.²

III. CONCLUSION

12 The record of the development of PO-20 makes abundantly clear the importance of manual order accuracy to a CLEC's ability to compete in Washington. Thus, pursuant to the clear standards set forth in the Commission's Thirtieth Supplemental Order in Docket No. UT-003022, the Commission should make PO-20 subject to Tier II payments.

DATED this 7th day of December, 2004.

CHRISTINE O. GREGOIRE
Attorney General

GREGORY J. TRAUTMAN
Assistant Attorney General
Washington Utilities and
Transportation Commission
(360) 664-1187

² The Commission earlier found that electronic order flow-through measure (PO-2b) "is important to a CLEC's ability to compete with Qwest," and ordered that it be subject to Tier II high payments. Docket No. UT-003022, *supra*, at ¶ 129. Manual service order accuracy is of this same high importance.