

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

In the Matter of the Investigation Into	)	DOCKET NO. UT-003022
	)	
U S WEST COMMUNICATIONS, INC.'s	)	
	)	
Compliance With Section 271 of the Telecommunications Act of 1996 .....	)	
	)	
In the Matter of	)	DOCKET NO. UT-003040
	)	
U S WEST COMMUNICATIONS, INC.'s	)	47 <sup>TH</sup> SUPPLEMENTAL ORDER; DIRECTING PARTICIPATION IN MULTI- STATE COLLABORATIVE
	)	
Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996 .....	)	
	)	
In the Matter of the Six-Month Review of	)	DOCKET NO. UT-033020
	)	
QWEST CORPORATION'S	)	ORDER NO. 01
	)	
Performance Assurance Plan .....	)	ORDER DIRECTING PARTICIPATION IN MULTI- STATE COLLABORATIVE; NOTICE OF PREHEARING CONFERENCE <b>(Set for September 25, 2003)</b>

1 **Synopsis.** *In this Order, the Commission directs Commission Staff to participate in the Regional Oversight Committee's ad hoc multi-state collaborative concerning Qwest's performance measures, referred to as the Long-Term PID Administration (LTPA)*

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*collaborative. The Commission directs funding for Washington State's participation in the multi-state collaborative to come from the state Public Service Revolving Fund. The Commission establishes a prehearing conference in Docket No. UT-033020 to begin preparations for the Commission's six-month review proceeding of Qwest's Performance Assurance Plan.*

**I. INTRODUCTION**

2 **Proceeding.** In consolidated Docket Nos. UT-003022 and UT-003040, the Washington Utilities and Transportation Commission (Commission) evaluated Qwest Corporation's (Qwest), formerly U S West Communications, Inc., compliance with the requirements of section 271 of the Telecommunications Act of 1996.<sup>1</sup> In addition, the Commission reviewed and approved Qwest's Statement of Generally Available Terms and Conditions (SGAT), and several amendments to the SGAT, pursuant to section 252(f)(2) of the Act. The Commission approved Qwest's Performance Assurance Plan, or QPAP, as Exhibit K to the SGAT. The QPAP is intended to provide incentives for Qwest to continue to satisfy the requirements of section 271 after obtaining approval from the Federal Communications Commission (FCC).

3 In Docket No. UT-033020, the Commission will review certain terms of the QPAP, a review that is required under the terms of the QPAP to occur every six months following the effective date of the QPAP.

4 **Procedural History.** In the 39<sup>th</sup> Supplemental Order in Docket Nos. UT-003022 and UT-003040, the Commission approved the QPAP as Exhibit K to the SGAT. The QPAP provides for payments to competitive local exchange companies (CLECs)

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<sup>1</sup> Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. § 151 *et seq.*

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(Tier 1 payments) and states (Tier 2 payments) each month that Qwest fails to meet certain performance standards, or performance indicator definitions (PIDs). *See QPAP, Sections 2.1 and 2.1.1.*

5 Section 16 of the QPAP provides for a review of the PIDs every six months to determine if any adjustments should be made to performance measures, benchmark or parity standards, or payment structures.

6 During the proceedings in Docket Nos. UT-003022 and UT-003040, Qwest proposed language in the QPAP concerning multi-state six-month reviews, biennial reviews, and audits of performance measures, as well as establishing a special fund to finance such multi-state efforts. In the 30<sup>th</sup> Supplemental Order, the Commission noted that a multi-state, long-term PID administration and review process was under development, and deferred a decision on whether to participate in multi-state six-month reviews, biennial reviews, and audits of performance measures. *See 30<sup>th</sup> Supp. Order, ¶¶ 149, 241.*

7 The Commission also deferred a decision on whether to contribute funds to a special fund to finance the multi-state efforts. *Id., ¶¶ 149, 160.* Specifically, paragraph 162 of the 30<sup>th</sup> Supplemental Order provides that:

Until we determine whether we will participate in any multi-state process, Qwest must modify section 7.5 of the QPAP to reflect that Qwest must maintain an identified escrow account and deposit any payments of Tier 2 funds for Washington State into that account. We will review the proper placement of these funds based upon our decision to participate in a multi-state process.

8 On July 8 2002, Commissioners Bob Rowe of Montana, Ed Garvey of Minnesota, and Marilyn Showalter of Washington, sent a letter to all other Regional Oversight

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Committee<sup>2</sup> (ROC) Commissioners requesting comments on several alternative plans to coordinate PID administration among the ROC states. Representatives from Qwest, various CLECs, and state Commission staff began meeting on an ad hoc basis to develop the Long Term PID Administration (LTPA) collaborative.

- 9 On May 1, 2003, Qwest filed a letter notifying the Commission that Qwest had “established a temporary holding account, i.e., a commercial bank account, with U S Bank National Association” for the deposit of Tier 2 payments due to the State of Washington under the QPAP. In the letter, Qwest also requested that the Commission finalize a Washington Tier 2 Account by accepting Qwest’s proposed Memorandum of Understanding and identifying a “commission appointed designate to manage matters associated with the administration of the Washington Tier 2 Fund.”
- 10 On May 14, 2003, state commission's staff and representatives from Qwest and various CLECs finalized a plan document for the LTPA collaborative. The ad hoc collaborative group then developed a Request for Proposal for a facilitator who will develop a record of the collaborative proceedings, memorialize agreements between parties and manage impasse issues.
- 11 On May 15, 2003, the Commission issued a notice in Docket No. UT-033020 to all parties in Docket Nos. UT-003022 and UT-003040, as well as all CLECs registered in the state and attorneys included on the Commission’s telecommunications mailing lists, requesting comments on how the Commission should structure its QPAP six-month review proceeding.

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<sup>2</sup> The Regional Oversight Committee, or ROC, is composed of representatives of the regulatory commissions in states in which Qwest provides local exchange service.

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- 12 On May 30, 2003, the Commission received responses from Eschelon Telecom Inc. (Eschelon), AT&T Communications of the Pacific Northwest, Inc., and AT&T Local Services on behalf of TCG Seattle and TCG Oregon (AT&T), Covad Communications Company (Covad), and Qwest.
- 13 In June 2003, the LTPA facilitator hiring subcommittee, composed of state staff persons, and a representative from Qwest and the CLECs, selected John Kern of Kern & Associates, Inc., to facilitate the LTPA collaborative. Mr. Kern is expected to begin work by early September, 2003.

**II. MEMORANDUM**

- 14 **A. Participation in LTPA Collaborative.** The May 14, 2003, plan document for the LTPA collaborative provides that “the focus of the collaborative is on the long-term administration of the PIDs.” The collaborative is an ongoing process that will result in both "agreed upon" changes to the PIDs as well as documentation of unresolved disputes to be resolved during the six-month review process that states will commence pursuant to Section 16 of the QPAP. The collaborative may also address in the future audits and overall reviews of performance assurance plans.
- 15 The Commission has participated previously in multi-state proceedings in this and other dockets. In Docket Nos. UT-003022 and UT-003040, the Commission participated in the ROC-sponsored third-party testing of Qwest’s Operations Support Systems (OSS), as well as the multi-state proceedings concerning the QPAP. The LTPA collaborative is intended to build upon the work completed in those multi-state efforts by continuing regional collaborative efforts to refine and develop performance measures, or PIDs, used to assess Qwest’s performance in opening the local market to competition.

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- 16 The Commission may participate in multi-state proceedings pursuant to statutory authority that allows the Commission to hold joint hearings with other state commissions and to hold hearings outside of the state. *See RCW 80.01.070.*
- 17 Participation in the LTPA collaborative will allow the Commission to evaluate performance measures, or PIDs, in the six-month review proceeding more effectively and efficiently than proceeding independently. While certain issues concerning the PIDs may relate only to Washington State, Qwest and interested CLECs are likely to raise a number of issues that would be common to states in Qwest's region. Addressing the common issues first in a regional collaborative process will provide to all parties and the Commission the benefits of greater efficiency and time-savings in the six-month review proceeding.
- 18 **B. Financing the Commission's Participation in the LTPA Collaborative.** In paragraphs 149 and 160 of the 30<sup>th</sup> Supplemental Order, the Commission deferred a decision on whether to contribute funds to a special fund to finance multi-state collaborative efforts. Alternatively, the Commission directed Qwest to "maintain an identified escrow account and deposit any payments of Tier 2 funds for Washington state into that account" pending the Commission's determination of the proper placement of the funds and whether to participate in a multi-state process. *30<sup>th</sup> Supp. Order, ¶ 162.*
- 19 We have now stated our intent to participate in the LTPA collaborative. Such collaborative efforts will allow the Commission to address issues that are regional in nature. This multi-state collaborative effort, however, is not likely to address every issue that the Commission must address in the six-month review proceeding, or the biennial review or audit proceedings anticipated by the QPAP. The Commission is still determining the proper placement of the Washington state Tier 2 payments, and will respond to Qwest's May 1, 2003, letter after determining the proper placement

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of the payments. Until that time, the Commission intends to finance its portion of the costs of the LTPA collaborative from the state Public Service Revolving Fund.

20 **C. The Commission's Six- Month Review Proceeding.** Section 16.1 of the QPAP provides that "Every six (6) months, beginning six months after the effective date of Section 271 approval by the FCC for the state of Washington, Qwest, CLECs, and the Commission shall participate in a review" of certain aspects of the QPAP. The FCC approved Qwest's application under Section 271 of the Telecommunications Act of 1996 on December 23, 2002.

21 The May 2003 notice issued by the Commission stated that the Commission would schedule a prehearing conference in the six-month review proceeding soon after the Commission received comments in response to the notice. Eschelon, Covad, AT&T and Qwest responded to the notice and provided comments on process, timing and scope of the proceeding. Having determined that Washington state will participate in the LTPA collaborative, the Commission may now hold a prehearing conference and proceed to establish the timing, scope, and procedural schedule for the six-month review proceeding in Washington, and how the state's proceeding will coincide with the efforts of the LTPA collaborative.

### **NOTICE OF PREHEARING CONFERENCE**

22 Hearing in this matter is being held pursuant to Part IV of chapter 34.05 RCW pertaining to adjudicative proceedings, including but not limited to RCW 34.05.431, RCW 34.05.443, RCW 34.05.449, and RCW 34.05.455. The Commission has jurisdiction over this matter under Title 80 RCW and RCW 80.36.610(1), and 47 U.S.C. § 271(d)(3)(C) and 47 U.S.C. § 252(f), having a legal obligation under the Telecommunications Act of 1996 to continue to review Qwest's compliance with Section 271 of the Act and modification of Qwest's SGAT. Rules involved include

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but are not limited to those within chapter 480-09 WAC. The ultimate issues are whether and how Qwest's Performance Assurance Plan, or QPAP, should be modified pursuant to Section 16 of the QPAP.

23 **NOTICE IS HEREBY GIVEN That a prehearing conference in Docket No. UT-033020 will be held at 9:30 a.m. on September 25, 2003**, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The purpose of the prehearing conference is to consider formulating the issues in the proceeding, and to determine other matters to aid in its disposition, as specified in WAC 480-09-460. Petitions to intervene should be made in writing prior to that date or made orally at that time. Appearances will be taken.

24 If any party or witness needs an interpreter or other assistance, please fill out the form attached to this notice and return it to the Commission.

25 NOTICE IS FURTHER GIVEN THAT ANY PARTY WHO FAILS TO ATTEND OR PARTICIPATE IN THE HEARING SET HEREIN, OR OTHER STAGE OF THIS PROCEEDING, MAY BE HELD IN DEFAULT IN ACCORDANCE WITH THE TERMS OF RCW 34.05.440. THE PARTIES ARE FURTHER ADVISED THAT THE SANCTION PROVISIONS OF WAC 480-09-700(4) ARE SPECIFICALLY INVOKED.

26 Ann E. Rendahl has been appointed as the Administrative Law Judge from the Utilities and Transportation Commission's Administrative Law Division, 1300 S. Evergreen Park Drive S.W., Olympia, Washington 98504-7250 and will preside at the prehearing conference.

27 Notice of any other procedural phase will be given in writing or on the record as the Commission may deem appropriate during the course of this proceeding.



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**III. FINDINGS OF FACT**

28 Having discussed above in detail the oral and documentary evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues at impasse between 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.

29 (1) Qwest Corporation, formerly known as U S WEST Communications, Inc., is a Bell operating company (BOC) within the definition of 47 U.S.C. section 153(4), providing local exchange telecommunications service to the public for compensation within the state of Washington.

30 (2) The 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 review Qwest's Statement of Generally Available Terms, or SGAT, under section 252(f)(2) of the Act.

31 (3) Section 16 of Qwest's Performance Assurance Plan provides for a review of the PIDs every six months to determine if any adjustments should be made to performance measures, benchmark or parity standards, or payment structures.

32 (4) In paragraphs 149 and 241 of the 30<sup>th</sup> Supplemental Order, the Commission deferred a decision on whether to participate in multi-state six-month reviews and biennial reviews of the QPAP, and audits of performance measures. The

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Commission also deferred a decision on whether to contribute funds to a special fund to finance the multi-state efforts. *30<sup>th</sup> Supplemental Order*, ¶¶ 149, 160.

- 33 (5) On May 14, 2003, state Commission staff, and representatives from Qwest and various CLECs finalized a plan document for the LTPA collaborative.
- 34 (6) In June 2003, the LTPA facilitator hiring subcommittee selected John Kern of Kern & Associates, Inc., to facilitate the LTPA collaborative.

**IV. CONCLUSIONS OF LAW**

35 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.

- 36 (1) The Commission may participate in multi-state proceedings pursuant to statutory authority that allows the Commission to hold joint hearings with other state commissions and to hold hearings outside of the state. *See RCW 80.01.070.*
- 37 (2) Participation in the LTPA collaborative will allow the Commission to evaluate common issues concerning performance measures, or PIDs, in the six-month review proceeding more effectively and efficiently than proceeding independently.

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**V. ORDER**

38 THE COMMISSION ORDERS That

39 (1) Commission Staff participate in the ad hoc multi-state Long Term PID  
Administration (LTPA) collaborative to address issues relating to the six-  
month review of performance measures required by Section 16 of the QPAP.

40 (2) Until the Commission determines the proper placement of Washington State  
Tier 2 payments, the Commission will pay its portion of the costs of the LTPA  
collaborative from the state Public Service Revolving Fund.

41 (3) A prehearing conference be held on September 25, 2003, in Docket No. UT-  
033020 to commence the six-month review proceeding required under Section  
16 of the QPAP.

DATED at Olympia, Washington and effective this 20th day of August, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

PATRICK J. OSHIE, Commissioner

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**NOTICE TO PARTIES: The 47<sup>th</sup> Supplemental Order in Docket Nos. UT-003022 and UT-003040 is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).**

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**NOTICE**

PLEASE NOTE: The hearing facilities are accessible to interested people with disabilities; that smoking is prohibited; and if limited English-speaking or hearing-impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

The information needed to provide an appropriate interpreter or other assistance should be stated below and returned to Washington Utilities and Transportation Commission, Attention: Carole J. Washburn, 1300 S. Evergreen Park Drive SW, P. O. Box 47250, Olympia, WA 98504-7250. (PLEASE SUPPLY ALL REQUESTED INFORMATION)

Docket No.: \_\_\_\_\_

Case Name: \_\_\_\_\_

Hearing Date: \_\_\_\_\_ Hearing Location: \_\_\_\_\_

Primary Language: \_\_\_\_\_

Hearing Impaired (Yes) \_\_\_\_\_ (No) \_\_\_\_\_

Do you need a certified sign language interpreter:

Visual \_\_\_\_\_ Tactile \_\_\_\_\_

Other type of assistance needed: \_\_\_\_\_

English-speaking person who can be contacted if there are questions:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone No.: (\_\_\_\_) \_\_\_\_\_