

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

In the Matter of the Second Six-Month) DOCKET NO. UT-043007
Review of)
) ORDER NO. 03
QWEST CORPORATION'S)
) ORDER APPROVING PETITION
Performance Assurance Plan) TO MODIFY EXHIBIT K TO THE
) SGAT, AND INTER-
) CONNECTION AGREEMENTS
) CONTAINING EXHIBIT K
.....)
In the Matter of the Investigation Into) DOCKET NO. UT-003022
)
U S WEST COMMUNICATIONS,) 49TH SUPPLEMENTAL ORDER;
INC.'s) AMENDING 30TH and 47TH
) SUPPLEMENTAL ORDERS
Compliance With Section 271 of the)
Telecommunications Act of 1996)
.....)
In the Matter of)
)
U S WEST COMMUNICATIONS,) DOCKET NO. UT-003040
INC.'s)
) 49TH SUPPLEMENTAL ORDER;
Statement of Generally Available) AMENDING 30TH and 47TH
Terms Pursuant to Section 252(f) of the) SUPPLEMENTAL ORDERS
Telecommunications Act of 1996)
.....)

SYNOPSIS. *In this Order, the Commission approves the modifications to Section 7.5 of Qwest's Performance Assurance Plan (QPAP), Exhibit K to Qwest's Statement of Generally Available Terms and Conditions. The Commission amends the 30th and 47th Supplemental Orders in Docket Nos. UT-003022 and UT-003040 by identifying the proper placement of Tier 2 funds and relieving Qwest of the obligation to maintain an escrow account to hold Tier 2 payments. The Commission also directs Qwest to transfer all Tier 2 payments from the escrow account established to hold Tier 2 payments to the*

DOCKET NOS. UT-003022 & UT-003040
49th SUPPLEMENTAL ORDER

Public Service Revolving Fund (PSRF) by May 21, 2004, and to make any future Tier 2 payments directly to the PSRF.

I. BACKGROUND

- 1 **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. Under Section 16 of the 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.
- 2 In Docket Nos. UT-003022 and UT-003040, the Commission conducted a review of Qwest's compliance with Section 271 of the Telecommunications Act of 1996, making a recommendation to the FCC concerning Qwest's Section 271 application for the state of Washington. The Commission also approved a statement of generally available terms (SGAT) for Qwest for the state of Washington. The QPAP is included as Exhibit K to the Washington SGAT.
- 3 **Procedural History.** The Commission approved the QPAP during the Commission's review of Qwest's compliance with Section 271 of the Telecommunications Act. *See 39th Supplemental Order, Docket Nos. UT-003022 and UT-003040 (July 1, 2002).* During that proceeding, the Commission ordered Qwest to modify its proposed language for Section 7.5 of the QPAP to include language requiring Qwest to maintain an escrow account and deposit Tier 2 funds into that account, as the Commission had not yet determined the proper placement of the funds or whether to participate in a multi-state QPAP review process. *See 30th Supplemental Order, Docket Nos. UT-003022 and UT-003040, ¶ 162.*

DOCKET NOS. UT-003022 & UT-003040
49th SUPPLEMENTAL ORDER

- 4 In the 47th Supplemental Order in Docket Nos. UT-003022 and UT-003040 and Order No. 01 in Docket No. UT-033020, the Commission's first six-month review proceeding, the Commission stated that it was still determining the proper placement of Washington state Tier 2 payments.
- 5 On January 27, 2004, the Commission issued a Prehearing Conference Notice in Docket No. UT-043007, providing notice to all competitive local exchange carriers (CLECs) in Washington of a prehearing conference on February 11, 2004, initiating the Commission's second six-month review proceeding. Qwest, Covad Communications Company (Covad), Eschelon Telecom Inc., WorldCom, Inc., d/b/a MCI, Inc (MCI), and Commission Staff participated in the conference held on February 11, 2004.
- 6 On April 7, 2004, the Commission entered Order No. 02 in Docket No. UT-043007 and the 48th Supplemental Order in Docket Nos. UT-003022 and UT-003040, directing the transfer of certain QPAP Tier 2 Funds to the Public Service Revolving Fund (PSRF), proposing modifications to QPAP Section 7.5 and notifying parties in Docket Nos. UT-003022 and UT-003040 of the Commission's intent to amend the 30th and 47th Supplemental Orders in that proceeding.
- 7 On April 9, 2004, Qwest filed with the commission a Petition for Review or Clarification of Order No. 2. On April 26, 2004, Qwest filed with the Commission a Notice of Modifications to Exhibit K to the Statement of Generally Available Terms and Conditions, requesting the Commission approve the change to Section 7.5 of the QPAP proposed in Order No. 02. Qwest states that no party objects to the change to Section 7.5. Qwest's transmittal letter for the filing indicates that the filing makes moot Qwest's April 9, 2004, request for clarification.

II. MEMORANDUM

8 **Section 7.5 of the QPAP.** When Qwest fails to meet certain performance measures under the QPAP, the QPAP provides that Qwest must make payments to CLECs (Tier 1 payments) and the states (Tier 2 payments). *See QPAP, Sections 2.1 and 2.1.1.* Section 7.0 of the QPAP governs Tier 2 payments to the State. Section 7.5 of the QPAP provides that:

Payments to a state fund shall be used for any purpose determined by the Commission that is allowed to it by state law. *Qwest will maintain an identified escrow account for the State of Washington for the purposes of conducting audits or QPAP reviews and deposit any payments of Tier 2 funds for Washington State into that account, pending Commission review of the proper placement of those funds based upon its decision whether to participate in a multi-state process.* If the Commission is not permitted by state law to receive or administer Tier 2 payments, the payments shall be made to the state general fund or to such other source as may be provided under state law.

(Emphasis added).

9 As discussed above, the Commission directed Qwest in the 30th Supplemental Order and 47th Supplemental Order in Docket Nos. UT-003022 and UT-003040 to establish and maintain an escrow account for the purpose of conducting audits or QPAP reviews and required Qwest to deposit any Tier 2 payments due to Washington State into that account until the Commission determined the proper placement of the funds or whether to participate in a multi-state process. In Order No. 02 in Docket No. UT-043007 and the 48th Supplemental Order in Docket Nos. UT-003022 and UT-003040, the Commission determined that Tier 2 payments due to Washington State under the QPAP are appropriately placed in

DOCKET NOS. UT-003022 & UT-003040
49th SUPPLEMENTAL ORDER

the PSRF, and that Section 7.5 of the QPAP should be modified to require Tier 2 payments to be deposited in the PSRF.

- 10 In paragraph 16 of that Order, the Commission proposed certain modifications to QPAP Section 7.5. In its April 26, 2004, Notice of Modifications to Exhibit K to the Statement of Generally Available Terms and Conditions, Qwest requests that the Commission approve the proposed change to Section 7.5 of Exhibit K to the SGAT, with a slight correction reflecting that the word “must” is new language:

Payments to a state fund shall be used for any purpose determined by the Commission that is allowed to it by state law. Qwest ~~will maintain an identified escrow account for the State of Washington for the purposes of conducting audits or QPAP reviews and~~ must deposit any payments of Tier 2 funds for Washington State into the Public Service Revolving Fund, the account within the Washington State treasury established to fund Commission expenses that account, pending Commission review of the proper placement of those funds based upon its decision whether to participate in a multi-state process. If the Commission is not permitted by state law to receive or administer Tier 2 payments, the payments shall be made to the state general fund or to such other source as may be provided under state law.

- 11 Qwest concurs with the Commission’s findings in paragraph 15 of Order No. 02 that the change to Section 7.5 is fundamental and highly exigent, as required for a non-PID related change to the QPAP under Section 16.1 of the QPAP. Qwest requests that the Commission allow the change to QPAP Section 7.5 to become effective immediately so that Qwest may be relieved of the burden of administering the escrow account. Qwest reports that no party objects to the proposed modification.

DOCKET NOS. UT-003022 & UT-003040
49th SUPPLEMENTAL ORDER

- 12 Qwest further requests that the changes to Exhibit K automatically apply to and modify all existing interconnection agreements that currently contain Exhibit K, the QPAP, as an exhibit.
- 13 **Transfer of Tier 2 Payments.** As stated in Order No. 02, the enactment of Chapter 276, Laws of 2004 PV increases the Commission's operating budget appropriation in part due to additional work the Commission must undertake as a result of the QPAP. As a result, the Commission directed Qwest in paragraph 11 of Order No. 02 to transfer \$625,000 in Tier 2 payments from the escrow account to the PSRF within 30 days of the effective date of the order.
- 14 Qwest requests in its April 26, 2004, filing that the Commission issue an order allowing the QPAP change to become effective in such time that Qwest may transfer *all* funds in the escrow account established to hold Tier 2 payments due to Washington State into the PSRF by the due date set forth in Order No. 02. As Order No. 02 was served on April 7, 2004, the thirtieth day following service of the order will be Friday, May 7, 2004. Qwest requires at least two days after receiving an order to issue the necessary funds transfer documents. Qwest requests that the due date for the funds transfer be extended if the Commission cannot enter an order making the change to QPAP Section 7.5 effective in sufficient time for Qwest to meet the May 7, 2004, deadline for the transfer of funds.
- 15 **Discussion and Decision.** As no party objects to the proposed change to Section 7.5 of the QPAP, the Commission approves the change to Section 7.5 that Qwest requests in its April 26, 2004, filing. The change to Section 7.5 of the QPAP, Exhibit K to the SGAT, is effective immediately upon the date of service of this Order. As Qwest requests, and consistent with section 16 of the QPAP, the changes to Exhibit K shall automatically apply to and modify all existing

DOCKET NOS. UT-003022 & UT-003040
49th SUPPLEMENTAL ORDER

interconnection agreements that currently contain Exhibit K, the QPAP, as an exhibit.

- 16 By approving the change to Section 7.5 of the QPAP, the Commission modifies paragraphs 162 and 351 of the 30th Supplemental Order and paragraphs 19 and 40 of the 47th Supplemental Orders in Docket Nos. UT-003022 and UT-003040 to reflect that the proper placement of Tier 2 payments is in the Public Service Revolving Fund, the account within the state treasury established to fund Commission expenses. The Commission further modifies the 30th and 47th Supplemental Orders to reflect that Qwest is relieved of the burden of maintaining an escrow account to hold Tier 2 payments due to Washington State. As a result, Qwest must transfer all monies in the escrow account to the PSRF, and must make any future Tier 2 payments due to Washington State directly to the PSRF.
- 17 The Commission intends that Tier 2 payments held in the PSRF be used to pay for Commission expenses in implementing the federal Telecommunications Act of 1996, including six-month review proceedings and participation in multi-state LTPA and audit processes, other matters deriving from the Section 271 proceeding, arbitration proceedings, Triennial Review proceedings, and any other matters relating to the Act.
- 18 The Commission also grants Qwest's request that the Commission allow the QPAP change to become effective in such time that Qwest may transfer all funds in the Tier 2 escrow account for Washington State into the PSRF by May 7, 2004, the due date set forth in Order No. 02. While the service date of this Order should allow Qwest to accomplish the transfer of all funds in the Tier 2 escrow account by May 7, 2004, the Commission extends the due date for the transfer of

DOCKET NOS. UT-003022 & UT-003040
49th SUPPLEMENTAL ORDER

funds by two weeks to May 21, 2004, to allow Qwest sufficient time to accomplish the transfer.

III. FINDINGS OF FACT

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.

- 19 (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.
- 20 (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.
- 21 (3) Qwest's Performance Assurance Plan (QPAP) is included in the SGAT as Exhibit K. 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

DOCKET NOS. UT-003022 & UT-003040
49th SUPPLEMENTAL ORDER

structures. Section 16.1 of the QPAP allows for review of other more fundamental provisions of the QPAP if the matter is “highly exigent.”

- 22 (4) All parties to Docket No. UT-043007 agree to the change to QPAP Section 7.5 proposed by the Commission in paragraph 16 of Order No. 02 in Docket No. UT-043007, as modified by Qwest in its April 26, 2004, Notice of Modifications to Exhibit K to the Statement of Generally Available Terms and Conditions.

IV. CONCLUSIONS OF LAW

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.

- 23 (1) Tier 2 payments due to Washington State under the QPAP are appropriately placed in the Public Service Revolving Fund, the account within the state treasury established to fund Commission expenses.
- 24 (2) The proposed change to Section 7.5 of the QPAP is appropriately brought within the six-month review proceeding in Docket No. UT-043007 under Section 16.1 of the QPAP. While the proposed change is not related to a performance measure, and is a more “fundamental change” to the plan, the change highly exigent. The proposed change is necessary for the Commission to clarify the proper placement of Tier 2 payments and to relieve Qwest of the administration of the escrow account, without waiting another year for the biennial review.

V. ORDER

THE COMMISSION ORDERS:

- 25 (1) Effective upon service of this Order, Qwest Corporation's petition to modify Section 7.5 of SGAT Exhibit K, as follows, is approved:

Payments to a state fund shall be used for any purpose determined by the Commission that is allowed to it by state law. Qwest ~~will maintain an identified escrow account for the State of Washington for the purposes of conducting audits or QPAP reviews and~~ must deposit any payments of Tier 2 funds for Washington State into the Public Service Revolving Fund, the account within the Washington State treasury established to fund Commission expenses that account, pending Commission review of the proper placement of those funds based upon its decision whether to participate in a multi-state process. If the Commission is not permitted by state law to receive or administer Tier 2 payments, the payments shall be made to the state general fund or to such other source as may be provided under state law.

- 26 (2) Qwest Corporation's request that the change to Section 7.5 of SGAT Exhibit K applies to and modifies existing interconnection agreements that currently contain Exhibit K as an exhibit is approved.
- 27 (3) Paragraphs 162 and 351 of the 30th Supplemental Order and paragraphs 19 and 40 of the 47th Supplemental Order in Docket Nos. UT-003022 and UT-003040 are modified to reflect that the proper placement of Tier 2 payments due to Washington State is in the Public Service Revolving

DOCKET NOS. UT-003022 & UT-003040
49th SUPPLEMENTAL ORDER

Fund, and that Qwest is relieved of the burden of maintaining an escrow account to hold Tier 2 payments due to Washington State.

- 28 (5) By May 21, 2004, Qwest must transfer all monies held in the escrow account established to hold Tier 2 payments due to Washington State to the Public Service Revolving Fund, and must make any future Tier 2 payments due to Washington State directly to the Public Service Revolving Fund.

29 **NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810(3)..**

Dated at Olympia, Washington, and effective this __th day of May, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK OSHIE, Commissioner

DOCKET NO. UT-043007
ORDER NO. 03

PAGE 12

DOCKET NOS. UT-003022 & UT-003040
49th SUPPLEMENTAL ORDER