

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

In the Matter of the Petition of	)	DOCKET UT-073034
	)	
QWEST CORPORATION,	)	ORDER 10
	)	
For Commission Approval of	)	
Stipulation Regarding Certain	)	ORDER DENYING PETITION
Performance Indicator Definitions and	)	FOR RECONSIDERATION
Qwest Performance Assurance Plan	)	
Provisions.	)	
	)	
.....	)	

1 **SYNOPSIS.** *The Commission denies Qwest’s Petition for Reconsideration of the final order in this proceeding, and denies Qwest’s request, in the alternative, to initiate a five-and one-half year review of the Qwest Performance Assurance Plan now, rather than one year prior to the expiration of the AFOR. Under the Commission’s AFOR orders in Docket UT-061625, Qwest may propose changes to the Plan at any time.*

2 **PROCEDURAL HISTORY.** Qwest Corporation (Qwest or Company) initiated this proceeding on June 26, 2007, by filing a petition to approve a stipulation between itself and three competitive local exchange carriers (CLECs)<sup>1</sup> operating in Washington to modify certain Performance Indicator Definitions (PIDs) as well as certain provisions of the Qwest Performance Assurance Plan (Plan or QPAP). Qwest filed similar petitions before thirteen other state commissions across its service territory.

3 Prior to filing this petition, Qwest filed a petition in Docket UT-061625 for an alternative form of regulation, or AFOR, under RCW 80.36.135. During the course of the AFOR proceeding, the Commission adopted and Qwest accepted the QPAP as its carrier-to-carrier service quality plan for the duration of the AFOR plan, finding that such a service quality plan was required under the AFOR statute. The

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<sup>1</sup> Eschelon Telecom, Inc., DIECA Communications, Inc. d/b/a Covad Communications Company and McLeodUSA Telecommunications Services, Inc., joined with Qwest in the stipulation.

Commission required and Qwest accepted the condition that the QPAP remain in place for the four year term of the AFOR.

- 4 In Order 06 in this proceeding, which became effective by operation of law, Administrative Law Judge Adam E. Torem approved a settlement among the parties allowing a number of changes to the QPAP. In Order 08 in this proceeding, the Commission allowed Qwest to make an additional change to the Plan, but denied Qwest's second requested change, finding it inconsistent with the statutory requirements for an AFOR service quality plan. Most recently, the Commission in Order 09 rejected Qwest's interpretation of the interplay between the QPAP and the AFOR, preserving a number of performance measures and the payments that would result under the QPAP should Qwest fail to meet the measures, and finding that the five and one-half year review proceeding called for under the QPAP should be deferred until at least one year prior to the AFOR's expiration.
- 5 Qwest seeks reconsideration of the Commission's decision in Order 09 that a five and one-half year review of the QPAP should occur one year prior to the expiration of the AFOR. In the alternative, Qwest requests that it be allowed to commence a five and one-half year review now.
- 6 **APPEARANCES.** Lisa A. Anderl, Associate General Counsel, Seattle, Washington, represents Qwest. Ginny Zeller, Associate General Counsel, Minneapolis Minnesota, represents Integra Telecom of Washington, Inc., (Integra), and Eschelon Telecom, Inc., (Eschelon). Gregory J. Kopta, Davis Wright Tremaine LLP, Seattle, Washington, represents Time Warner Telecom of Washington, LLC (Time Warner Telecom), and XO Communications Services, Inc., (XO). Jonathan Thompson, Assistant Attorney General, Olympia, Washington, represents the regulatory staff of the Washington Utilities and Transportation Commission (Commission Staff or Staff).<sup>2</sup>

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<sup>2</sup> In formal proceedings such as this, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as other parties to the proceeding. There is an "ex parte wall" separating the Commissioners, the presiding Administrative Law Judge, and the Commissioners' policy and accounting advisors from all parties, including regulatory Staff. *RCW 34.05.455.*

- 7 **QWEST’S PETITION.** Qwest disputes statements in Order 09 that the parties agreed that there was no need to conduct a five and one-half year review at this time. Qwest argues that its statement about the timing of such a review was based on its belief that language in Section 16.3 of the QPAP allowed only measures in Attachment 3 to the Plan to remain in effect after December 23, 2008.<sup>3</sup> Because the Commission decided otherwise in Order 09, Qwest now believes that a five and one-half year review is warranted.
- 8 Qwest argues that in deferring a review until “at least” one year prior to the expiration of the AFOR, Order 09 can be interpreted to allow a review to begin earlier, and that the review could be commenced now.<sup>4</sup> If Qwest is not correct that under Order 09 a five and one-half year review may begin now, it seeks review of the Commission’s decision, and requests that the Commission commence a five and one-half year review at this time.<sup>5</sup>
- 9 Qwest does not dispute our statement in the Order that no party provided specific evidence of the effect on CLECs and competition if non-Attachment 3 measures are allowed to expire. Qwest also does not dispute our observations that a large number of measures may be affected, but requests the opportunity to present evidence demonstrating that certain measures may be eliminated without causing competitive harm.<sup>6</sup> Qwest asserts that the QPAP would still be consistent with the AFOR orders and RCW 80.36.135 without certain measures.
- 10 **DECISION.** We consider petitions for reconsideration under WAC 480-07-850. Under this rule, “the purpose of a petition for reconsideration is to request that the commission change the outcome with respect to one or more issues determined by the commission’s final order.” We will grant petitions for reconsideration only if the petitioner demonstrates that our order is erroneous or incomplete.<sup>7</sup> A petition for reconsideration must also cite to portions of the record and laws or rules for its support, and must present sufficient argument to warrant a finding that our order is

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<sup>3</sup> Qwest Petition, ¶ 3.

<sup>4</sup> *Id.*, ¶ 4.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*, ¶ 5.

<sup>7</sup> WAC 480-07-850(2).

erroneous or incomplete. Should we grant reconsideration, we may modify our prior order or take other appropriate action.<sup>8</sup>

11 The five and one-half year review at issue in Qwest's petition is referenced in Section 16.3 of the QPAP: "Five and one-half years after the QPAP's effective date, a review shall be conducted with the objective of phasing-out the QPAP entirely." By the terms of the Plan itself, the review allows an opportunity to consider whether to terminate the QPAP "entirely". When we agreed to adopt the QPAP as the carrier-to-carrier service quality plan under the AFOR, we recognized that the Plan would need to remain in effect for the four full years of the AFOR in order to comply with the statutory mandate that an AFOR include such a plan. In our most recent order in this docket, Order 09, we chose to defer commencing the five and one-half year review until "at least" one year prior to the expiration of the AFOR to ensure the five and one-half year review serves its original purpose. We clarify here that by "at least" one year prior to the AFOR's expiration we mean *within* a year of the expiration date. A proceeding to consider whether to terminate the QPAP "entirely" is not appropriate at this early stage in the implementation of the AFOR because the result would be no carrier-to-carrier service quality plan, contrary to the AFOR statute. For this reason, the five and one-half year review should occur near the expiration of the AFOR. Thus, we deny Qwest's petition for reconsideration on this issue.

12 By deferring the five and one-half year review until November of 2010, however, we do not bar Qwest from seeking changes to the QPAP. In our AFOR orders in Docket UT-061625 and Order 09 in this proceeding, we have repeatedly stated that Qwest may request changes to the QPAP, but must demonstrate that the proposed changes ensure that the Plan provides adequate "service quality standards or performance measures for interconnection, and appropriate enforcement or remedial provisions" as required under RCW 80.36.135(3).<sup>9</sup>

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<sup>8</sup> WAC 480-07-850(6).

<sup>9</sup> See, e.g., *In the Matter of the Petition of Qwest Corporation For an Alternative Form of Regulation Pursuant to RCW 80.36.135*, Docket UT-061625, Order 08, ¶ 23 (Sept. 6, 2007); See also, *In the Matter of the Petition of Qwest Corporation for Commission Approval of Stipulation Regarding Certain performance Indicator Definitions and Qwest Performance Assurance Plan Provisions*, Docket UT-073034, Order 09, ¶ 40 (Jan. 5, 2009).

- 13 If Qwest believes that certain measures can be removed from the QPAP without harming competition, it may seek such changes and demonstrate that they meet the standard in RCW 80.36.135(3). Qwest may file such a request at any time, and must present sufficient evidence to support its request. We would not, however, consider such a request to be a five and one-half year review under the QPAP, as that review has a particular meaning and purpose under the Plan.

**ORDER**

**THE COMMISSION ORDERS:**

- 14 (1) Qwest Corporation's Petition for Reconsideration of Order 09, or, in the Alternative, Petition to Commence a Five-And-One-Half-Year Review is denied.
- 15 (2) The Commission retains jurisdiction over the subject matter and parties to this proceeding to effectuate the provisions of this Order.

Dated at Olympia, Washington, and effective February 3, 2009

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner