

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

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COMMISSION

In the Matter of the Second Six-Month	)	DOCKET NO. UT-043007
Review of Qwest Corporation's	)	
Performance Assurance Plan	)	
	)	JOINT CLEC RESPONSE TO
	)	QWEST'S MOTION FOR
	)	CHANGE OF SCHEDULE,
	)	EVIDENTIARY HEARING AND
	)	DISCOVERY
.....	)	

WorldCom, Inc., on behalf of its regulated subsidiaries in Washington ("MCI"), Covad Communications Company ("Covad") and Eschelon Telecom, Inc. ("Eschelon") (collectively "Joint CLECs") hereby respond to Qwest Corporation's ("Qwest") Motion for Change of Schedule, Evidentiary Hearing and Discovery ("Motion"). (Qwest and the Joint CLECs shall be referred to jointly as the "Parties".)

1. First, in its Motion, Qwest requests that the Commission delay the schedule set forth in Order No. 1 in this Docket, particularly for the presentation of an issues list, by a minimum of 2 weeks. Qwest also requests that the Commission hold an evidentiary hearing in this Docket, changing the process set forth in both the first and second six-month reviews of Qwest's Performance Assurance Plan ("PAP"). Third, Qwest requests that the Commission permit the Parties to conduct discovery in this case. Finally, Qwest asks the Commission to hold a prehearing conference to discuss these matters in detail. The Joint CLECs respond to each request in turn.

2. Background relating to the schedule for the Long Term PID Administration ("LTPA") process is helpful to the discussion. Beginning with the "ad

hoc LTPA,” prior to the official start of LTPA with the facilitator, the Joint CLECs have worked with Qwest on PO-20 (Manual Service Order Accuracy) for about 19 months. The official LTPA process, with the facilitator, began in November 2003. The last LTPA meeting was held on March 25, 2004. Most issues were agreed upon or withdrawn. For those issues at impasse, LTPA is proceeding along two different tracks:

BI-3 and PO-20:

- Facilitator extended parties comments on impasse issue due April 6.
- Recommendation by the facilitator due April 12.
- Commission Staff votes on recommendations on April 22.

BI-5, PO-2, Loop Splitting, Line Splitting, xDSL-I and Line Loss:

- Party’s comments on impasse issues due April 9.
- Recommendation by the facilitator due April 19.
- Commission Staff votes on recommendations on April 27.

3. The Joint CLECs agree with Qwest that the current schedule in this proceeding should be modified to accommodate the schedule in the LTPA process. The statement of issues is currently due April 9, 2003. Qwest requests that the deadline be extended until at least April 23, 2003. The Joint CLECs have no objection to this request.

4. Qwest next asks the Commission for an evidentiary hearing. The Joint CLECs do not agree that an evidentiary hearing is necessary in this Docket. In deciding whether to participate in the LTPA collaborative, this Commission reasoned that such participation would:

[A]llow 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.<sup>1</sup>

5. Thus, the LTPA process is meant to be an efficient and time saving method of discussing and resolving disputes amongst parties. As to some of the PIDs at issue, the Joint CLECs have been working with Qwest for the past 19 months. In doing so, the Joint CLECs and other parties have expended a great deal of resources. Preparing for and participating in an evidentiary hearing in each of the Qwest states relating to these same issues would expend a great deal of additional party resources, presumably performing activities that were, or should have been, previously addressed or completed in the collaborative. The Joint CLECs believe that holding an evidentiary hearing in each of the states in the Qwest region would defeat the efficiency and time saving purposes of the regional collaborative.

6. Further, Qwest has failed to present any justification for an evidentiary hearing. Nowhere in Qwest's Motion is there an explanation of why the paper process is insufficient to address the issues involved in the Washington PAP. Qwest only states, "the type of issues involved based on the information from the concluding LTPA session indicates that an evidentiary hearing should be held in this case." See Qwest's Motion at page 3.

7. Qwest's rationale for an evidentiary proceeding is not sufficiently developed for the Joint CLECs to respond substantively to the request. The Joint CLECs believe that no disputes exist that would necessitate an evidentiary hearing.<sup>2</sup> Rather, the

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<sup>1</sup> *Order No. 1, Order Directing Participation in Multistate Collaborative; Notice of Prehearing Conference*, Docket No. UT-033020 (August 21, 2003) at para. 17.

<sup>2</sup> See for example, Attachment 1, Qwest's Minutes for the January 15, 2004, LTPA meeting, "[w]hen Qwest and Eschelon examined their respective xDSL-i volumes for the same time period. Their numbers were essentially the same."

disputes concern policy matters. For example, one disputed issue before LTPA is whether the xDSL-i loop product should be added to the PIDs. The CLEC request to measure Qwest's performance for xDSL-i loops is the type of policy issue that the Commission decided with a paper process in the first six-month review. The Joint CLECs believe that the paper process is sufficient to present the matters at issue to this Commission and therefore request that the Commission deny Qwest's request. At a minimum, Qwest should be required to establish just cause for a change in process that will be costly to all of the parties involved.

8. The Joint CLECs also believe that Qwest's Motion is insufficient to justify invoking the discovery rules of WAC 480-07-400 through 425. Qwest's Motion presents no explanation of why discovery is necessary in this case. WAC 480-07-400(2) (b) allows discovery in the proceedings specifically identified in that Rule or in "any proceeding in which the commission, in its discretion, determines that the needs of the case require the methods of discovery specified in this rule." This proceeding is not a type of proceeding specifically identified in the Rule and, at this point, Qwest has not presented any information to the Commission so it can make the finding that the needs of the case require discovery.<sup>3</sup>

9. Additionally, the Joint CLECs believe that discovery is not necessary in this Docket.<sup>4</sup> Discovery would only prolong the proceeding and require that the Parties expend time and precious resources responding to requests. Therefore, the Joint CLECs

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<sup>3</sup> The Commission should not make the assumption that no fact gathering has taken place to date without formal discovery. For example, with respect to xDSL-I capable loops, the parties each presented data and were able to understand the differences in the data. Qwest should be required to explain what facts it was not able to obtain in the LTPA without formal discovery.

<sup>4</sup> If discovery is allowed, the Joint CLECs reserve the right to conduct discovery.

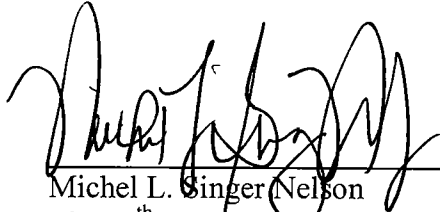
ask the Commission to deny Qwest's request. At a minimum, Qwest should be required to establish just cause for its request for discovery.

10. Finally, the Joint CLECs agree that a prehearing conference would be helpful to enable the Parties to fully discuss the issues raised by Qwest's Motion.

Dated this 8th day of April 2004.

Respectfully submitted,

**MCI**



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**Minutes**  
**Long Term PID Administration Conference Call**  
 (Minutes Provided by Qwest)

**Date & Time:** Thursday, January 15, 2004, 1 p.m. M.S.T.

**Purpose [LTPA participants had not received the agenda sent January 11<sup>th</sup> from John Kern. It was re-sent at the beginning of the meeting.]:**

- To address Issue 10a, change phrase “of receipt” to “that Qwest is first notified of the trouble by CLEC” for MR-3, MR-4, MR-5, and MR-6
- To address Issue 10b, delete the phrase “indicated as” from MR-3 and MR-4
- To address Issue 22, adopt Arizona version of PO-19 region-wide
- To address Qwest’s response to Issue 27, standards for line sharing and line splitting for OP-6 and OP-15
- To address Issue 31, adopt Colorado EEL standards for PO-5, OP-3, OP-4, OP-5, OP-6, MR-5, MR-6, MR-7, and MR-8
- To review the following pending Action Items:
  - Proposed LTPA Web Site
  - Issue 3, MCI’s response to wording change in formula for BI-3A
  - Issue 32, Eschelon and Qwest x-DSL-I volume discrepancy
- To address the two day face-to-face meeting

<i>Organization</i>	<i>Name</i>	<i>Organization</i>	<i>Name</i>
LTPA Facilitator	John Kern	Qwest	Nancy Lubamersky
ID PUC	Wayne Hart	Qwest	Dean Buhler
AT&T	Joe Bloss	Qwest	Kathy Haile
Covad	Megan Doberneck	Qwest	Patricia Emigh
Eschelon	Ray Smith	Qwest	Duane Cooke
MCI	Chad Warner	Qwest	Barb Brohl
U S Link	Rod Cox	Qwest	Todd Staebell
IA Utilities Board	Penny Baker	Qwest	Tom Kowal
MN DOC	Sue Pierce	Qwest	Char Mahs
MT PUC	Kate Whitney	Qwest	Barry Orrel
MT PUC	Tina Shorten	Qwest	Dave Phillips
OR PUC	Irv Emmons	Qwest	Nancy Tangeman
UT Div. of Public Utilities	Joni Zenger	Qwest	Tim Francis
WA UTC	Tom Spinks	Qwest	John Hayat
WY PUC	Mike Korber	Qwest	Paul Diamond
		Qwest	Cindi Houston

- **Issue 10b, delete the phrase “indicated as” from MR-3 and MR-4:**  
Qwest agreed to the deletion of the “indicated as” phrase.
  - **Resolution:** Issue closed.
  
- **Issue 10a, change phrase “of receipt” to “that Qwest is first notified of the trouble by CLEC” for MR-3, MR-4, MR-5, and MR-6:** Qwest agreed to the language change with the understanding that the clock starts on trouble reports when, with all the required information available, the repair ticket is created. The CLECs reiterated their concern that the time from when a trouble is reported to the Call Center to the time when a repair trouble report is created is not captured in the M & R measures. Qwest provided October 2003 data showing that after service order completion less than 1% of the CLEC repair troubles involve the CLECs first calling the Call Center, the Call Center being unable to resolve the problem, and then being referred to Repair, resulting in an average elapsed time of one hour. The data also showed that after a service order completes, the CLECs predominantly submit a repair ticket through CEMR or call the Repair Center. In these latter situations and assuming all the required field information is provided, a repair ticket is created and all such time is captured in the M & R PIDs. Qwest also stated it sent a CMP notice to the CLECs that Qwest is reducing the time after service order completion that a CLEC is encouraged to contact the Call Center with a trouble from 72 hours to 24 hours. Eschelon requested adding the average one hour timeframe to the M & R PIDs. Qwest stated its unwillingness to do so reiterating that the CLEC always has the option to contact the Repair Center directly or submit a trouble report through CEMR, which is how the CLECs are predominantly reporting troubles after service order completion.

In response to a question about how Qwest measures repair time for its retail customers, Qwest stated that when a Qwest end user contacts the Business Office about a new service problem, the Business Office can often solve the problem. If the Business Office needs to refer the trouble to repair, the clock starts when the trouble report is created. For both end users and CLECs the time interval for repair is calculated the same way.

A CLEC expressed concern about what happens to the M & R measurements if the gateway for submitting repair trouble reports is experiencing unscheduled down time. Qwest stated that gateway availability has not been an issue and is captured in the applicable Gateway PIDs, not in the M & R PIDs.

- **Resolution:** The CLECs will review this issue and the data presented above with their internal experts. If a CLEC finds discrepancies between its data and Qwest’s, it should discuss this off-line with Qwest. This issue will be discussed further at a later date.

- **Issue 22, adopt Arizona version of PO-19 region-wide:** PO-19 measures the Stand-Alone Test Environment (SATE). The Arizona version has two sub-measures while the version for the other 13 states only has one. The Arizona version arose out of the Arizona 271 test and a recommendation from the vendor. Qwest is publishing the results for all 14 states in its monthly performance results report per discussions it had with the FCC Wireline Bureau. The additional submeasure measures the extent that SATE mirrors production by measuring the percentage of transactions that produce comparable results in SATE and the production environment. The region-wide standard would be 95%, the same as for Arizona.

  - **Resolution:** The CLECs will review this issue with their internal experts. It will be discussed further on the January 22 call.
  
- **Issue 27, standards for line sharing and line splitting for OP-6 and OP-15:** As agreed upon for Issue 29 on the January 8<sup>th</sup> call, discussions on standards for line splitting will begin after the February report with 5 months of data comes out. With respect to line sharing, Qwest stated that in response to Covad's request, Qwest is willing to adopt a standard of "Parity with retail Qwest DSL" for OP-6. Qwest stated that, since all standards within OP-15 are diagnostic, the line sharing standard should remain diagnostic but Qwest would be willing to add "(Expectation: Parity with retail Qwest DSL)." In response to a question about when the Qwest DSL standard for OP-6 would be reported, Qwest stated that the standard would be part of the next SGAT Exhibit B PID filing targeted for the early part of April, effective in the June timeframe, and then with the reporting starting in July with the June performance report.

  - **Resolution:** The CLECs agreed on using Qwest DSL for the OP-6 standards. The CLECs will review with their internal experts Qwest's proposal for OP-15.
  
- **Issue 31, adopt Colorado EEL standards for PO-5, OP-3, OP-4, OP-5, OP-6, MR-5, MR-6, MR-7, and MR-8:** Qwest stated its willingness to adopt the current Colorado EEL standards with the understanding that the TRO network modification requirements may impact multiple PIDs and product reporting, including the current Colorado EEL standards and these PIDs. Qwest does not yet know the full impact of these TRO requirements on its business processes and performance requirements. Qwest requested the CLECs share any information or documentation they may have on the subject. In response to a question about when these EEL standards would be reflected in the PAP reporting, Qwest stated that the April Exhibit B PID filing must first occur and become effective.

  - **Resolution:** Issue closed but the Issues Matrix should reflect that this issue may need to be re-opened as the impact of the TRO network modification requirements is better understood, especially



on the Colorado EEL standards. Qwest was invited to provide a new issue relating to the TRO network modifications.

- **Pending Action Items:**
  - **LTPA Web Site:** Qwest reviewed the proposed LTPA web site. The test URL sent out to the participants turned out to be inaccessible to parties external to Qwest. Qwest provided screen shots of each of the proposed 7 screens. Qwest reviewed each screen with the parties, requesting feedback if the web site included what was desired or whether it included too much. Feedback was especially requested about when individual PIDs and the 14-State PID documents should appear on the Draft PID screen versus the Agreed Upon PID screen. The web site will have a URL that the parties will have to access directly and will be unavailable through navigation or browsing on the Web.
    - **Resolution:** The parties will review the screen shots and provide their input on next week's call. The parties should contact Duane Cooke directly with any technical questions.
  - **Issue 3, changing formula language in BI-3A:** MCI agrees with the proposed language change.
    - **Resolution:** Issue closed.
  - **Issue 32 action item, reconciliation of x-DSL-I volumes:** When Qwest and Eschelon examined their respective x-DSL-I volumes for the same time periods, their numbers were essentially the same.
  
- **Other Items:**
  - **Face-to-Face Meeting:** Qwest stated that it had conflicts with the mid-February dates. John Kern recommended that the parties continue going through the issues on the weekly conference calls. Then in a two-day face-to-face meeting in March the parties will address any outstanding open issues and determine which issues, if any, will be going to impasse. John Kern asked the parties to submit their availability for such a meeting in the first two weeks of March excluding March 3<sup>rd</sup> and the weekends. Qwest will provide an audio bridge for those parties who cannot attend the meeting in person.
  - **Contract Extension:** Because the first three months of billings by John Kern have totaled well under half of the 6-month \$50,000 cap, if the State Commissions want to, his contract can be extended into April 2004. That would allow extra time after the March in-person meeting to complete any impasse issues as well as complete the all-inclusive SGAT Exhibit B filings.

**New Action Items:**

- John Kern will distribute the next agenda and an updated Master Issues Matrix by noon on Monday, January 19. **If parties do not receive the agenda and matrix by then, please notify John Kern.**
- Qwest will provide a new issue relating to the TRO network modification requirements impacting the PIDs and the product reporting.
- The CLECs will:
  - Review the Call Center information presented above by Qwest in Issue 10a.
  - Review the PO-19 information presented above by Qwest in Issue 22 for further discussion on January 22.
  - Review internally Qwest's proposal for the line sharing OP-15 standard presented above in Issue 27.
- The parties will:
  - Review the proposed LTPA Web Site screen shots for further discussion on January 22.
  - Provide to John Kern their availability within the first two weeks of March excluding March 3rd to attend a two-day face-to-face meeting in Denver.

**Next Meeting:**

- January 22, 2004, at 1 p.m. M.S.T.
- Conference bridge: 1-877-552-8688 pass code 3381262#

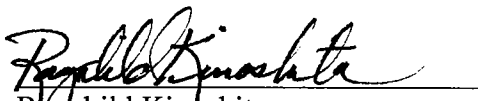
I hereby certify that I served a true and correct copy of the foregoing on the following:

*Please see attached Service List*

Sent by the following indicated method or methods:

- By **faxing** full, true, and correct copies thereof to the attorneys at the fax numbers shown above, which are the last known fax numbers for the attorneys' offices, on the date set forth below. The receiving fax machines were operating at the time of service and the transmissions were properly completed, according to the attached confirmation reports.
- By **mailing** full, true, and correct copies thereof in sealed, first-class postage-prepaid envelopes, addressed to the attorneys as shown above, the last-known office addresses of the attorneys, and deposited with the United States Postal Service at Seattle, Washington, on the date set forth below.
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- By causing full, true and correct copies thereof to be **hand-delivered** to the attorneys at the attorneys' last-known office addresses listed above on the date set forth below.
- By **e-mailing** to the e-mail addresses as noted on the attached service list.

DATED 8th of April, 2004

  
Ragnhild Kinoshita

APPENDIX A

<u>PARTY REPRESENTATIVES</u>				
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<p><b>Presiding Administrative Law Judge</b></p>	<p><b>ANN E. RENDAHL</b> 1300 S Evergreen Park Dr SW P.O. Box 47250 Olympia WA 98504-7250</p>	<p>360-664-1144</p>	<p>360-664-2657 <a href="mailto:rendahl@wutc.wa.gov">rendahl@wutc.wa.gov</a> [ALD fax only – do not use to file]</p>