BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Six-Month Review of Qwest Corporation's Performance Assurance Plan	)	DOCKET NO. UT-033020
	)	REPLY COMMENTS OF QWEST CORPORATION
. . . . .	)	

Qwest Corporation ("Qwest") hereby submits its reply comments in the above proceeding to the comments of Covad, Eschelon and MCI. Covad, Eschelon and MCI advocate, based on their perceptions that the LTPA process is not moving speedily enough for their purposes, that the WUTC address in this six-month review, issues which these parties concede are also being addressed in the LTPA. Qwest disagrees. Qwest submits that the proposal of these three parties would lead to inefficiency, it is contrary to the intent of the *47th Supplemental Order,*[1] and it makes no allowance for the fact that the LTPA Facilitator is now under contract and in a position to help the parties address the issues as this Commission expected when it agreed to participate in the LTPA. Qwest responds below in detail to the arguments of these three parties.

[1] *In the Matter of the Investigation Into U S WEST Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996*, et al., Dockets Nos. UT-003022, UT-003040 and UT-033020, 47th Supplemental Order; Directing Participation in Multi-State Collaborative, August 21, 2003. (Hereinafter "*47th Supplemental Order*.")

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1. Comments of Covad.

Covad has raised essentially a single issue in its Additional Comments, although Covad has framed the issue in three different ways. That issue is the inclusion in the QPAP of Line Splitting and Loop Splitting. Covad frames the first issue, of whether Line Splitting and Loop Splitting should be included in the QPAP, under the heading of answering the ALJ's first question, namely what issues are currently under review in the LTPA or could be addressed in that forum. However, Covad sidesteps any attempt to answer that question on this issue. Instead, Covad characterizes the issue as a "change in the law" as to which LTPA does not have the ability to work quickly enough. Covad's evidence on this point is the experience prior to the engagement of the Facilitator, with LTPA negotiations on PO-20 and OP-5. Covad argues that it cannot wait "ten months" for "certain changes" which have become "critical issues." Covad then appears to offer to negotiate with Qwest in its comments, stating that if Qwest is willing to include Line Splitting and Loop Splitting in the QPAP now, then Covad would be willing to wait until the next six-month review to address the other issues it had filed in its previous comments.

Yet the point of having the parties submit this round of comments was to provide information to the ALJ on the current status of the LTPA process with respect to the issues which the parties had previously raised in earlier comments. Covad's characterization of the Line Splitting and Loop Splitting issue as a "change in the law" based on the *Triennial Review Order*[2] which Covad claims that LTPA is ill equipped to address, does not address the

[2] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Dockets Nos. 96-96, 01-338, 98-147, FCC 03-36, Report and Order on Remand and Further Notice of Proposed Rulemaking (August 21, 2003)

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question, and is incorrect. Qwest's Second Comments showed, at p. 8, that in fact the informal LTPA process had addressed the issue of including Line Splitting as a new product disaggregation in the revised OP-5 which was filed October 2, 2003. This occurred after several months of negotiations, and agreement was reached well before the *Triennial Review Order, supra*, was issued. Qwest's Second Comments also noted that the ongoing discussions in the LTPA are addressing the impact of the Line Sharing issue on the new PO-20 PID. Therefore in response to the ALJ's question, not only is Line Splitting appropriate for consideration in the LTPA, it actually has been so considered. Covad has made no showing that LTPA is incapable of addressing Loop Splitting in a fair and expeditious manner, either.

Covad's comments concede at p. 2 that there are no issues which Covad has raised which are unique to Washington State. Covad nonetheless argues for decision of these issues in the six-month review. Covad bases this argument on its implied claim that LTPA cannot meet Covad's desired schedule. In fact this argument appears to invite all of the states to begin considering issues piecemeal and separately, which all have agreed to consider together in the LTPA.

Covad's third point is that Line Splitting is supposedly a new issue which changes the issues before the Commission from those which were presented in May, and that the Commission for this reason should consider Line Splitting and Loop Splitting as replacements for Line Sharing in this six month review case. Covad implicitly bases its argument on provisions of the *Triennial Review Order, supra*, which phase out Line Sharing and which may, depending on the outcome of this Commission's investigation based on that Order, affect the extent of the availability of Line Splitting. Covad's argument is a *non sequitur*. Covad has not shown why the novelty of the issues of Line Splitting and Loop

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Splitting mean that the LTPA process should be bypassed. Instead this argument simply restates Covad's claim that the LTPA is too slow.

As discussed above, Covad concedes that this issue is not unique to Washington. Instead Covad argues that "it is imperative" that this Commission and the other ROC states address these issues "more quickly" apparently than the LTPA is capable of doing. This undermines the LTPA and is also based on an incorrect view of the urgency of action. Under the *Triennial Review Order, supra,* paras. 264 and 265, CLECs may continue to sign up new Line Sharing customers for up to one year after the effective date of the Order, and may continue to serve with these arrangements for up to three years after that date. The extent of the availability of Line Splitting depends in turn on the extent to which this Commission finds that competitors are not impaired without access to Qwest's unbundled local switching in any areas for market loops, based on its investigation. The Commission's investigation into this issue is underway in *In the Matter of Implementation of the FCC's Triennial Review Order,* Dockets Nos. UT-033025 and UT-033044. Based on the schedule in that case, a decision can be expected in the spring of 2004. It is clearly premature for Covad to claim that there is such great urgency to decide the questions relating to development of PIDs for Loop Splitting that these questions cannot be addressed by the LTPA and they instead must be decided in this six-month review.

Finally, Covad argues that Qwest has included Line Splitting in the Colorado Performance Assurance Plan, and implies that Qwest's purported unwillingness to include these measurements in Washington means that the Commission should consider this issue in the six-month review. Covad is simply incorrect. Qwest has already included line splitting in the Washington QPAP as well. Comparison of the Exhibit K in the Washington QPAP with

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the Exhibit K in the CPAP indicates that for the measurements Covad identifies in its comments, namely OP-3, OP-4, OP-5, OP-6, MR-3, MR-6, MR-7 and MR-8, both plans include Line Splitting with Line Sharing.[3] Thus Covad is simply wrong on the facts which underlie its argument. None of Covad's arguments addresses the basic policy choice which this Commission made in the *47th Supplemental Order*. The Commission determined in para. 14 that "The [LTPA] 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." [emphasis added] The Commission clearly contemplated the addressing of issues for changes in PIDs of region wide significance first in the LTPA and then, if necessary due to unresolved disputes after that process, in the six-month review. Thus all of the arguments which Covad raises at p. 3 of its comments are premature for this Commission to address in the current six-month review.

2. Comments of Eschelon.

Eschelon raises two issues in its comments. Eschelon argues that the Commission should use this six-month review docket to establish a tier for PO-20 and that it should establish Enhanced Extended Loop ("EEL") standards in this review. Neither of Eschelon's proposed issues should be considered in this six-month review.

Eschelon argues on its first issue, that of establishing a QPAP tier for PO-20, that even Qwest acknowledges that such establishment is necessary and that it should be done in a six-month review case. Eschelon is perfectly correct in this argument. However, because the PO-20 issue is still being addressed in the LTPA, it is not ripe for the WUTC to address

[3] See Attachment A.

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the establishment of a tier for that PID in *this* six-month review proceeding. In para. 17 of the *47th Supplemental Order*, the Commission determined that the objective of its participation in the LTPA was to evaluate PIDs in the six-month review more effectively and efficiently than proceeding independently. It would be contrary to this objective for this Commission to determine the QPAP tier for a PID which is new and which has not yet been completed in the LTPA. It would be inefficient to perform such a tier assignment at this time when the outcome of the LTPA could result in a need to change that assignment later, compared with the alternative of holding consideration of the tier assignment until after the PID is complete.

Eschelon's second argument is that more than one year ago the Commission determined that the purpose of the Section 16 review would be to correct omissions of the QPAP to capture intended performance, that the Commission found that there must be measures for EELs and payment for performance that fails the measures, and that according to Eschelon the reason why there are supposedly no EEL standards in the QPAP is that Qwest never proposed EEL standards to LTPA. Eschelon argues further that Qwest's "request to defer everything to LTPA" is simply a ploy to obtain additional delay in complying with the Commission's order. The short answer to this argument is that in fact Qwest filed standards for EELs in the revised OP-5 PID in Washington on October 2, 2003. This filing was a direct result of the LTPA process. Plainly, when this change to OP-5 is incorporated in the QPAP, there will be an opportunity for payment when and if Qwest's performance fails the standard. Eschelon's argument would undermine this Commission's rationale in the *47th Supplemental Order* that it is more effective and efficient to have regional issues for PID changes considered first at the regional level, and then only if there are unresolved disputes after that consideration, considered in the six-month review.

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Eschelon also claims that there is "no need" for the Commission to allow the LTPA to develop standards because in Colorado, a stipulation was submitted by Qwest, AT&T, MCI and Eschelon to modify the CPAP to include standards for EELs in submeasures for nine PIDs. Eschelon has made no attempt to address the questions posed by the ALJ with regard to this issue. Plainly the issue of standards for EELs is not specific to Washington. As in its first issue, that of the tier designation for PO-20, Eschelon has ignored this Commission's policy decision in the *47th Supplemental Order* to allow LTPA to consider issues of regional significance in the first instance and document unresolved disputes, if any, and to use the six-month review process to resolve those disputes. The Colorado PAP is not identical to the QPAP, and Eschelon has identified no *a priori* reason why a stipulation on standards in the CPAP should automatically be imposed by this Commission in the QPAP.

3. Comments of MCI.

MCI raises three issues in its comments. First, MCI argues that the Commission should order Qwest to include the agreed upon revised OP-5 in the QPAP. Second, MCI asks the Commission to make a forum available for resolution of any disputes in the ongoing LTPA discussions regarding PO-20 on an expedited basis. Finally, MCI urges that this proceeding be used to require separate reporting and payment for Line Splitting and Line Sharing and separate standards in several measurements. None of MCI's arguments supports including its proposed issues in this six-month review.

First, Qwest stated during the prehearing conference October 2, 2003 that it was that very day filing the revised OP-5 with the Commission. Qwest has in the interim been preparing revisions to Exhibit K of the Washington SGAT to incorporate the changes to the definition of OP-5 for filing, and those revisions are expected to be filed this week. Under

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Section 16.1.1 of Section K of the SGAT, this is all that Qwest is required to do to include changes that have been agreed upon in the LTPA proceeding. The Commission does not need to conduct a six-month review to order Qwest to make this filing. MCI's first point is therefore moot.

MCI's second point is unripe. MCI concedes that the LTPA is considering what MCI also concedes is a brand new PID, PO-20. MCI apparently asks the Commission to conduct this six-month review so that it may enter an order requiring Qwest to do that which Qwest has already shown with revised OP-5 that it is willing to do, namely to file the new PO-20 and revisions to Exhibit K of the SGAT with the Commission when PO-20 is agreed upon. MCI also argues that if agreement cannot be reached within a reasonable period of time, any party should be permitted to bring the issue to the Commission for resolution on an expedited basis. Plainly this argument is no more than a restatement of what the Commission said was its policy in the *47th Supplemental Order*, quoted *supra*. This point requires no six-month review case to establish.

MCI's third point is also unripe. MCI argues that while the separate reporting and payment of measures for Line Splitting and Line Sharing "may now be addressed again in LTPA," since the FCC has issued its *Triennial Review Order, supra,* MCI is concerned that the LTPA may not address the matter in as speedy a fashion as MCI perceives is needed.

First, the issue of payments for Line Splitting and Line Sharing is a PAP issue and will not be discussed in LTPA. That issue cannot be discussed in a six-month review with regard to separate measurements for Line Splitting and Line Sharing until those measurements are disaggregated in the LTPA process. MCI's comments complain that Qwest took the position before the *Triennial Review Order, supra,* was issued that it was premature

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in the LTPA process to discuss the disaggregation of Line Sharing and Line Splitting, but MCI has not shown that Qwest was wrong in this view. MCI also is concerned that a backlog of issues exists for the LTPA. For the foregoing reasons, namely that there will be "likely delay" in considering these issues at the LTPA, MCI argues that this Commission should use this six-month review case to address Line Splitting and Line Sharing separate reporting and payment under OP-3, OP-4, OP-6, MR-3, MR-6, MR-7 and MR-8, and standards for Line Sharing and Line Splitting under OP-6, OP-5 and PO-5.

MCI's argument is inconsistent with the Commission's *47th Supplemental Order*. MCI has failed to explain how its proposal for parallel and simultaneous review by this Commission, in the six-month review and also as a participant in the LTPA, of the same issue, namely separate standards and reporting for Line Splitting and Line Sharing, meets the Commission's policy goals of efficiency and effectiveness as stated in *the 47th Supplemental Order*. MCI's proposal conflicts with those policy goals because it would result in duplicative and potentially conflicting work by the Commission.[4] Qwest's comments above in response to Eschelon with regard to the claim of urgency to consider Line Splitting issues and the inability of the LTPA to address these issues timely, also apply to MCI's comments.

The MCI position will, if adopted generally, ultimately rob the LTPA of its effectiveness as a clearinghouse and resolution point for regional PID administration issues.[5]

[4] In addition, the consideration of Line Splitting as a separate category is premature because there are at this time only 63 line splitting services in Washington and just over 700 in service in all fourteen Qwest states combined.
[5] Although MCI argues that this Commission should consider the issues, MCI suggests that this Commission should reach the same result on those issues as the Minnesota and Colorado commissions did, except with regard to separate payments. As noted above, this Commission should make its own determination on payments under the QPAP, once a determination has been made in the LTPA on disaggregation of measurements for Line Sharing and Line Splitting.

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Any party could claim at a particular time that an issue of regional significance which was important to it was not being decided speedily enough at the LTPA. If this were sufficient to cause individual states to abandon the LTPA for that issue, then there would be little confidence that the LTPA would ever represent the kind of uniform overall approach which this Commission perceived when it agreed to participate in that effort. The LTPA has recently received its Facilitator, who is moving aggressively to define the issues which parties seek to have addressed. The LTPA should be given the time to perform the function which this Commission assigned to it, and that process should not be bypassed at the instance of CLECs which are focused on single issues.

Conclusion

Qwest appreciates the opportunity to submit comments in this proceeding. For the reasons stated above, Qwest submits that the Commission should defer consideration of the issues raised until the six-month review which begins in January, 2004.

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Respectfully submitted this 27th day of October, 2003,

QWEST CORPORATION

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