

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

In the Matter of the Second Six-Month)	
Review of Qwest Corporation’s)	DOCKET NO. UT-043007
Performance Assurance Plan)	
)	ORDER NO. 04
)	
)	PREHEARING CONFERENCE
)	ORDER; GRANTING MOTION
)	FOR DISCOVERY;
)	ESTABLISHING REVISED
)	PROCEDURAL SCHEDULE
)	(Prehearing Conference set for
)	June 28, 2004, at 10:00 a.m.)
.....)	

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. 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 **PREHEARING CONFERENCE.** The Commission convened a prehearing conference in this docket at Olympia, Washington on May 19, 2004, before Administrative Law Judge Ann E. Rendahl.

3 **APPEARANCES.** Douglas N. Owens, attorney, Seattle, Washington, represents Qwest. Karen Shoresman Frame, Senior Counsel, Denver, Colorado, represents Covad Communications Company (Covad). Ray Smith of Eschelon Telecom Inc., and Karen Clauson, attorney, Minneapolis, Minnesota, represent Eschelon Telecom, Inc (Eschelon). Michel Singer Nelson, attorney, Denver, Colorado,

represents WorldCom, Inc., d/b/a MCI, Inc (MCI). Gregory J. Trautman, Assistant Attorney General, Olympia, Washington, represents Commission Staff.

- 4 **QWEST'S MOTION.** On March 31, 2004, Qwest filed a motion with the Commission requesting that the Commission modify the procedural schedule established in Order No. 01, provide for an evidentiary hearing, and invoke the discovery rule. Qwest asserted that certain issues remained at impasse in the Long-Term PID Administration (LTPA) collaborative process, and that those issues were complex enough to require an evidentiary hearing.
- 5 Commission Staff and the Joint CLECs (MCI, Covad and Eschelon) filed responses to Qwest's motion, agreeing that the procedural schedule should be modified, but opposing Qwest's request for evidentiary hearing and discovery. Commission Staff asserted that it was premature to determine whether evidentiary hearings were necessary, as the facilitator for the LTPA collaborative had not yet issued his recommendations. The Joint CLECs opposed Qwest's request for an evidentiary hearing and discovery asserting that Qwest has not demonstrated a need for either, and that such hearings would negate the efficiency and time savings of the LTPA process.
- 6 Qwest asserts that the LTPA process was not an adjudicative process, and did not create a record from which any party could appeal. Qwest further argues that the Commission has allowed the possibility of discovery in the six-month review process, but that no party believed it was necessary at the first prehearing conference.
- 7 **DISCUSSION AND DECISION.** Based upon the arguments of the parties and information provided during the conference, Qwest's motion to invoke the Commission's discovery rule, WAC 480-07-400, is granted. The Commission encourages all parties to engage in informal discovery, as well, to try to narrow

the issues in the proceeding and to determine whether any of the issues require an evidentiary hearing.

- 8 The Commission will issue a bench request requiring that all documents available from the LTPA collaborative process, including issues matrices, weekly minutes of LTPA meetings, statements of agreed upon impasse issues, the facilitator's recommendations, and parties' statements, be filed with the Commission. This information will be available to the parties and to inform the Commission, but is not intended as the basis for an appeal from the LTPA collaborative process to the Commission.
- 9 A decision on Qwest's request for an evidentiary hearing is deferred until the parties have prepared an initial issues list, conducted discovery, and prepared a final issues list. The appropriate process for considering the issues in this six-month review period will be determined at a prehearing conference, scheduled for Monday, June 28, 2004.
- 10 **PROCEDURAL SCHEDULE.** The Commission adopts the following procedural schedule, which modifies the procedural schedule established in Order No. 01 in this proceeding:

<u>Deadline for</u>	<u>Date</u>
Initial Issues List	Friday, May 28, 2004
Discovery Ends	Friday, June 18, 2004
Final Issues List	Friday, June 25, 2004
Prehearing Conference	Monday, June 28, 2004, at 10:00 am

11 **NOTICE OF PREHEARING CONFERENCE.** The Commission convenes a prehearing conference in this matter to address the issues to be determined in the proceeding, the format of the proceeding, and to finalize the procedural schedule. **The conference will be held on Monday, June 28, 2004 at 10:00 a.m. in Room 108 of the Commission's Offices in the Chandler Plaza Building, 1300 S. Evergreen Park Drive S. W., Olympia, Washington.** Persons who cannot attend in person may participate via the Commission's teleconference bridge line **360-664-3846**. Persons desiring to participate via the bridge line must make advance reservations, by calling Kippi Walker at 360-664-1139, no later than **Noon on Friday, June 25, 2004.**

12 **NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**

Dated at Olympia, Washington, and effective this 21st day of May, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL
Administrative Law Judge