

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

In the Matter of the Petition of)	DOCKET UT-073034
)	
QWEST CORPORATION)	
)	ORDER 02
Petitioner,)	
)	
For Commission Approval of Stipulation)	PREHEARING CONFERENCE
Regarding Certain Performance Indicator)	ORDER; ESTABLISHING
Definitions and Qwest Performance)	PROCEDURAL SCHEDULE
Assurance Plan Provisions.)	
)	
.....)	

1 **NATURE OF PROCEEDING.** Docket UT-073034 involves a petition by Qwest Corporation (Qwest) and four (4) competitive local exchange carriers (CLECs)¹ seeking approval of a stipulation modifying various Performance Indicator Definitions (PIDs) as well as the Qwest Performance Assurance Plan (QPAP), each of which is an exhibit to Qwest’s Statement of Generally Available Terms (SGAT). Qwest has filed the stipulation and is pursuing the same action before 13 other state commissions.

2 **CONFERENCE.** The Washington Utilities and Transportation Commission (Commission) convened a prehearing conference in this docket at Olympia, Washington, on August 21, 2007, before Administrative Law Judge Ann E. Rendahl.

3 **APPEARANCES.** Lisa A. Anderl, Associate General Counsel, Seattle, Washington, represents Qwest. Ginny Zeller, Associate General Counsel, Minneapolis Minnesota, represents Eschelon Telecom, Inc. (Eschelon). Gregory J. Kopta, Davis Wright Tremaine LLP, Seattle, Washington, represents Integra Telecom of Washington, Inc.(Integra), Time Warner Telecom of Washington, LLC. (Time Warner), and XO

¹ Three of these CLECs (Eschelon Telecom, Inc., DIECA Communications, Inc., d/b/a Covad Communications Company, and McLeodUSA Telecommunications Services, Inc.) conduct business in Washington. The fourth CLEC (US Link, Inc.) does business only in North Dakota and Minnesota.

Communications Services, Inc. (XO). Jonathan Thompson, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff ("Commission Staff" or "Staff").² Contact information provided at the conference for the parties' representatives, including those of the CLECs joining Qwest in the petition, is attached as Appendix A to this order.³

4 **PETITIONS FOR INTERVENTION.** Integra, Time Warner and XO petitioned in writing by August 15 to intervene in the docket. At the conference, counsel for Integra corrected a statement in its petition to intervene, clarifying that Integra has not opted into the QPAP, but as a CLEC in Washington, continues to have a substantial interest in Qwest's petition. With that clarification, no party objected to the petitions for intervention. These petitions to intervene are granted.

5 **APPLICATION OF SECTION 252(f).** In its petition, Qwest and the stipulating parties requested the Commission approve the stipulation within 60 days of Qwest's filing of the petition on June 26, 2007, pursuant to Section 252(f)(3) of the Telecommunications Act of 1996 governing Statements of Generally Available Terms. Under this provision, changes to an SGAT must be considered within 60 days of the filing, requiring the Commission to act on Qwest's petition by Friday, August 24.

6 In oral and written comments and in their petitions to intervene, Staff, Integra, Time Warner, and XO (Intervenors) all claim that the 60-day deadline does not apply to this filing.

7 During the conference, Qwest proposed to defer argument and decision on the issue of the application of the 60-day review period. While Qwest believes 60-day review

² In formal proceedings, such as this case, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as any other party 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 Staff. *RCW 34.05.455*.

³ No representative of DIECA Communications, Inc., d/b/a Covad Communications Company (Covad) or McLeodUSA Telecommunications Services, Inc. (McLeodUSA) appeared at the conference. Their contact information, however, is included in Appendix A.

period applies to its petition, Qwest proposed to waive the statutory deadline until November 30, 2007, to allow the parties time to fully investigate the stipulation and provide an opportunity for parties to file initial comments and responses concerning the stipulation. Qwest proposed that the Commission consider the petition on a paper record and enter a final order by November 30. All parties agreed to Qwest's proposal. In response to clarification by Judge Rendahl, Qwest and the parties agreed that, should the Commission determine a hearing is necessary, Qwest would be amendable to modifying the schedule to allow for a hearing.

- 8 **COMPLIANCE WITH WAC 480-07-740(1).** In their filings in this proceeding, Staff and the Intervenors raise the concern that Qwest and the stipulating parties have not fully justified why the proposed stipulation is in the public interest. After further reviewing Qwest's petition and attachments, it became apparent that the petition did not comply with the Commission's rule governing consideration of settlements. The Commission's procedural rules require that parties filing settlement agreements must "also file supporting documentation sufficient to demonstrate to the commission that the proposal is consistent with law and the public interest and that it is appropriate for adoption."⁴ The rule describes the types of documentary support proponents of settlements may file with a settlement. During the conference, Judge Rendahl directed Qwest and the stipulating parties to file with the Commission the necessary documentation to support the stipulation.
- 9 **PROTECTIVE ORDER.** The parties ask that the Commission enter a protective order in this docket under RCW 34.05.446, RCW 80.04.095, WAC 480-07-420 and WAC 480-07-423 to protect the confidentiality of proprietary information. The request was granted. The parties will prepare a proposed protective order for consideration and, following Commission review, a protective order will be entered in this docket.
- 10 **DISCOVERY.** The parties asked that the discovery rules be invoked in this docket, under WAC 480-07-400. The matter is one that qualifies for discovery, and the discovery rules, WAC 480-07-400 – 425, are invoked. Thus, discovery will be conducted pursuant to the Commission's discovery rules, WAC 480-07-400 – 425.

The Commission urges the parties to work cooperatively together to avoid having to bring discovery matters forward for formal resolution.

- 11 **MODIFIED PROCEDURAL SCHEDULE.** The parties agreed during the conference to modify the procedural schedule for this proceeding. The Commission adopts the following modified procedural schedule, which is attached to this Order as Appendix B:

Responses to Bench Request No. 4	Tuesday, August 28, 2007
Deadline for Qwest and Stipulating Parties to File Supporting Documentation	Wednesday, September 12, 2007
Deadline for Initial Comments	Friday, October 5, 2007
Deadline for Responsive Comments	Friday, October 26, 2007
Commission Final Order	By Friday, November 30, 2007

- 12 **DOCUMENT PREPARATION AND FILING REQUIREMENTS.** Parties must file an original plus **five (5) paper copies** of all pleadings, motions, briefs, and other prefiled materials. These materials must conform to the format and publication guidelines in WAC 480-07-395 and WAC 480-07-460. The Commission prefers that materials be three-hole punched with *oversized* holes to allow easy handling. The Commission may require a party to refile any document that fails to conform to these standards.

⁴ WAC 480-07-740(2).

- 13 All filings must be mailed or delivered to the Executive Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250. Both the post office box and street address are required to expedite deliveries by the U.S. Postal Service.
- 14 An electronic copy of all filings must be provided either through the Commission's Web Portal (www.utc.wa.gov/e-filing) or by e-mail delivery to records@utc.wa.gov. Alternatively, parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette or CD including the filed document(s). Parties must furnish electronic copies in MS Word 6.0 (or later) supplemented by a separate file in .pdf (Adobe Acrobat) format. Parties must follow WAC 480-07-140(5) in organizing and identifying electronic files.
- 15 **ELECTRONIC SUBMISSION OF DOCUMENTS.** Pursuant to WAC 480-07-145(6), the presiding officer grants a one-day extension of the paper-filing requirement, allowing electronic submission of documents with the Commission on the filing deadline. Parties must submit documents either through the Commission's Web Portal (www.utc.wa.gov/e-filing) or by e-mail to records@utc.wa.gov, and file an original, plus **five (5) paper copies**, of the documents with the Commission by noon on the following business day. **Parties must provide courtesy copies of their electronic submissions to the presiding administrative law judge and the parties to the proceeding.**
- 16 **ALTERNATE DISPUTE RESOLUTION.** The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving disputes informally. The Commission does have limited ability to provide dispute resolution services; if you wish to explore those services, please call the Director, Administrative Law Division, at (360) 664-1144.

- 17 **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 August 23, 2007.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL
Administrative Law Judge

APPENDIX A

**PARTIES' REPRESENTATIVES
DOCKET UT-073034**

PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
QWEST	LISA A. ANDERL Associate General Counsel 1600 7 th Avenue, Rm 3206 Seattle, WA 98191 MARK REYNOLDS CHRIS VIVEROS	206-345-1574	206-343-4040	lisa.anderl@qwest.com Mark.Reynolds3@Qwest.com Chris.viveros@Qwest.com
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COMMISSION STAFF	JONATHAN THOMPSON Asst. Attorney General 1400 S Evergreen Park Drive SW P.O. Box 40128 Olympia, WA 98504-0128	360-664-1189	360-586-5522	jthomps@utc.wa.gov

PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
Administrative Law Judge	ANN E. RENDAHL 1300 S Evergreen Park Dr SW P.O. Box 47250 Olympia, WA 98504-7250	360-664-1144	360-664-2654 [ALD fax only – do not use to file]	arendahl@utc.wa.gov
Administrative Law Judge	ADAM E. TOREM 1300 S Evergreen Park Dr SW P.O. Box 47250 Olympia, WA 98504-7250	360-664-1138	360-664-2654 [ALD fax only – do not use to file]	atorem@utc.wa.gov

**APPENDIX B
PROCEDURAL SCHEDULE
DOCKET UT-073034**

EVENT	DATE	INTERVAL
Qwest Filing of Petition	Tuesday, June 26, 2007	—
Prehearing Conference	Tuesday, July 31, 2007	35 Days
Deadline for Petitions to Intervene	Wednesday, August 15, 2007	15 Days
Deadline for Staff Filing (various)	Thursday, August 16, 2007	1 Day
Deadline to Respond to Petitions to Intervene (if any) <i>and/or</i> Deadline to Waive Initial Order	Monday, August 20, 2007	4 days
Prehearing Conference (Second)	Tuesday, August 21, 2007	1 Day
Responses to Bench Request No. 4	Tuesday, August 28, 2007	7 Days
Deadline for Qwest and Stipulating Parties to File Supporting Documentation	Wednesday, September 12, 2007	15 days
Deadline for Initial Comments	Friday, October 5, 2007	23 Days
Deadline for Responsive Comments	Friday, October 26, 2007	21 Days
Commission Final Order	By Friday, November 30, 2007	35 Days