BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Docket No. UT-033020

IN THE MATTER OF THE SIX-MONTH REVIEW OF QWEST CORPORATION'S PERFORMANCE ASSURANCE PLAN

I. Introduction

Eschelon Telecom, Inc. ("Eschelon") provides the following response to Qwest's December 8, 2003 comments regarding Enhanced Extended Loops ("EELs") and the Performance Indicator Definition ("PID") PO-2B.

Eschelon has requested that the Washington Commission establish EEL standards and payment opportunities for seven PIDs and include EELs as a reporting category for another PID consistent with the Colorado Performance Assurance Plan ("PAP"). As described below, Qwest's comments provide no basis for further delay in establishing EEL standards. Furthermore, Qwest has not provided any argument as to why the approach that Qwest and CLECs agreed to in Colorado is not a reasonable approach in Washington.

With respect to PO-2B, Qwest's December 8, 2003 comments provide, for the first time, Qwest's basis for removal of PO-2B from the Washington PAP. As the Commission recognized in including PO-2 in the PAP, measurement and corresponding remedies for this measure is important. For this, and many other reasons, Qwest's proposal is, at best premature.

II. The Washington PAP should contain the same EEL standards as the Colorado Performance Assurance Plan ("PAP")

More than a year ago, this Commission found that the Washington PAP "must have sufficient measures in place that reflect a broad range of carrier-to-carrier performance at the time Qwest enters the long distance market, including EELs, sub-loops, and line sharing."[1] The Commission determined that "Qwest must provide payment opportunities in the QPAP for these measures as standards are determined and not wait until a six-month review to do so."[2]

The Commission's order reflects the importance of including EEL standards in the Washington PAP as soon as possible. While CLECs share the Commission's urgency, Qwest's comments

[1] Thirtieth Supplemental Order in the Matter of the Investigation into U S WEST Communications Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996, Docket No. UT-003022 and In the Matter of U S WEST Communications, Inc.'s Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996, Docket No. UT-003040, April 5, 2002 at 33.
[2] *See* Id.

clearly indicate that Qwest wants to delay the inclusion of EELs in the Washington PAP for as long as possible. Qwest's rationale for doing so is not reasonable on many levels.

First, Qwest suggests that the Commission has "confounded the issue of performance standards for EELs with the contents of the QPAP."[3] Qwest is incorrect. The Washington PAP clearly indicates that the six-month review can correct omissions in Qwest performance measures. For example, Section 16.1 states that the, "Criteria for review of performance measurements, other than for possible reclassification, shall be whether there exists an omission or failure to capture intended performance."[4] This Commission intended to include EELs in the PAP and an agreed upon approach to the treatment of EELs has been presented to the Commission.

Second, Qwest suggests that the Long Term PID Administration ("LTPA") should establish the standards and only then should the Commission review the outcome.[5] While Qwest suggests LTPA should be used to develop "consistent" standards, Qwest fails to acknowledge that the request before this Commission is to provide consistency with the Colorado PAP. The Colorado Stipulation[6] represents a compromise for both Qwest and CLECs. CLECs are willing to extend the compromise to other states. Qwest has not expressed, in either LTPA or in this proceeding, whether it would agree to "consistently" apply the Colorado Stipulation.

While Qwest asserts that using the LTPA process is "beneficial to all parties," Eschelon is unable to contemplate benefits to anyone beyond Qwest.[7] Because the parties have already negotiated the matter in Colorado and reached agreement, there should be no need to discuss the matter in LTPA. If Qwest agrees to the same terms as those in the Stipulation, the matter will come back before the Washington Commission. However, by the time LTPA considers the matter, the <u>second</u> Washington six-month review will have likely already begun.[8] In the event that Qwest does not agree to apply the Colorado Stipulation region-wide, again, the matter will come right back to the Washington Commission as an impasse issue. In either case, Qwest's strategy to delay, for as long as possible, implementing standards for EELs in Washington will have been effective.

Third, Qwest has mischaracterized the level of EELs competition in Washington in an attempt to convince the Commission that the issue is not "urgent or necessary."[9] Qwest asserts that there are currently "only <u>sixteen</u> EELs in place in Washington."[10] Qwest failed to provide any

[3] Qwest Corporation's Third Comments ("Comments"), December 8, 2003 at 11.
[4] Qwest's latest version of the Washington PAP can be found at: http://www.qwest.com/wholesale/downloads/2003/031111/WA-Exhibit-K-10-31-03.doc
[5] Qwest Comments at 13.
[6] On July 23, 2003, Qwest, AT&T, MCI and Eschelon entered into a Stipulation before the Colorado Commission during its first six-month review of the Colorado PAP ("CPAP"). This Stipulation was accepted by the Colorado Commission and standards for EELs for PO-5, OP-3, OP-4, OP-5, OP-6, MR-5, MR-6, MR-7, and MR-8 are now part of the CPAP. Order Denying Rehearing, Reargument, or Reconsideration in the Matter of Qwest Corporation's Colorado Performance Assurance Plan, Docket No. 02M-259T, August 22, 2003 at 2.
[7] Comments at 12.
[8] The proposed EELs standards are listed as Issue #31 out of approximately 40 issues currently before the LTPA. The issue has not been scheduled for discussion at this time.
[9] Comments at 12.
[10] See id. Emphasis added.

documentation for this remarkable claim. Instead, Qwest's own performance reports indicate that there are 974 EELs in place in Washington.[11]

The Commission's directive that EEL standards and payment opportunities must be included in PAP at the time Qwest entered the long distance market is clear. Qwest has attempted to further delay resolution of this issue despite resolving the issue in Colorado almost six months ago. The Washington Commission should establish the agreed upon EEL standards provided in the following table. These standards should apply to PAP payment reports in the first month following Commission approval.

PID	Standard
OP-3	90% Benchmark
OP-4	6 day Benchmark
OP-5	Parity with Qwest Retail DS1 Private Line
OP-6	Parity with Qwest Retail DS1 Private Line
MR-5	Parity with Qwest Retail DS1 Private Line
MR-6	Parity with Qwest Retail DS1 Private Line
MR-7	Parity with Qwest Retail DS1 Private Line
MR-8	Parity with Qwest Retail DS1 Private Line
PO-5	Add EELs as a product category for PO-5B. A standard for PO-5B already exists.

III. The PAP's treatment of PO-2B should not change at this time

Eschelon's initial comments regarding this issue were necessarily quite general because Qwest had not provided its basis for removing PO-2B in the first two rounds of comments in this proceeding. Qwest's December 8, 2003 comments represent Qwest's first explanation of Qwest's proposal. Nevertheless, Eschelon's general observations still apply. Before responding to Qwest's comments specifically, the next section describes how Qwest's comments fail to address these concerns.

A. Removal of PO-2B is premature, unnecessary, and goes against the grain of other state commissions which are expanding the scope of PO-2B

First, as described in Eschelon's initial comments, because the FCC relied on the existence of performance plans, like the Washington PAP, to ensure that the market would remain open after Qwest received 271 relief, it is premature to start removing measures at the first six-month review when Qwest's performance after receiving long distance authority across its service region is still unknown.

Second, as described in Eschelon's initial comments, the appropriate conclusion to draw from Qwest's performance is that it can meet the standards that this Commission (and the FCC)

[11] http://www.qwest.com/wholesale/downloads/2003/031219/WA_271_Dec02-Nov03_Exhibit_PID-Final.pdf at 252

accepted as benchmarks in the 271 proceedings as necessary to provide a meaningful opportunity to compete under PO-2B. In its comments, Qwest describes meeting or exceeding standards for PO-2B on many occasions.[12] Qwest describes modifications to its systems that "will substantially increase flow-through of such orders from levels which have been observed during the past eighteen months."[13]

Eschelon would suggest that it is the very inclusion of PO-2 in the Washington PAP that has provided an incentive for Qwest to improve its performance. When Qwest meets the standards established for 271 purposes, Qwest will be required to make no PAP payments. The optimal result under the PAP would be Qwest not paying remedies <u>because of acceptable performance.</u> Qwest's proposal to allow it to make no payments, no matter what the level of its performance, is inconsistent with the intent of performance plans.

Third, Qwest's proposal goes against the grain from what other states are doing with regard to flow through. The Minnesota Commission recently required Qwest to include two additional products under PO-2 and to develop standards for these measures in LTPA.[14] So, just as Qwest is expanding PO-2 upon direction of the Minnesota Commission, Qwest is requesting that this Commission restrict PO-2 in Washington.

Fourth, Qwest's states in its comments that it is requesting the "removal of PO-2B in all states in which it current exists…"[15] What Qwest doesn't state is that it has made this request in LTPA.[16] Qwest's position that EELs cannot be considered in a six-month review and must be considered in LTPA first (see above), is inconsistent with Qwest's position on this issue.

B. <u>Qwest's proposal to eliminate PO-2B from the PAP is not appropriate</u>

Qwest proposes to either eliminate or at least modify PO-2B.[17] In this section, Eschelon responds to Qwest's rationale for eliminating PO-2B. In the next section, Eschelon responds to Qwest's modification proposal.

As an initial matter, it should be recognized that Qwest's position that PO-2 should not be included in PAPs is one that was rejected by the Commission when it included PO-2 in the PAP in the first place. As such, Qwest should be required to explain "what has changed?" Qwest asserts that "[s]ubsequent events have shown that the finding that this PID is necessary for CLECs to compete is incorrect."[18] Unfortunately, Qwest provides no explanation of what these subsequent events are. Instead, Qwest makes claims such as "no linkage has ever been demonstrated between PO-2 performance and harm to CLECs or to their ability to compete"[19]

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[12] Comments at 8.
[13] See id.
[14] Order Finding Compliance Filing Inadequate and Requiring Further Filings, In the Matter of a Request by Eschelon Telecom for an Investigation regarding Customer Conversion by Qwest and Regulatory Procedures, Docket No. P-421/C-03-616, November 12, 2003.
[15] Comments at 9-10.
[16] See Issue 17 in the LTPA Issues log (LTPA website not currently accessible).
[17] Comments at 1.
[18] See id at 4.
[19] See id at 2.

and "There are no direct impacts of a failure of an LSR [Local Service Request] to flow through electronically…"[20] The claims are false and a careful reading of Qwest's comments makes clear that Qwest recognizes this as well.

Qwest makes the undefined distinction between "direct" and "indirect" effects. While it may be true that it isn't the falling down the stairs that hurts so much as the landing; this distinction provides little comfort. Harm is harm. Nevertheless, it seems necessary to explain to Qwest the "linkage", the "impact", and why other PIDs do not address the matter addressed by PO-2.

1. <u>Poor flow through is cause of both CLEC and end-user harm</u>

As mentioned in Eschelon's initial comments, PO-2 measures Qwest's flow through capabilities, with PO-2B measuring only a limited subset of all orders. Orders that do not flow through require Qwest to manually create service orders. Qwest errors in the manual creation of service orders are the result of a lack of flow-though. After all, if orders flow through (i.e., Qwest's performance under PO-2 is good), there is no need for Qwest to manually create service orders.

Qwest's makes so many errors during its manual service order creation processes that Eschelon undertook the tremendously resource intensive process of reviewing Qwest's internal service orders. When Eschelon finds a Qwest error, Eschelon notifies Qwest so that Eschelon's end users are not impacted. It is only because Eschelon is conducting quality control of Qwest's work that Qwest can claim no harm to end users results. Nevertheless, there is a harm—Eschelon must expend tremendous resources to stop Qwest-caused trainwrecks.

Eschelon created a performance metric to measure Qwest's manual service order errors and began providing results to Qwest in the October 2003 Report Card.[21] Measure E-3B documents each Qwest service order error that Eschelon corrects prior to the due date so that the Eschelon's end users are not taken down or otherwise affected by Qwest's manual service order errors.

The level of Qwest's service order errors is striking. In October 2003, 14% of Eschelon's new customers served by UNE-P and UNE-E would have experienced a bad conversion had Eschelon not taken on the burden of reviewing Qwest's manual service order accuracy.[22] Because Qwest makes errors on so many orders, Eschelon has to review every service order if it wishes to ensure a seamless installation. Qwest acknowledges that CLECs must use their own resources to fix the issues associated with LSRs that drop out and that no direct measurements exist for this "dimension."[23]

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[20] See id at 3.
[21] Eschelon provides Qwest with a report card of Qwest's performance each month is various areas.
[22] Eschelon is unaware of a protective agreement in this proceeding. Eschelon will provide the Commission with data supporting this report card measure to the Commission under some sort of protective agreement upon request. As mentioned above, Qwest has already been provided with the data.
[23] Comments at 3.

2. Qwest is incorrect in stating that other PIDs address the end user impacts of poor flow through

Instead of undertaking steps to reduce manual service order errors, Qwest chose to describe its "excellent performance" for PO-5—Firm Order Confirmations ("FOC") On Time.[24] However, it is important to note that providing an FOC quickly is not useful if the underlying order is incorrect. Similarly, Qwest describes the existence of OP-8C to measure Qwest's "Number Portability Timeliness."[25] Once again, doing something in a timely manner, but incorrectly, is not an achievement.

Qwest then goes on to briefly describe PO-20, a proposed measure of Qwest's manual service order accuracy. Qwest cites the existence of this measure as a basis for eliminating payments for PO-2B. This is incorrect.

First, PO-20 is being discussed in LTPA but the measure does not exist at this time. Because this process has taken so long, Eschelon began to publish its own performance measure of Qwest's service order errors. At this time, Qwest is reviewing Eschelon's data to determine whether Qwest's proposed measure will truly capture service order errors related to installation. This review is occurring because CLECs have been concerned that Qwest's proposed measure will exclude the types of orders most likely to have errors.

Second, even if PO-20 is completed in the near future, there will not be performance standards with remedy payments under the Washington PAP.[26] In addition, there is usually a lag in Qwest's ability to report performance for new measures. Eschelon believes that it would be optimistic to suggest that Qwest will report PO-20 results and pay PAP payments any time before the third six-month review.[27] As such, Qwest's proposal to eliminate PO-2B because of PO-20 is premature.

Third, even if the pending PO-20 measure captured the Qwest service order errors that it is designed to capture and the Washington PAP provided payments for any Qwest discriminatory treatment, PO-2B should still be maintained. This is because the draft PO-20 includes only inward activity.[28] Eschelon's report card indicates that Qwest makes approximately the same number of manual service order errors on non-inward activity as it does on inward activity. From the customer's perspective, the distinction between inward and non-inward activity is irrelevant. The customer has asked Eschelon to do something. Eschelon then submits an order to Qwest. If Qwest makes a mistake in manually entering a service order because the order did not flow through, the customer is taken down or otherwise impacted. Because PO-2 measures the flow

[24] See id at 5.
[25] See id at 6.
[26] Eschelon (and other CLECs) proposed treating PO-20, when finalized, in the same manner as OP-5 as part of this review. The Commission determined that standards for PO-20 are not part of this six-month review.
[27] Eschelon assumes the third six-month review will begin in July 2004.
[28] Inward activity can be roughly thought of as installation of "new" circuits/services. Non-inward activity can be thought of as involving changes to existing circuits/services.

through of both inward and non-inward orders, it is the only measure that addresses the costs borne by CLECs and their end users due to Qwest's lack of flow through.[29]

C. <u>Qwest's proposal to modify PO-2B is both unclear and inappropriate</u>

In the event the Commission rejects Qwest's proposal to remove PO-2B from the PAP, Qwest then asks the Commission to modify PO-2B. Qwest's proposal to modify PO-2B is unclear. Qwest seems to be proposing to aggregate some measures and products, disaggregate others, compare the results and then determine if a PAP payment is warranted.[30] Qwest kindly offers to "disclose implementation details… to the Commission and CLECs upon implementing and first reporting" in a footnote.[31]This is unreasonable. Qwest has proposed a dialogue on this very complex approach in LTPA. Qwest should be consistent in its advocacy of the LTPA process to address such issues.

In addition, Qwest seems to be suggesting that its issue with PO-2B is the amount of money paid to the state (Tier II) and not payments to CLECs.[32] The level of Tier II payments made by Qwest is not visible to Eschelon. Eschelon would note that payments to CLECs are at the lowest level available in the PAP. Nevertheless, it is important to note that if Qwest passes the measure, whether the Tier payment is $25 or $225 is irrelevant because Qwest will be required to pay nothing. Qwest's performance indicates that it can pass PO-2B. Qwest's comments predict improved performance in the future.[33] As such, Qwest's request to remove or modify the measure may be moot.

V. Conclusion

EELs should be treated in the same manner under the Washington PAP as the parties have agreed to in Colorado. No changes should be made to the treatment of PO-2 under the PAP at this time.

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[29] Once again, it is important to note that PO-2, and particularly PO-2B, does not currently measure <u>all</u> products or all flow through, but just a limited subset. As mentioned above, the Minnesota Commission has directed Qwest to <u>expand</u> PO-2 to make the measure better.
[30] Comments at 6-7.
[31] See id at 7. See footnote 5.
[32] See id at 10.
[33] See id at 8.