

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: April 8, 2004

REGULAR CONSENT EFFECTIVE DATE April 18, 2004

DATE: March 22, 2004

TO: Lee Sparling

FROM: Tom Harris through Dave Booth and Phil Nyegaard

SUBJECT: QWEST CORPORATION: (Docket No. UM 973) Requests approval of the Statement of Generally Available Terms and Conditions (SGAT), Fourteenth Revision, filed February 18, 2004.

STAFF RECOMMENDATION:

The Commission should allow Qwest Corporation's (Qwest's) amended Statement of Generally Available Terms and Conditions (SGAT), Fourteenth Revision, filed February 18, 2004, to go into effect without approval and subject to investigation.

DISCUSSION:

On February 18, 2004, Qwest Corporation filed another revision of its Statement of Generally Available Terms and Conditions (SGAT). This filing is the latest in a long series of such filings. In April 2000 Qwest filed its original SGAT pursuant to Section 252(f) of the Telecommunications Act of 1996 (the Act). The SGAT is Qwest's offer to competitive local exchange carriers (CLECs) of terms, conditions and prices for interconnection, collocation, unbundled network elements, and telecommunications services for resale. The Commission allowed Qwest's SGAT to take effect without approval and subject to investigation. See Order No. 00-327¹. From November 2000 to October 2003, Qwest filed fourteen amendments to its SGAT. The Commission allowed those amendments to take effect without approval and subject to investigation².

¹ The Commission issued Order No. 00-327 in Docket UM 973, a proceeding established to investigate Qwest's SGAT. The Commission decided that initially it would review the SGAT in Docket UM 823. The latter proceeding was the investigation of Qwest's compliance with Section 271 requirements for entry into the in-region, interLATA toll market. In Docket UM 823, the Commission determined that Qwest satisfied Section 271 requirements. Now the Commission will continue to investigate the SGAT in Docket UM 973 before giving final approval.

² See Orders 01-122, 01-721, 01-878, 01-1050, 02-145, 02-315, 02-731, 03-074, 03-150, 03-189, 03-410, 03-572, 03-665, and 03-753.

On February 18, 2004, Qwest filed a "Notice of Fifteenth Amendment (Fourteenth Revision) of Statement of Generally Available Terms and Conditions and Statement of Compliance [regarding Exhibit B - Long Term PID Administration Changes]" (the Notice). Along with the Notice Qwest filed the SGAT (Fourteenth Revision), Exhibits A – M, which are part of the SGAT, and a redlined version of Exhibit B³. In this filing the only changes are in Exhibit B. Exhibit B contains the Performance Indicator Definitions (PIDs). The Commission must decide the status of this latest version of Qwest's SGAT pursuant to Section 252(f) of the Act and Commission rules.

Federal Law: Section 252(f) of the Act provides that a Bell operating company, such as Qwest, may file with a state commission a statement of terms and conditions that the company offers competitors in order to comply with the Act. Section 252(f) gives the Commission three procedural options: (1) It can complete its review within 60 days, and determine whether the SGAT complies with both federal and state law. (2) It can ask Qwest to agree to an extension of the 60-day review period in order to allow sufficient time to complete its review and reach a determination. (3) It can allow the SGAT to go into effect, without approval or rejection, and continue to review the SGAT after it is in effect.

Section 252(f) also states that submission or approval of an SGAT shall not relieve a Bell operating company of its duty to negotiate terms and conditions of an agreement required by Section 252 of the Act.

Commission Rules: OAR 860-016-0040 sets the Commission process for SGAT filings. The rule echoes Section 252(f) of the Act. The rule provides that persons may file comments concerning an SGAT within 30 days of the date it is filed. Also, the rule states that the Commission will review the SGAT filing within 60 days, and "either reject it or permit it to go into effect." The submitting carrier can extend the review period beyond 60 days by agreeing to an extension. In addition, the Commission "may continue to review the statement after it has gone into effect."

We posted notice of Qwest's February 18 filing on the PUC web site for comment.

Comments of Qwest: In the Notice, provided with the February 18 filing, Qwest requested that the Commission allow the revised version of Exhibit B to the SGAT to go into effect within 60 days, that is by April 18, 2004, which is the time limit allowed by Section 252(f). Exhibit B contains Performance Indicator Definitions (PIDs).

³ Qwest identified this version of the SGAT as the "Fourteenth Revision", even though this is the fifteenth set of amendments the company has filed. To avoid confusion, staff will use Qwest's revision number to identify which version of the SGAT is being discussed.

The company also requested that the Commission deem the revised Exhibit B to modify the SGAT and existing interconnection agreements that currently contain PIDs as an exhibit.

Qwest worked through the Long Term PID Administration (LTPA)⁴ to identify changes needed to the PIDs. The LTPA approved the changes proposed in this SGAT filing on December 18, 2003.

First, Qwest made administrative changes to correct typographical errors and to increase the clarity, accuracy and completeness of the PIDs. The company did not change the meaning of any PID. Second, the company modified PID PO-16, Timely Release Notifications, to reflect the correct definition, which had not been filed previously. However, Qwest has been reporting its monthly performance according to the correct version of PO-16.

Third, Qwest changed PID GA-1, Gateway Availability, to reflect the retirement of two interface components, Fetch-N-Stuff (GA-1B) and Data Arbiter (GA-1C). These two interface components have been replaced with one component SIA (GA-1D). SIA is the Strategic Application Architecture Framework and Environment Information Access. The PID GA-1D measures the percentage of scheduled time the SIA system is available.

Comments of Staff. The changes that Qwest filed are relatively minor and have been approved by the LTPA. Like previous SGATs, the February 18, 2004, SGAT is a work-in-progress and is not ready for Commission approval. This latest version of the SGAT will undergo additional changes, and the Commission can expect further amendments.

Qwest made two additional requests in the Notice. The company requested that the Commission deem the revised Exhibit B to modify the SGAT. Exhibits A to M are part of the SGAT, and changes to them modify the SGAT.

However, Qwest also requested that the Commission deem the revised Exhibit B to modify existing interconnection agreements that currently contain the PIDs as an exhibit. Staff believes the Commission cannot grant that request. Existing interconnection agreements have been individually approved by the Commission. Those agreements can only be changed by terms within each agreement. If individual agreements allow for automatic changes based on SGATs which the Commission allows into effect, then the revised PIDs will become part of those agreements. If

⁴ The LTPA is a working group consisting of Qwest, CLECs, and representatives of state commissions. Irv Emmons is the Oregon PUC representative.

individual agreements do not allow for such automatic changes, then Qwest and the other parties will have to work out the changes, agreement by agreement.

In 2002 the Commission concluded Docket UM 823, a proceeding during which Qwest modified its SGAT extensively. In Docket UM 973 the Commission will continue investigating Qwest's SGAT. Rates or prices for interconnection, collocation, unbundled network elements (UNEs), wholesale discounts applied to resold services, and ancillary services are part of the SGAT and are listed in Exhibit A to the SGAT. Costs and prices for Qwest UNEs are the subject of Docket UM 1025. Moreover, the Commission has not reviewed costs and prices for collocation in Qwest's central offices. Collocation costs and prices could be investigated in UM 973 or in another docket.

The Commission deferred some issues, which were raised in Docket UM 823, to Docket UM 973 because those issues were not germane to Section 271 requirements, the focus of UM 823.

It should not be construed that the Commission is approving Qwest's SGAT here. As with past SGAT filings, staff recommends the Commission allow the latest version to take effect without approval. To comply with the 60 day deadline in Section 252(f)(3) of the Act, the Commission must act by April 18, 2004. Allowing the SGAT into effect will not prejudice the position of CLECs, since they will be able to negotiate interconnection agreements with Qwest regardless of the availability of a SGAT.

PROPOSED COMMISSION MOTION:

Qwest Corporation's Statement of Generally Available Terms and Conditions (Fourteenth Revision), filed on February 18, 2004, be allowed to go into effect without approval and subject to investigation in Docket UM 973, pursuant to Section 252(f) of the Telecommunications Act of 1996 and OAR 860-016-0040.