

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: November 9, 2004**

REGULAR **CONSENT** X **EFFECTIVE DATE** November 14, 2004

DATE: October 26, 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), Seventeenth Revision, filed September 15, 2004.

STAFF RECOMMENDATION:

The Commission should allow Qwest Corporation's (Qwest's) amended Statement of Generally Available Terms and Conditions (SGAT), Seventeenth Revision, filed September 15, 2004, to go into effect without approval and subject to investigation.

DISCUSSION:

On September 15, 2004, Qwest Corporation filed another revision of its Statement of Generally Available Terms and Conditions (SGAT). 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 July 2004, Qwest filed numerous revisions to its SGAT. The Commission allowed those revisions 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, 03-753, 04-208, 04-380, and 04-482.

On September 15, 2004, Qwest filed the Seventeenth Revision SGAT along with a notice describing, in great detail, the changes included in the filing. The filing also included all the exhibits, A to M, to the SGAT, along with red-lined versions of Exhibits B and K. In this filing the changes are in Exhibits B and K. Exhibit B contains the Performance Indicator Definitions (PIDs). Exhibit K is Qwest's Performance Assurance Plan (QPAP). The QPAP defines payments Qwest makes to CLECs (Tier 1 payments) and to the states (Tier 2 payments) when its performance does not meet the standards defined by the PIDs in Exhibit B. 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. 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; or (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 September 15 filing on the PUC web site for comment. No comments were received.

Comments of Qwest: In the notice, provided with the September 15 filing, Qwest requested that the Commission allow the revised Exhibits B and K to the SGAT to go into effect by October 1, but in any event within 60 days, that is by November 14, 2004.

In the past, Qwest has worked through the Long Term PID Administration (LTPA)³ to identify changes needed to the PIDs. However, most of the changes shown in the instant filing result from an agreement (the 'Stipulation') between Qwest and participating CLECs in a review of the QPAP before the Washington Utilities and Transportation Commission (WUTC), Docket UT-043007. Qwest intends that the terms and conditions of the Stipulation be made available to all CLECs that opt-in to the QPAP in Qwest's fourteen state region.

Changes in Exhibit B include revised standards for performance for Line Splitting, Loop Splitting, and xDSL-I Capable Loops. Each of the changes affect several different PIDs.

As a result of work during the LTPA process, participants agreed to complete the addition of PID PO-20 (Expanded), Manual Service Order Accuracy, to Exhibit B. The participants also agreed to delete Exhibit B1, which contained the original version of PID PO-20, Manual Service Order Accuracy. Qwest and participating CLECs agreed in the Stipulation that PID PO-20 (Expanded) will be designated at the Tier 1 Medium, rather than Tier 1 Low, level for payments to the CLECs when Qwest's performance does not meet the standards defined for the PID in Exhibit B. Revised Exhibit K, which is the QPAP, reflects the changes to Exhibit B.

Comments of Staff. The substantive changes to the PIDs in Exhibit B reflect agreements Qwest reached with participating CLECs during the QPAP review in Washington. The September 15, 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 revisions.

Staff has no objection to the changes described by Qwest which are reflected in Exhibits B and K. The PID PO-20 (Expanded), Manual Service Order Accuracy, is being revised in four phases over several months. This filing reflects Phase 2. Qwest will now review 34 fields in the manual service orders for accuracy.

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. 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. Rates or prices for interconnection,

³ The LTPA is a working group consisting of Qwest, CLECs, and representatives of state commissions. Irv Emmons is the Oregon PUC representative.

collocation, unbundled network elements (UNEs), wholesale discounts applied to resold services, and ancillary services are listed in Exhibit A to the SGAT. Some of the prices have been resolved, some are under investigation in other dockets, and for some we have yet to begin an investigation of appropriate prices for Qwest's SGAT.

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 November 14, 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 (Seventeenth Revision), filed on September 15, 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.