

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02M-259T

IN THE MATTER OF QWEST CORPORATION'S COLORADO PERFORMANCE
ASSURANCE PLAN.

**ORDER ADDRESSING THE SIX-MONTH REVIEW OF
THE COLORADO PERFORMANCE ASSURANCE PLAN**

Mailed Date: July 03, 2003
Adopted Date: July 02, 2003

I. BY THE COMMISSION

A. Statement

1. Section 18.2 of the Colorado Performance Assurance Plan (CPAP or Plan) calls for a review of the Plan every six months beginning six months after the effective date. Staff of the Public Utilities Commission (Staff) is to submit a report to the Commission at the five month mark to make any recommendations on changes to the Plan, noting which were agreed to by all parties and which were contested. To compile this report, Section 18.3 directs Staff to meet with parties and the Independent Monitor to discuss any concerns or problems beginning 90 days into the relevant 6-month period.

2. Once this report is filed, parties are to be given two weeks to respond, then the Commission is to rule within four weeks after receiving the responses. Section 18.5 indicates that the Commission shall conduct a proceeding to resolve any disputes.

3. On June 2, 2003, Staff filed its first Six-Month Review Report (Staff Report). On June 16, 2003, two weeks later, AT&T Communications of the Mountain States, Inc., and TCG Colorado (AT&T), WorldCom, Inc. (MCI), and Qwest Corporation (Qwest) submitted

responses to the Staff Report. On June 17, 2003, Covad Communications Company (Covad) filed both a Motion for a One-Day Extension of Time to File Comments and comments. Also on June 17, 2003, Eschelon Telecom of Colorado, Inc. (Eschelon), filed late comments with no motion for extension of time.

4. Finally, on June 25, 2003, Staff filed a Motion for Leave to File a Response to Qwest's and to Specific CLEC's Comments on Staff's Six-Month Review Report and Request to Waive Response Time. Attached to the Motion was Staff's response (Staff Response).

B. Analysis

5. The first competitive local exchange carrier (CLEC) concern that we will address is one raised by Eschelon in its comments. Eschelon indicates that CLECs do not have access to the aggregate CLEC payment reports produced by Qwest at the end of the month following the performance reports. Eschelon states that access to this aggregate payment report would provide CLECs with information on which to base feedback on reporting and results at the second six-month review. Eschelon proposes that the aggregate CLEC payment be posted to the CPAP website at the same time as the individual CLEC reports are made available.

6. No other CLEC, Staff, nor Qwest comments on this Eschelon concern. However, it was our understanding that CLECs would have public access not only to the aggregate CLEC performance reports each month, but also to the aggregate payment reports. Our review of the language in Section 13.2 of the CPAP reveals a lack of clarity regarding the inclusion of the aggregate payment reports on the website. We agree with Eschelon that the information contained in those aggregate reports is valuable not only for the Commission and its Staff, but the CLECs as well.

7. We order Qwest to begin posting the aggregate CLEC payment reports to their CPAP website with the end of July report, *i.e.*, the May 2003 payment results. We further order Qwest to make the following language change to Section 13.2 of the CPAP: “On or before the last business day of each month following the relevant performance or payment period, Qwest shall post the individual CLEC monthly performance and payment reports to a secure part of the CPAP website and the aggregate state performance and payment reports to the public part of the CPAP website. In addition, Qwest must officially file with the Commission, one hard copy and one electronic copy in an Excel format, of all CLEC individual monthly reports under seal and one hard copy and one electronic copy in an Excel format of the state aggregate reports in the public file. If CLEC requests a hard ~~copy~~ copies of its individual reports, Qwest should make ~~that those~~ hard ~~copy~~ copies available at no cost to CLEC.”

8. The next issue of concern to the CLECs was raised by Eschelon, MCI, and AT&T. Those CLECs commented that Qwest had committed to submit proposed measurement standards for the inclusion of enhanced extended loops (EELs) for the following performance indicator definitions (PIDs): OP-3, OP-4, OP-5, OP-6, OP-15, MR-5, MR-6, MR-7, and MR-8. The CLECs stated that these standards are being discussed in the Long Term PID Administration (LTPA) forum.

9. Qwest, in its comments, agreed to propose standards for the EELs product and indicated that it had a meeting scheduled with the LTPA forum for June 26, 2003. After this meeting, Qwest agreed to supplement its comments to include identification of consensus or disputed areas. Qwest did not agree, however, with the inclusion of OP-15 either for EELs or line sharing. Qwest stated that OP-15 was inadvertently included by the Commission and is

duplicative of OP-6. Qwest asserts the OP-15 was not on the original list from the Regional Oversight Committee forum from which the CPAP PIDs were taken.

10. Staff reminds the Commission that any proposed standards for the EELs measurements would be circulated to the CLECs for comment as well prior to Staff making a recommendation to the Commission on their inclusion. Staff further states that OP-15 should be added to the CPAP for reporting and penalties for EELs and also for special access circuits.

11. The Supplemental Report, written by Special Master Phil Weiser, recommended that the EEL product category be added to the same list of measures as outlined in AT&T's comments, and listed above. This list of measures includes OP-15. It also recommended that the EEL submeasure be included as Tier 1A and that the statistical methodology can be used for EEL submeasures until a set of variance factors is developed for inclusion in Table 2. Further, the Supplemental Report recommended that EEL submeasures be added for PO-5 and PO-9, unless Qwest provided a compelling reason not to do so.

12. Commission Decision No. C02-399 accepts the recommendation stating that the submeasures for EELs should be considered for addition to the CPAP at the first six-month review. The decision further indicates that the Commission prefers that Qwest develop variance factor tables for the EEL submeasures for consideration at the first six-month review. The Commission accepted Qwest's willingness to disaggregate PO-5 for EELS and to begin producing data to be considered at the first six-month review. The Commission also accepted Qwest's reason not to disaggregate EELs for PO-9.

13. We agree with Qwest's proposal to supplement its comments regarding its proposed EEL standards including the CLEC, and Staff reaction to the proposed standards from

the June 26, 2003 meeting and any follow on discussions. We order Qwest to file this information, including its proposed EEL standards by July 16, 2003. In addition, we request that all parties file comments on the inclusion or exclusion of OP-15 for EELs as well as line sharing/line splitting. These comments will also be due July 16, 2003. Finally, we request that all parties file comments on the inclusion or exclusion of EELs in the PO-5.

14. Covad, MCI, and AT&T also requested that the Commission order Qwest to separately report line splitting. The CLECs assert that line splitting should be reported as a separate product category from line sharing, for the following PIDs: OP-3, OP-4, MR-3, MR-6, MR-7, and MR-8. In addition, AT&T requests that a standard be set for line splitting performance for the measures above as well as: PO-5, OP-5, OP-15, and MR-4. AT&T states that this line splitting product should no longer have a diagnostic indication, but rather a standard to include the payment of penalties associated with “misses.”

15. Qwest agrees with reporting line splitting as a separate product category from line sharing, but opposes setting standards at this time mainly due to the uncertainty of the treatment of line sharing and line splitting under the expected Triennial Review order from the Federal Communications Commission (FCC), as well as the low volumes for this product. Qwest states that it will be able to begin reporting the line splitting data with the June 2003 results.

16. Staff recommended that Qwest report line splitting separately from line sharing, but continue to make payments on the combined category. Staff believes it is appropriate to wait until the Triennial Review order is published and more data is gathered to make a further recommendation on standards for the line splitting PIDs.

17. We agree with Qwest and Staff on this issue. Because of the imminent Triennial Review order and the current low volumes for line splitting, we order Qwest to report on its line splitting performance as a separate product category for performance purposes, but do not require standards be set at this time. Any payments for missed measures should be made combining line sharing and line splitting. This matter should be revisited at the next six-month review to determine the effects, if any, of the FCC's Triennial Review and to determine if volumes have increased enough to warrant that a separate performance standard be set. The list of PIDs for reporting purposes will be: OP-3, OP-4, OP-5, MR-3, MR-4, MR-6, MR-7, and MR-8. We will reserve judgment on OP-15 and PO-5 until after we have received the parties' July 16, 2003 comments on these measures.

18. MCI and Covad commented that the interval for OP-4, loop conditioning, should be shortened from the current 15-day interval to 5 to 7 days. They state that Qwest has typically been taking between 4 and 10 days (MCI) or 5 to 7 days (Covad) and therefore, if Qwest is "hitting more aggressive performance standards," the Commission should set a higher standard going forward to maintain that high performance.

19. Staff states that a 15-day interval was included in Exhibit B to the Statement of Generally Available Terms and Conditions (SGAT) with the 9th Revision accepted by the Commission with Decision No. C03-0464. This revision did not change the standard in Appendix B to the CPAP, however. Appendix B to the CPAP contains provisions unique to the CPAP. Staff does recommend for consistency that the Appendix B interval be changed to 15 days as well, but not any lower at this point.

20. As Staff indicated, the Qwest 9th Revised SGAT contained a change in the service interval for loop conditioning, OP-4, in Exhibit B from 16 ½ days to 15 days. Qwest did not make the same change to Appendix B to the CPAP -- it remains at 16 ½ days. Appendix B contains any differences between the Regional Oversight Committee (ROC) PIDs in Exhibit B and the specific PIDs for the CPAP. For Colorado, Appendix B takes priority over Exhibit B for CPAP purposes.

21. For consistency with the ROC standards, we order Qwest to make a change to Appendix B to the CPAP. The interval for OP-4 should be changed from 16 ½ days to 15 days. We order no further reduction in the interval at this time. Qwest should be applauded for surpassing this standard, and the CLECs have the right to present this proposal again at the next six-month review.

22. Qwest takes issue with the penalties associated with late or inaccurate reporting contained in Section 13.0. Qwest states that the Commission should consider the circumstances under which Qwest's reported results would be considered inaccurate for assessing payments. It states that some degree of error is inevitable when one is dealing with these huge amounts of data. Qwest requests the Commission adopt the BellSouth policy for rerunning data.

23. MCI and AT&T comment that Qwest should not be allowed to change the penalties set in the CPAP for late or inaccurate reports. They state that this is not an issue yet and there is no detailed information from Qwest concerning undue harm. Staff agrees that no change should be made at this time, but that the Commission should reconsider the merits of the BellSouth policy at the next six-month review when there is more payment and reporting data available.

24. This same concern was addressed in the Supplemental Report to the Commission. At that point, any decision to refine the parameters for inaccurate reports was deferred until after the Commission gains a better real world understanding of the performance plan and reporting under that plan, and can identify shortcomings. We do not believe we are there yet, nor do we believe Qwest has that detailed of an understanding of its data gathering and reporting processes. At this point we view the re-running of data as an experience that will hopefully refine Qwest's processes and programs to minimize errors in the future. We also note that Section 13.6 allows for self-correction of reporting errors by Qwest without penalty.

25. Covad and AT&T state that the standard for OP-3, installation commitments met, should be 95 percent rather than the current 90 percent. They indicate that all 13 other ROC states have a 95 percent standard and Qwest's performance has been greater than 95 percent for line sharing under OP-3, with the lowest results in the past year at 96.97 percent.

26. Staff, in its report, requests the Commission do nothing with the standard at this time, but rather review it again at the next six-month review. Because Qwest is meeting or besting this standard currently, Staff believes there is no harm to the CLECs to wait another six months.

27. The ROC standard was "diagnostic" for OP-3 for line sharing when the Special Master's Final Report was filed. He recommended that the standard be set at 90 percent for CPAP purposes. Due to timing and our intent to finalize the CPAP for Qwest to begin reporting, the CPAP standard was not changed when later the ROC agreed to a 95 percent standard for OP-3 line sharing.

28. We now believe a change in this standard, to conform with the higher ROC standard of 95 percent, is warranted. For consistency with the other 13 ROC states, and hopefully to help Qwest for reporting purposes we order Qwest to change the CPAP to reflect a 95 percent standard for OP-3, line sharing. Qwest's performance should be applauded and this change should not be viewed as penalizing it for good behavior.

29. AT&T states that the dark fiber interoffice facilities (IOF) product category is currently diagnostic in the PIDs and should now have a benchmark standard instead. AT&T asserts that the volume is significant and increasing (161 lines in region as of April 2003 and increasing in each of the last seven months). AT&T asserts that given the increasing volume and Qwest's gained experience on the provisioning, maintaining, and repairing of dark fiber IOF, now is the time to set a benchmark or parity standard to this product.

30. Qwest states that this product category is already reported in the PIDs as diagnostic and the low monthly volume data does not justify standards being set. Monthly volumes are normally zero, according to Qwest.

31. Staff originally recommended that dark fiber IOF not have a set standard at this time, and then somewhat changed its recommendation in its response because of the apparent conflict between AT&T's line count for dark fiber IOF and Qwest's line count. Now Staff recommends that direct dialogue be ordered between Qwest and AT&T to resolve the dispute. Staff further recommends if this issue cannot be resolved, AT&T should take the matter to the Independent Monitor for resolution.

32. We do not order a change at this time. Even if AT&T's line counts are correct on a region-wide level, we still believe the Colorado portion is too low to warrant a separate standard

and associated penalty for dark fiber IOF at this time. This issue can be revisited at the next six-month review, and if the volumes have increased significantly, then a standard might be appropriately added at that time. As for the dialogue between AT&T and Qwest suggested by Staff, of course, we encourage open communication between parties at all times, but we will not order dialogue at this time.

33. In Decision No. C02-718, the Commission required Qwest to develop and submit for inclusion in the CPAP a performance measure for Manual Service Order Accuracy. Qwest was ordered to complete development of the PID such that it could be added to the CPAP at the first six-month review. The Commission acknowledged that there might not yet be a functioning long-term PID administration process and stated that lack of such a process does not extend Qwest's time to complete development of a PID.

34. The decision goes on to indicate that the standard for the PID will initially be "diagnostic" and that a benchmark will be set at the second six-month review. The PID is to be added to the CPAP as a Tier 1B measure unless parties agree that Qwest's performance does not warrant the addition of such a PID to the CPAP.

35. In its comments, Qwest requests a waiver of the requirements of the Commission's direction to have a Manual Service Order Accuracy PID, PO-20, submitted at the six-month review, based upon Staff's recommendation in its report and the parties' unanimous agreement.

36. The individual CLECs do not specifically comment on PO-20, other than to say that this PID should be added to the CPAP once the LTPA's *ad hoc* working group has completed its revisions.

37. We deny Qwest's request for a waiver. The requirement to develop a PID for Manual Service Order Accuracy was a condition placed on Qwest in order to receive a favorable recommendation to the FCC from the Commission on Qwest's § 271 application for Colorado. We now request that all parties file comments by July 16, 2003 on whether or not PO-20 should be included in the CPAP.

38. The LTPA forum should continue work on any other PIDs mentioned in the Staff Report, CLEC, or Qwest comments, until such time as consensus or impasse has been reached.

39. In its report, Staff recommends adding definitions and examples of the interrelationship of the various Tiers and penalties to the CPAP language and also recommends adding illustrative examples of the payment calculations. Staff further suggests a trial/advisory staff panel be formed to work on this language.

40. No other party commented on this suggestion.

41. We do not agree with the addition of this language to the CPAP. The CPAP is part of a business contract and does not need to contain, nor should it contain illustrative examples or payment calculations. However, if the parties want to compose a working paper with common understanding of how the CPAP functions, they should pursue that on their own.

42. Finally, Staff suggests language be added to Section 10.6 of the CPAP to memorialize our Decision No. C03-0614 in which we allowed for the payment of a LTPA facilitator from the Tier 2 or Special Fund.

43. Section 10.6 should be changed to read: "Other potential uses for this fund include: paying for the Colorado portion of a Long Term PID Administration facilitator, paying a

technical advisor for the Commission's CPAP Revision process; paying a consultant for the three-year review; and, if the Commission so decides, paying for additional audits of Qwest's performance measurement and reporting, and paying other administrative expenses."

II. ORDER

A. The Commission Orders That:

1. Covad Communication Company's Motion for One-Day Extension of Time is granted.
2. On the Commission's own motion, we allow the late filed comments of Eschelon Telecom of Colorado, Inc.
3. Staff of the Colorado Public Utilities Commission's Motion for Leave to File a Response to Qwest's and to Specific CLEC's Comments on Staff's Six-Month Review Report and Request to Waive Response Time is granted and response time is waived.
4. Qwest Corporation's request for waiver of the requirements in Decision No. C02-718 regarding PO-20, Manual Service Order Accuracy, is denied consistent with the above discussion.
5. All parties are requested to file comments on OP-15, PO-5, and PO-20, consistent with the above discussion, by July 16, 2003.
6. Qwest Corporation is ordered to file supplemental comments to update the Commission on the status of the standards for enhanced extended loops, consistent with the above discussion, by July 16, 2003.

7. Qwest Corporation is ordered to revise the Colorado Performance Assurance Plan consistent with the above discussion.

8. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
July 2, 2003.**

(S E A L)



ATTEST: A TRUE COPY

**Bruce N. Smith
Director**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners