

Decision No. C04-0269

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 GRANTING APPLICATION FOR REHEARING,
REARGUMENT, OR RECONSIDERATION IN PART**

Mailed Date: March 16, 2004

Adopted Date: March 3, 2004

I. BY THE COMMISSION

A. Statement

1. On February 24, 2004, Qwest Corporation (Qwest) filed an Application for Rehearing, Reargument, or Reconsideration (RRR) and Motion for Stay with Request for Waiver of Response Time. By Decision No. C04-0204 we granted Qwest's motion for stay until further order of the Commission. In this decision, we address Qwest's filing for RRR on Issue #4 of Decision No. C04-0147, mailed February 11, 2004.

2. In this filing for RRR, Qwest asserts that the Commission ruled on assertions that DIECA Communications, doing business as Covad Communications Company (Covad) and WorldCom, Inc. (MCI), made in an untimely pleading filed outside of the second six-month review process. Qwest states that it objects to those portions of Decision No. C04-0147 that were entered without notice to Qwest and without giving Qwest an opportunity to be heard.

3. Qwest states that on October 3, 2003, it filed its Notice of Compliance Filing Regarding Modified Exhibits K and B to its Statement of Generally Available Terms and Motion for Approval. On November 4, 2003, the Commission by Decision No. C03-0961 accepted

Qwest's compliance filing, but ordered Qwest to make an additional filing to change Exhibit K to separately report performance for line splitting. Qwest filed the additional compliance filing on November 18, 2003. On November 26, 2003, the Commission, by minute entry, accepted Qwest's additional compliance filing.

4. After that acceptance, MCI and Covad, on December 2, 2003, filed a Response to Qwest's Notice of Compliance Filing. In that filing, MCI and Covad provided proposed language for Exhibit K to further revise and clarify Qwest's requirements for line splitting performance reporting and penalty assessment on the combined line sharing/line splitting product categories. In addition, this Response indicated that the standard for the Performance Indicator Definition (PID) OP-4, installation interval, should be changed for line sharing from 3.3 days to 3.15 days as a result of the Commission ordering a change to OP-3, installations met, from 90 percent to 95 percent.

5. Qwest asserts that the Commission did not issue any notice concerning the Covad and MCI filing before including it in the deliberations for the second six-month review. As a result, Qwest did not reply to this filing. Further, Qwest claims that in neither the informal comments provided before the Staff Report on the second six-month review was issued, nor in the formal comments filed in response to the Staff Report, did any party, including MCI or Covad, mention the arguments contained in the Covad and MCI filing.

6. We disagree with Qwest's threshold argument that it was improper for us to consider the arguments contained in the December 2, 2003 MCI/Covad Response filing during our deliberations on the second six-month review. At numerous times in both MCI and Covad's formal comments on the Staff Report, the same arguments were raised as those in the December 2, 2003 Response. Specifically, on pages 2 through 5 of the MCI Comments, MCI addresses its

concerns regarding the line splitting requirements and the language contained in Exhibit K. MCI further directly references the MCI/Covad filing in two footnotes, footnotes 3 and 6. Similarly, Covad, on pages 2 and 3 of its formal comments to Staff's Report, makes the same argument for changing the standard for OP-4 as is made in the MCI/Covad Response. Clearly, whether or not the December 2, 2003 filing was actually on the deliberations' agenda, the same issues were raised for Commission decision.

7. Having satisfied that threshold question raised by Qwest, we now turn to the two findings on which Qwest files its application for RRR. The first issue from Decision No. C04-0147 is MCI and Covad's suggestion that Qwest no longer believes it is required to make penalty payments for line splitting. Qwest asserts that nothing could be further from the truth. Qwest states that as a result of Commission order, it expanded Appendix A to the Colorado Performance Assurance Plan (CPAP) to reflect not only measures upon which Qwest would make penalty payments, but also the measures upon which Qwest will only report performance.

8. Qwest states that under the CPAP as accepted in its Notice Filing, penalty payments for line splitting remain combined with the line sharing loops. Nothing has changed with these penalty payments. Qwest recognizes that the language proposed by MCI and Covad make it clear that there is no change in the manner in which penalty payments are made. However, Qwest states that the suggested changes are without merit and should not be included in Exhibit K.

9. Further, Qwest states that § 18.5 of the CPAP indicates that the "Commission shall conduct a proceeding to resolve any disputes" that arise during a six-month review. Qwest submits that there is a dispute regarding these revisions to Exhibit K, and, therefore, the Commission must conduct an adjudicatory hearing on these matters.

10. Qwest's second issue on RRR concerns the ordered change to the standard for OP-4, installation interval for line shared loops. Qwest states that, currently, the standard for OP-3, installation due date met, is 95 percent as ordered by the Commission in the first six-month review. PID OP-4 currently has a standard interval of 3.3 days. The Covad/MCI filing and Commission Decision No. C04-0147 tie these PIDs together. Covad and MCI conclude that, because the standard for OP-3 was changed from 90 percent to 95 percent, the installation interval for OP-4 should be changed to 3.15 days from 3.3 days.

11. Qwest asserts that, contrary to the parties' position in the December 2, 2003 filing, the two PIDs are related, but no automatic change is necessary. Qwest states that if the OP-3 standard is changed to 95 percent, but retains the 3.3 days for OP-4, this results in permitting installations to be late by only two days, on average. Qwest argues that, even if the OP-3 standard is increased by 5 percent, the OP-4 standard should remain at 3.3 days because fewer misses are permitted.

12. In addition, Qwest points out that Covad did not advocate for a change in the OP-4 standard in the first six-month review when it requested the change to OP-3 to bring the standard into line with the other 13 states in Qwest's region. Covad never suggested that the OP-4 standard be changed as well. Qwest notes that the current Regional Oversight Committee standard for OP-3 is 95 percent and 3.3 days for OP-4. Again, Qwest asserts that it has a right to an adjudicated proceeding pursuant to § 18.5 of the CPAP since there is a dispute on these issues.

13. We will grant Qwest's request for RRR on these two issues. As stated above, while we disagree with Qwest's assertion that our ruling on these matters was improper, we do agree with Qwest's reading of the CPAP § 18.5 that matters of dispute in a six-month review

shall be adjudicated before the Commission. Therefore, we will set these two matters for hearing before an administrative law judge.

14. While that proceeding is commencing, we see no reason to delay the implementation of the other ordered changes in Decision No. C04-0147. Therefore, we order Qwest to revise the CPAP to reflect all other ordered changes and make this revised filing by March 24, 2004. Qwest must file both a redline and a clean version of Exhibit K at that time.

II. ORDER

A. The Commission Orders That:

1. Qwest Corporation's Application for Rehearing, Reargument, or Reconsideration is granted in part, consistent with the above discussion.

2. Qwest Corporation is ordered to file a revised Exhibit K, Colorado Performance Assurance Plan, reflecting all the changes ordered in Decision No. C04-0147, except for the two remaining disputed issues, by March 24, 2004.

3. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 3, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

COMMISSIONER POLLY PAGE
ABSENT.