

Decision No. R04-1011

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.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
KEN F. KIRKPATRICK
ORDERING CHANGES TO QWEST'S COLORADO
PERFORMANCE ASSURANCE PLAN**

Mailed Date: August 26, 2004

Appearances:

David W. McGann, Esq., Denver, Colorado, for Qwest
Corporation;

Thomas F. Dixon, Esq., Denver, Colorado, for WorldCom, Inc.;
and

Karen S. Frame, Esq., Denver, Colorado, for DIECA
Communications, Inc., doing business as Covad Communications
Company.

I. STATEMENT

1. This proceeding has its genesis in the first and second six-month reviews of Qwest Corporation's (Qwest) Colorado Performance Assurance Plan (CPAP). A number of issues arose from those proceedings, and two of them are the subject of this proceeding by virtue of Decision No. C04-0269, March 16, 2004. In that Decision, the Commission granted Qwest's application for rehearing, reargument, or reconsideration on those two issues. The first issue concerns the appropriate language to implement the Commission's directive that Qwest begin

reporting line splitting as a separate product category for certain performance indicator definitions (PIDs).

2. The second issue concerns a change to the standard for OP-4, installation interval for line shared loops. The specific issue is, given that the standard for OP-3 (installation due date met) was changed from 90 percent to 95 percent, should the interval for OP-4 be changed from 3.3 days to 3.15 days?

3. A prehearing conference was held on April 16, 2004. At the prehearing conference it was determined that the parties would attempt to arrive at joint language on Issue No. 1, to be submitted by a date certain. However, the parties were unable to agree and therefore submitted written argument in support of their respective positions on Issue No. 1 on May 7, 2004.

4. Also at the prehearing conference it was determined that a hearing would be necessary to resolve Issue No. 2. The hearing was originally established for July 9, 2004, but that hearing date was vacated and rescheduled at the request of WorldCom, Inc. (MCI). The hearing was rescheduled for August 19, 2004, at 9:00 a.m. in a Commission hearing room in Denver, Colorado. At the assigned place and time the undersigned Administrative Law Judge (ALJ) called the matter for hearing. During the course of the hearing Exhibits 1 through 5, 5A, 6, 6A, and 7 were identified, offered, and admitted into evidence.¹ At the conclusion of the hearing the parties presented oral closing statements of position. The matter was then taken under advisement.

¹ Exhibits 5A and 6A contain confidential information. Exhibits 5 and 6 are the redacted, non-confidential versions of those respective exhibits.

5. In accordance with § 40-6-109, C.R.S., the undersigned now transmits to the Commission the record and exhibits in this proceeding along with a written recommended decision.

II. ISSUE NO. 1

6. Section 18.2 of the CPAP 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 to make any recommendations on changes to the plan. Once this report is filed, parties are given an opportunity to respond, and the Commission rules on the responses.

7. On June 2, 2003, Staff filed its First Six-Month Report. On July 3, 2003, the Commission issued Decision No. C03-733. In that Decision, the Commission ordered at paragraph 17 as follows:

... 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 measure should be made combining line sharing and line splitting. The matter should be revisited at the next six-month review ...

8. It is Qwest's language implementing this directive from the Commission that is the heart of Issue No. 1.²

9. The parties agree, and the ALJ finds, that there has been no Commission directive to make payments on line splitting as a separate product category. There are, however, payments made for line splitting and line sharing on a combined product category basis, which has not

² Issue No. 1 carried through to the Commission's Order on the second six-month review, for reasons that need not be detailed here.

changed. Qwest proposes to list line splitting and the appropriate measures in Appendix A of its CPAP at the appropriate places with the following language:

For line splitting, performance is reported as a separate product category for diagnostic reporting purposes only. (*i.e.*, there are no associated payments for line splitting as a separate product category; payments for missed measures are based on aggregated line sharing and line splitting volumes.)³

10. AT&T Communications of the Mountain States, Inc., and TCG Colorado (AT&T), DIECA Communications, Inc., dba Covad Communications Company, and MCI (collectively, CLECs) would agree to this language if the phrase “for diagnostic reporting purposes only” were removed. The CLECs feel this deletion is necessary to avoid the implication that there are no payments on a combined basis for line sharing/line splitting.

11. The ALJ finds that both proposals are acceptable, and, on the theory that less is more, accepts the CLECs’ proposal.

III. ISSUE NO. 2 – CHANGES TO OP-3 AND OP-4

12. In Decision No. C03-733, the Commission ordered Qwest to raise the standard for OP-3, installation commitments met, from 90 percent to 95 percent for line-shared loops. In Decision No. C04-0147, in response to a suggestion by Covad and MCI, the Commission changed the OP-4 standard from 3.3 to 3.15 days. By Decision No. C04-0269, the Commission granted Qwest’s request for rehearing, reargument, or reconsideration of the reduction of the OP-4 standard from 3.3 days to 3.15 days.

³ This is the language proposed in Qwest’s May 7, 2004 filing. It differed from that originally included in its compliance filing.

13. The CPAP indicates that there is some relationship between OP-3 and OP-4. Specifically, the following language appeared in the CPAP immediately prior to the recently-ordered changes:

Line Sharing/Line Splitting Together – The interval for line sharing and line splitting, which shall be measured on an aggregate basis, is 3 days. Thus, OP-3 shall be that 90 percent of such loops shall be installed within three days. As for OP-4, the relevant installation interval shall be set at 3.3 days, which reflects the recognition 10 percent of such loops will not be installed within three days, so that the relevant interval should be marginally greater than the interval.

14. MCI and Covad concede that OP-3 and OP-4 measure different things. Nonetheless, they suggest that the language quoted above creates a relationship that can be reduced to a formula relating OP-3 and OP-4. Specifically, MCI and Covad argue that the OP-4 period of 3.3 days was arrived at by taking 10 percent (100 percent minus the 90 percent OP-3 standard equals 10 percent) of the 3-day metric and adding it to the 3 days. Thus they argue that, for consistency, now that the Commission has changed OP-3 to 95 percent, the same formula should be used. They would take 5 percent (100 percent minus the OP-3 standard of 95 percent equals 5 percent) times the 3-day metric and add it to the 3 days to arrive at 3.15 days for OP-4. In support of their argument, MCI and Covad point out that Qwest appears to be able to meet a 3.15 standard much of the time.

15. Qwest responds to the CLECs arguments by emphasizing that OP-3 and OP-4 are different measures. Further, they suggest, and the ALJ finds, that there is no linear relationship between OP-3 and OP-4., and that the CLECs have assumed a linear relationship in their calculation. They argue that, should the CLECs' argument and methodology be accepted, the

Commission would have no discretion in the setting of OP-4 as it just formulistically follows OP-3.⁴

IV. DISCUSSION

16. The CLECs' argument is that there should be an automatic change to OP-4 whenever OP-3 is changed. For the reasons set forth below the ALJ disagrees.

17. The CLECs concede that OP-3 and OP-4 are different measures that measure different things. Qwest can meet OP-3 and not meet OP-4 or meet OP-4 and not meet OP-3. One or two outliers can significantly affect OP-4 without affecting OP-3 at all. Conversely, Qwest could miss OP-3 widely if 50 percent of the loops were installed within two days and 50 percent were installed within four days, yet meet OP-4 with an average interval of three days, well under the 3.3 OP-4 standard. There is some relationship between OP-3 and OP-4 because they both relate to the amount of time for installation. However, the relationships between the two is not a linear one and not one that can be reduced to a formula. The CLECs' argument to the Commission has been that OP-4 must automatically be changed because OP-3 was changed. The ALJ finds and concludes that there is no such necessity or justification for changing OP-4 simply because OP-3 has been changed.⁵

⁴ The CLECs counter that the discretion comes when the decision is made to change OP-3.

⁵ This is not to say that OP-4 should never be changed. This proceeding was not a general inquiry into what OP-4 should be, but rather a limited inquiry as to whether OP-4 should be automatically changed given that OP-3 was changed. Thus the CLECs' evidence concerning Qwest's ability to actually meet an OP-4 of 3.15 days is irrelevant. Such evidence would be relevant in the next six-month review, should the CLECs urge a reduction to OP-4 at that time.

18. The ALJ finds that the language in the CPAP is ambiguous in that it implies a relationship between OP-3 and OP-4 that does not exist. Therefore he will order that the CPAP be revised to state the following:

Line sharing/Line splitting together—the interval for line sharing and line splitting, which shall be measured on an aggregate basis, is 3 days. Thus, OP-3 shall be that 95% of such loops shall be installed within 3 days. As for OP-4, the relevant installation interval shall be set at 3.3 days.

19. In accordance with § 40-6-109, C.R.S., it is recommended the Commission enter the following order.

V. ORDER

A. The Commission Orders That:

1. Qwest Corporation shall include the following language into Appendix A of the Colorado Performance Assurance Plan for OP-4 and for purposes of clarifying line splitting reporting:

Line sharing/Line splitting together—the interval for line sharing and line splitting, which shall be measured on an aggregate basis, is 3 days. Thus, OP-3 shall be that 95% of such loops shall be installed within 3 days. As for OP-4, the relevant installation interval shall be set at 3.3 days.

For line splitting, performance is reported as a separate product category. (*I.e.*, there are no associated payments for line splitting as a separate product category; payments for missed measures are based on aggregated line sharing and line splitting volumes.)

2. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

3. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

4. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge

