

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 02M-259T

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

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**ORDER ON SECOND SIX-MONTH REVIEW**

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Mailed Date: February 11, 2004  
Adopted Date: January 14, 2004

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**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 changes were agreed to by all parties and which were contested. To compile this report, § 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 issue its order within four weeks after receiving the responses. Section 18.5 indicates that the Commission shall conduct a proceeding to resolve any disputes.

3. On December 8, 2003, Staff filed its Second Six-Month Review Report (Staff Report). Two weeks later, on December 22, 2003, Eschelon Telecom, Inc. (Eschelon), Qwest Corporation (Qwest), WorldCom, Inc. (MCI), filed comments on the Staff Report. DIECA Communications, doing business as Covad Communications Company (Covad) filed a Motion to Accept Late Filed Response and its response comments. We grant this Motion and evaluate Covad's comments along with those of the other carriers.

4. On January 2, 2004, Staff filed a Motion for Leave to File a Response to Qwest's and to the Specific Competitive Local Exchange Carriers' (CLECs) Comments and Request to Waive Response Time and its Response. On January 6, 2004, Qwest filed a Response to Staff's Motion for Leave to File a Response to Qwest's and Specific CLECs' Comments on Staff's Second Six-Month Review Report and Request to Waive Response Time and Qwest Corporation's Motion for Leave to Reply to Staff's Response. We granted these Motions with Decision No. C04-0025.

5. In this order, we now address the merits of the Staff Report, carriers' comments, and Staff and Qwest's responses.

**Issue 1: Should Qwest be required to report and pay separate penalties for the line splitting and line sharing product categories for Performance Indicator Definitions (PIDs): PO-5, OP-3, OP-4, OP-5, OP-6, OP-15, MR-3, MR-4, MR-6, MR-7, and MR-8?**

6. Staff, in its Report, separates many of the line splitting and line sharing concerns into different issues. We have re-worked and re-combined several of Staff's issues into our Issues 1 through 4. We believe that these new issue topics better highlight the parties current concerns with the line splitting and line sharing PIDs.

7. This first line splitting issue is a follow up from the first six-month review in which we ordered Qwest to report on the line splitting category for a certain set of PIDs. We did not order separate payments, but rather ordered Qwest to continue making payments on any misses for the combined line sharing/line splitting product category. The parties in this second six-month review now request that the Commission assign parity standards for the line splitting category and order Qwest to make payments on any misses for that separate product category.

8. The Staff Report recommends that the Commission assign a parity standard for reporting and penalties beginning January, 2004, for PIDs OP-3C, OP-4A, OP-4C, and OP-5. Staff states that there is enough performance data in the record to support this change and that the volumes are sufficient. However, Staff does not recommend a change to the diagnostic standard for OP-3A, Installation Commitments Met, because it states that the volumes are too low to justify changing the standard from diagnostic to parity. Similarly, Staff recommends no change to the maintenance and repair (MR) PIDs because it states that none of these PIDs have more than three months of performance data to-date for the line splitting product and that six months of data is required to set a standard. Likewise, Staff indicates the volumes for these MR PIDs is

low. Staff recommends the standard remain diagnostic for MR-3, MR-6, MR-7, and MR-8 until at least July 1, 2004.

9. Staff further recommends no change to the diagnostic standard for OP-6, Delayed Days for Facilities and Non-facilities Reasons, because of the low volumes and months of no performance data. Staff states that if Covad wishes to see this changed, it should submit a request to the Long Term PID Administration (LTPA) collaborative. Regarding OP-15, Pending Orders Past Due Date, Staff notes that while Covad requested a change to the OP-15 line splitting standard as well, OP-15 is not a submeasure in the CPAP and therefore, it should not be addressed.

10. Covad, in its comments, takes issue with Staff's position that all line splitting PIDs in the CPAP are diagnostic measures. Covad states that those comments are inconsistent with the CPAP itself given that for all PIDs other than OP-3 and OP-4, the relevant parity standard is Qwest Digital Subscriber Line (DSL). The only line splitting PID that Covad agrees is diagnostic is OP-5, New Service Installation Quality, and it states that the standard for OP-5 should be parity.

11. Covad also states that Staff is in error in its assumption that six months of CLEC volume is necessary before a standard may be established. Rather, Covad argues that six months of Qwest's retail performance is necessary, not wholesale data, in order to make a parity evaluation. In addition, Covad finds Staff's analysis of the low volumes of certain PIDs contrary to actual definitions. According to Covad, the MR PIDs should have low volumes, otherwise it would mean that Qwest is doing an extraordinarily poor job in repairing the CLEC lines. Similarly, OP-6, while technically speaking, a provisioning PID, is designed to look at the

network to determine whether there are network issues that impact how quickly Qwest can fill CLEC orders. Therefore, Covad posits that, like the MR PIDs, when OP-6 volumes are low, Qwest is performing sufficiently.

12. MCI, in its comments, states that the line splitting issue is actually easier than Staff's interpretation. MCI asserts that where any PID currently lists the line sharing standard as diagnostic, a standard should be set and in addition line splitting should also be added as a separate product category with an established standard as well. MCI states that it has taken this issue to the LTPA forum.

13. MCI agrees with Covad that Staff's conclusion that six months of wholesale performance data is necessary before a standard can be set, is incorrect. There does not need to be six months of line splitting data to develop a standard, rather the wholesale data is compared to a six-month average retail parity.

14. Qwest, in its comments, objects to Staff's recommendation that the standards for line splitting for the PIDs OP-3C, OP-4A, OP-4C, and OP-5 be changed from diagnostic to parity because not only should a change such as this be developed and discussed in the LTPA collaborative, it is not clear to Qwest what the proper standard for line splitting would be. Qwest finds the LTPA is best suited to work through the laborious process required for developing an appropriate standard.

15. Further, Qwest states that the volumes for OP-3C are only significant for three months which is not enough data to reasonably establish a valid standard. OP-4C and OP-5 do not have significant volumes.

16. Qwest asserts that the standards for OP-5 line splitting should remain diagnostic as well, since OP-5 for line splitting was never added to the CPAP. Further, Qwest argues it is just beginning to report the new OP-5, as approved by the Commission, and setting a standard now is inappropriate. Qwest points out that § 18.6.1 of the CPAP encourages development of PID data on a diagnostic basis before determining the relevant standard and appropriate penalties.

17. Qwest agrees with Staff's assessment that there is also insufficient data for reporting on MR-3, MR-6, MR-7, and MR-8, and that the standards should not be changed from diagnostic to parity.

18. Staff responded to the carriers' comments on this issue. Staff disagrees with Covad that line splitting standards exist in the CPAP today. Staff asserts that those standards are for the combined line sharing/line splitting product and not line splitting alone. Staff agrees with Covad and MCI's interpretation of the CPAP that six months or CLEC data are not necessary to establish a standard for a new PID category. However, Staff still believes that a minimum of six months of performance reporting should be available to evaluate the need for a standard other than diagnostic.

19. For the MR PIDs, Staff acknowledges that the need for a standard should not be based on volumes. However, Staff notes that there is at most three months of performance history for line splitting for these PIDs and, therefore, Staff stands by its recommendation that the line splitting product category for those PIDs remain diagnostic until at least the next six-month review.

20. Staff also responds to MCI and Covad's assertion that line sharing for OP-5 should be evaluated for possible inclusion in the CPAP. Staff's opinion is that Qwest should begin reporting line sharing performance as a diagnostic measure for at least six months, and then make a determination whether to add the product to the CPAP. For OP-6, Staff responds to MCI and Covad by stating that it agrees that low volumes for this PID correlates to better performance by Qwest. However, Staff does not agree that Covad and MCI have justified why the standard should be changed from diagnostic to parity for either line sharing or line splitting. Staff stands by its original recommendation to leave the standard as diagnostic.

21. Qwest's response to Staff indicates that the forum established to review standards for PIDs is the LTPA, and that forum should be given an opportunity to review all standards for PIDs. Qwest objects to Staff's recommendation to now add payments for line splitting for PIDs OP-3C, OP-4A, OP-4C, and OP-5. Qwest states that the only rationale that has been offered is reference to the importance of the Triennial Review even though volumes remain low for line splitting. If this issue remains in dispute, Qwest requests that this issue be set for hearing.

22. Qwest believes that Staff's recommendation for reporting line sharing for OP-5 is inappropriate. Qwest states that Staff assumes that the only criteria for determining whether a measure should be included in the CPAP is volumes. Instead, Qwest asserts that, in light of the Triennial Review Order and the phasing out of line sharing, there is a compelling reason to drop line sharing from a performance assurance plan (PAP), not add it. In addition, Qwest points out that it reports performance for line sharing for PID OP-5 on the 14-state Regional Oversight Committee (ROC) level and Staff should avail itself of that data.

23. We agree with Qwest's position that the line splitting product should not have a separate parity standard at this point in time, but rather the current standard and associated penalty for the combined line sharing/line splitting product should remain. Qwest shall continue to report line splitting separately, as ordered in Decision Nos. C03-0733 and C03-0961.<sup>1</sup> The appropriate forum to review the standards for PIDs is the LTPA, and all participants should be given the opportunity to air their opinions and suggestions in that forum. Staff and MCI point out that these issues are already being discussed by those participants, and we do not intend to undermine that process. However, if the LTPA has not resolved the line splitting issues by the next six-month review, we direct Staff to include an update on the discussions in that report.

24. We also agree with Qwest's position on OP-5 and OP-6 for line sharing. That is, we do not require reporting or penalties for line sharing for OP-5 or OP-6. We direct Staff to analyze the performance data captured at the ROC 14-state level and report on any performance degradation at the next 6-month review. We agree with Qwest that increased volumes for a product is not, by itself, indicative of a need for an associated penalty.

**Issue 2: Whether the parity standard for line splitting should be residential/business Plain Old Telephone Service (POTS) or Qwest's DSL product.**

25. The Staff Report separates the MR PIDs from the OP and PO PIDs for this discussion. Staff does not make a recommendation on the OP or PO PIDs and whether the parity standard should be compared to Qwest's residential/business Plain Old Telephone Service

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<sup>1</sup> As MCI points out, MR-4 is not to be included in the CPAP. C03-1236 should not have contained MR-4 in the list of PIDs for which the Commission ordered Qwest to report line splitting.



(POTS) or Qwest's DSL. For the MR PIDs, Staff states that the LTPA should address this issue, and does not make a further recommendation.

26. Covad states in its comments that it believes the most appropriate parity analog for all line splitting PIDs (except OP-3 and OP-4) is res/bus POTS rather than Qwest's DSL.

27. Qwest states in its comments that the Colorado Commission determined during the development of the CPAP to establish a different standard than those of the ROC states and to use a parity standard of Qwest's DSL services. Qwest disagrees with Covad's response that Qwest's retail DSL service is not the appropriate standard because the growth rate of Qwest's DSL service is too small. In fact, Qwest asserts, growth in Qwest's DSL service is significantly above the growth in both line sharing and line splitting.

28. We agree with Staff that this issue is better addressed by the LTPA forum. That group can better examine whether circumstances have changed regarding line splitting and DSL to warrant a change in the parity analog from our original order. When the LTPA has reached consensus, or when the LTPA determines that consensus cannot be reached, parties should bring this issue back to the Commission for incorporation into the CPAP or for a hearing on the disputed issues.

**Issue 3: Whether the first annual audit should include an analysis of performance and payments for line sharing and line splitting.**

29. On this issue, MCI requests that the results of performance submeasures and payments for line sharing and line splitting should be included in the annual audit pursuant to § 14.6. MCI states that there was some confusion and problems with Qwest's line splitting reporting for the months of September, 2003 through January, 2004. Qwest, according to MCI,

accounted for some line splitting orders in the line sharing category instead, and, although these errors were corrected, MCI still has concerns about the reports and payments for these products.

30. In its response, Staff states that it does not support MCI's request to include line splitting and line sharing performance and payments in the first annual audit. Staff points out that the first annual audit will analyze the first 11 months of the Plan, during which time line splitting was diagnostic and payments were not made. Staff notes however, that the auditor has chosen OP-3, OP-4, and MR-7 for a preliminary assessment for the first audit, which could provide a separate review of line sharing and line splitting performance for these measures.

31. We agree with Staff's recommendation. The CPAP outlines certain requirements for what is to be included in the annual audit. If the PIDs with line sharing and line splitting product categories are among the submeasures causing 80 percent of the payments for the year, they are to be included in the audit. Likewise, the accuracy of the measurements and reports for all Tier 1A PIDs are to be audited. With these requirements already a part of the CPAP, we believe MCI's concerns will be adequately addressed.

**Issue 4: Should the language in the CPAP be changed to reflect the clarifications requested by MCI and Covad in their December 2, 2003, filing regarding line splitting reporting and the change to the OP-4 standard?**

32. On November 18, 2003, Qwest filed a Notice of Compliance filing with its revised CPAP to implement the changes ordered in Decision No. C03-0961. Covad and MCI made a Joint filing on December 2, 2003 that responded to the Qwest changes.<sup>2</sup> In this Joint

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<sup>2</sup> This Joint filing was made after the Commission had already approved Qwest's compliance filing by minute entry on November 26, 2003.

filing, Covad and MCI stated that this revised CPAP was filed to comply with the Commission's orders and that Qwest should be required to further revise Exhibit K with the language contained in the Joint filing. Specifically, Covad and MCI's proposed language clarifies that there are penalties associated with the line splitting/line sharing combined product categories. Covad and MCI state that Qwest has acknowledged this, but the language does not reflect it.

33. Further, Covad and MCI assert that the change in the OP-3 standard from 90 percent to 95 percent, as ordered by the Commission, should have had a result of changing the OP-4 standard from 3.3 days to 3.15 days to recognize that 5 percent of the loops will not be installed in 3 days rather than 10 percent of the loops, before the ordered change.

34. With the exception of the addition of the line sharing product category for OP-5A, we accept the language provided by Covad and MCI and order Qwest to revise Exhibit K with this language. The new language should not change the requirements for Qwest in reporting or payments, but should add clarification of those requirements.

**Issue 5: Should loop splitting be reported as a separate product category with standards for PIDs: PO-5, OP-3, OP-4, OP-5, OP-6, OP-15, MR-3, MR-4, MR-6, MR-7, and MR-8?**

35. The Staff Report states that Covad requested that the line sharing standards for the above PIDs should be used for line splitting and loop splitting as separate product categories. According to Staff, Covad contends that, since Qwest is already providing these products, it should be required to report on them, particularly since the importance and order volume is growing. The Staff Report states that Covad asserts that the provisioning and maintenance processes for line sharing and line splitting are identical, and that it is technically easier to

provision loop splitting, so the line sharing standards should be adopted for loop splitting. Staff states that MCI agrees with this request.

36. Staff does not recommend the inclusion of loop splitting; rather, it requests that the Commission allow the LTPA forum to review and discuss this issue with the exception of MR-4 which is not part of the CPAP.

37. We agree with Staff's position. The LTPA should address this request by Covad first and then, as with other matters referred to the LTPA, we expect parties to bring this issue back to us either upon reaching consensus, or for a hearing on the disputed issues.

**Issue 6: Should PO-5 be disaggregated by disconnect and provisioning Firm Order Confirmations?**

38. Staff, in its Report, comments that Covad requests that PO-5 PID be disaggregated to include different intervals for provisioning and disconnection firm order confirmations (FOCs). According to the Staff Report, Covad asserts that the Standard Interval Guide (SIG) contains different intervals for these two types of FOCs. As such, inclusion of both types of FOCs in one product category permits Qwest to mask poor performance in one type of activity. Further, disconnect and provisioning FOCs serve very different purposes and should be reported and evaluated separately.

39. Staff states that it does not have a good reason why this change should not be made and understands that disconnect FOCs can be provisioned quicker than provisioning FOCs. Staff asserts that performance for disconnect and provisioning FOCs can be reported separately and penalties continue to be paid jointly, as is presently done with line sharing and line splitting.

Staff recommends that Qwest be ordered to report disconnect and provisioning FOCs separately, but continue to make penalty payments on the two combined.

40. Qwest disagrees with Staff's recommendation, stating that Qwest is not aware of the genesis of this issue and that Covad did not raise this as an issue in comments or at the Commission's feedback meeting on October 8, 2003. Qwest asserts that there is only one FOC interval for each product, whether it is for a disconnect or new connection, yet that interval may be different for each of the products measured by this PID. Qwest states that there is no legitimate reason to further disaggregate the measure.

41. We agree with Qwest on this issue. There is nothing in the record to indicate that the volume of disconnect local service requests, and therefore FOCs, is at such a level to warrant this disaggregation for reporting. Further, Staff does not indicate what the standards should be if such disaggregation was ordered. In our review of the SIG, we would note that many of the FOC intervals are the same for disconnect and provisioning and, absent further guidance from the parties on this issue, we do not order Qwest to make changes to disaggregate PO-5.

**Issue 7: Should the standards for OP-3 and OP-4 be changed to 100 percent and the intervals in the Standard Interval Guide, respectively?**

42. Eschelon, in its comments, withdrew this request, stating that it was being worked on at the LTPA. We will not address it here.

**Issue 8: How should the mandatory review of Tier 1Y PIDs that trigger escalation payments for six months or more, pursuant to § 18.6.1, be handled?**

43. Staff states that PID MR-8: UBL\_DS1, UBL\_ISDN, UNE\_PCTR21, and UNE\_P\_CTX have all triggered payment escalations for six to eight consecutive months. Pursuant to § 18.6.1, Staff recommends that these four product categories for this PID should be referred to the Independent Auditor for analysis and a recommendation at the first annual audit in mid-2004.

44. On a related note, Staff states that Eschelon requests that Qwest be required to provide a list of all PIDs that trigger escalation payments. Staff disagrees with this request, stating that the Independent Auditor's report will list those PIDs anyway, and the monthly aggregate payment reports are available on Qwest's CPAP web site.

45. Section 18.6.1 states that "if a PID continues to trigger a payment escalation for six months or more, that PID shall automatically be reviewed during a six-month review pursuant to this section..." Section 17.5 gives the Independent Monitor the responsibility to require Qwest to perform a root cause analysis "if Qwest is repeatedly penalized for failing to meet the performance requirements under any given PID." Finally, § 14.6 states that the annual audit shall include "problem areas requiring further oversight as identified in previous audits..." We believe that the analysis of the PIDs that have triggered six or more months of escalation payments is better handled by the Independent Monitor's ordered root cause analysis to be performed by Qwest. This analysis will be more timely performed than waiting for the first annual audit, and closely fits with the analysis already underway. If necessary, the Independent Monitor can also order further reporting or changes to the PID as a result of the analysis.

Therefore, we order Qwest to include an analysis of its performance for the MR-8 product categories UBL\_DS1, UBL\_ISDN, UNE\_PCTR21, and UNE\_P\_CTX as part of the root cause analysis already ordered by the Independent Monitor.

46. On Eschelon's related issue, we agree with Staff that this information is already available on the payment reports and will be part of the annual audit. We do not require Qwest to provide a separate list.

**Issue 9: Should PO-20 be included in the CPAP?**

47. PO-20, manual service orders, was originally ordered to be included as part of the § 271 proceeding. Since that time, Qwest and the other participants have been working on the disputed issues in the LTPA forum. In our order on the first six-month review we ordered Qwest to file PO-20 for inclusion in the CPAP. When work had been completed in the LTPA forum, or if consensus had not been reached on PO-20 by the second six-month review, we ordered Qwest and other parties to file the most current version of PO-20, and comments on the remaining disputes.

48. We did receive a copy of the latest version of PO-20 and a list of four remaining disputed issues attached to Staff's Report and Qwest's comments. We did not receive comments on these disputed issues from any party.

49. Qwest and the parties have been working for approximately 18 months on the development of the PID. We believed in our original § 271 decision that Qwest's compliance with standards for manual service order handling was integral to a CLEC's ability to do business. In that original decision, C02-0718, we reported that Qwest, in response to KPMG Consulting's April 30, 2002 "Qwest Manual Order Entry PID Adequacy Study," agreed to develop and present

a proposal using the long-term PID administration process for a new performance measure addressing manual processing order accuracy. Qwest states that it expects this will address concerns regarding the accuracy of manually handled orders.

50. Also, in that decision, we stated:

Qwest shall work with interested parties to complete development of a PID for manual service order accuracy. This PID shall be added to the CPAP at the first six-month review. The PID can be developed through a functioning long-term PID administration process. The lack of such a process does not extend Qwest's time to complete development of a PID for manual service order accuracy. If parties cannot reach agreement on a PID, then Qwest shall file its proposed PID with the Commission. The Commission will then seek comment on Qwest's proposal and make a decision before completion of the first six-month review of the CPAP.

51. Enough time has passed that we believe a hearing on this matter is warranted. We order the Independent Monitor to hold a hearing on the disputed issues remaining for PO-20. This hearing shall be held pursuant to §§ 17.5 and 17.7 of the CPAP. At the conclusion of the hearing, we expect the Independent Monitor to issue a decision that resolves the disputed issues and orders Qwest to implement reporting and penalties for misses for this new PID.

**Issue 10: Should we maintain six-month reviews of the CPAP, or instead hold annual reviews?**

52. Staff would like the Commission to change § 18.2 of the CPAP to require annual reviews of the Plan instead of six-month reviews. Staff states that the annual audits will begin mid-2004, around the same time the third six-month review will be due. Because of this timing, Staff recommends that Staff reviews should be done in January of each year, with the annual audits occurring in July. Staff asserts that the six-month reviews burden Staff and do not result in a large number of recommended changes.



53. The carriers are split on this issue. Qwest believes that six-month reviews are still necessary because they present all parties with the opportunity to request a hearing on disputed issues. MCI believes that the language of the CPAP should not be changed; rather, parties should be able to agree that a review is not needed. Eschelon recommends one more six-month review be held and, after that, they could be held annually.

54. Section 18.10 (4) of the CPAP states that the three-year review shall “evaluate whether the revision process should take place at a semi-annual, annual, or other interval.” We will not change the timing of the reviews at this point in time. In this review alone, we have 14 issues that we have addressed. These reviews serve not only as a process for changes to the CPAP PIDs and language, but also as a way for the Commission to stay informed about the current issues. We are not comfortable in lessening the exchange of information at this time. If Staff’s resources are thin for the next, or any subsequent six-month review, § 10.6 allows for the hiring of a technical advisor to be paid from the Special Fund.

**Issue 11: Should the language in § 18.9 be changed to no longer require PID review by the Independent Monitor when there is no dispute?**

55. In Decision No. C03-1236, we raised the issue of whether the parties should examine the language in § 18.9 to see if review by the Independent Monitor is necessary when a PID is submitted without dispute. We stated in that decision: “We note that it was not our intent to require approval by the Independent Monitor in those instances when agreement on a proposed change has been reached by the LTPA participants. Rather, approval by the Independent Monitor should only be required if a party or parties dispute the proposed change. To make this clear, however, § 18.9 would need modification.”

56. The Independent Monitor filed a Proposal to Modify the CPAP that included new language for § 18.9. Staff agrees with the language provided. We also agree with the proposed language, and order Qwest to make the change as follows:

18.9 If Qwest or CLEC wishes to modify a PID outside of the six-month review process and before the Three-Year Review set forth in the CPAP **and if that modification is contested**, the change must be approved by the Independent Monitor and then also approved by the Commission. **If the modification is uncontested, then only approval by the Commission is necessary.**

**Issue 12: Should a root cause analysis be performed by Qwest on the two PIDs with the highest occurrence of misses?**

57. On December 12, 2003, the Independent Monitor ordered Qwest to perform a root cause analysis of PIDs MR-8, Trouble Rate for DS1s and PO-2, Electronic Flow Through for Local Number Portability. The order states that Qwest has repeatedly failed to meet the standards for these two submeasures and that those misses have resulted in hundreds of thousands of dollars being paid to the Special Fund. By the terms of the order, Qwest is to contact the Independent Monitor to set details and timelines for these analyses.

58. We do not take action on this matter at this time, other than to add the four product categories to the root cause analysis for MR-8 as discussed above in Issue 8.

**Issue 13: LTPA decision making process.**

59. Covad raises some concerns regarding the LTPA governance structure and processes. Covad states that when the LTPA agrees on changes to PIDs, the governance documents state that those changes will be incorporated into Exhibit B and state PAPs. The documents do not say anything about incorporation into existing PAPs. Covad is concerned that

if there are impasse issues at the LTPA, Covad does not know what happens after parties have briefed the issue, *e.g.*, how the issues get to the Commission.

60. Staff, in response, states that Qwest should be required to incorporate any changes agreed upon by the LTPA into the Colorado Statement of Generally Available Terms and Conditions Exhibit B, Exhibit K, and the CPAP. Staff supports this only to the extent that such LTPA revisions do not contravene any CPAP-unique measurements or standards.

61. Qwest is unclear of the exact recommendation that Staff is making in response to Covad's feedback. Section 18.0 of the CPAP governs changes to the CPAP in this manner and requires Commission ratification. Qwest states that the LTPA recognizes that changes to Exhibit B and changes to the PAPs will be treated separately.

62. We do not take any action on this issue. We agree with Qwest that the CPAP, more specifically, § 18.0 of the CPAP, outlines how changes are made and ratified by the Commission. If Covad is concerned that existing CPAPs are somehow excluded from going-forward changes, we point out the language following the final decision point in this order that allows for the modification to any existing CPAP without the need for an amendment.

**Issue 14: Is the information contained in the Staff Report on page 8 confidential?**

63. Qwest considers all the information contained in the table on page 8 of Staff's report highly confidential. Qwest is required to provide CLEC-specific payment information under seal on a monthly basis. If the Commission determines this is not confidential, Qwest requests the Commission enter an order to that effect.

64. Likewise, MCI states that Staff published confidential individual CLEC CPAP payment information on page 8 of its report. This should have been omitted and only provided to those who had signed Non-disclosure Agreements.

65. Staff, in its Response, does not agree that the information contained in its table on page 8 of its report is confidential. Staff states that neither Qwest nor MCI explain why the information is confidential. Staff believes the information in the table is not confidential because each payment amount disclosed represents from one to eight months of aggregate penalty payments and does not identify specific wholesale products purchased, specific PID payment amounts, or volumes.

66. Qwest's response indicates that it opposes Staff's unilateral determination that the information contained in the table on page 8 is not confidential. While this information is aggregated for each CLEC, it is still being taken from information that has been deemed confidential by the CPAP. The better practice, according to Qwest, is that if a question arises regarding the confidential nature of information, that a phone call be made, and that the parties work out any disagreement or seek assistance from the Commission. Further, Qwest points out that Staff produced a similar table in its first six-month review report and at Qwest's request the report was ultimately modified to indicate the confidential nature of the table.

67. We find the information contained in the table on page 8 of Staff's report should be treated as confidential. Even though the information is aggregated payment information received by each CLEC, it is not difficult, given these amounts and the performance reports, to ascertain from what PIDs and even from what product categories the payments have resulted.

Similar information was treated as confidential after questioning by Qwest in the first six-month review.

68. We order Staff to replace the page of the report in the Commission's official file with a confidential copy to be kept under seal. Unfortunately there is not much we can do about the copies already distributed, other than to ask parties to also treat this page as confidential. Any future filing by Staff or any other party should treat such information as confidential.

69. All revisions approved in this decision shall be applicable without further amendment to any CPAP incorporated into an existing Interconnection Agreement (ICA), any ICA pending before the Commission, and any ICA amendment delivered to a CLEC but not yet executed or submitted to the Commission for approval. This decision is consistent with past Commission actions, and will lessen the administrative burden on both Qwest and other telecommunications providers.

70. We order Qwest to make the appropriate changes reflected in this decision and file a redlined and a clean Exhibit K reflecting those changes within two weeks of the mailed date of this decision.

## **II. ORDER**

### **A. The Commission Orders That:**

1. We grant DIECA Communications, Inc., doing business as Covad Communications, Inc.'s Motion to Accept Late Filed Comments.

2. We order the Independent Monitor to conduct a hearing on the Performance Indicator Definition PO-20 consistent with the above discussion.

3. We order Qwest Corporation to revise the Colorado Performance Assurance Plan consistent with the above discussion.

4. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
January 14, 2004.**

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Commissioners