

Decision No. R04-1532-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04M-424T

IN THE MATTER OF THE THIRD SIX-MONTH REVIEW OF QWEST CORPORATION'S
COLORADO PERFORMANCE ASSURANCE PLAN.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
PERMITTING LATE-FILED TESTIMONY,
GRANTING QWEST MOTION, AND PERMITTING
SOME PARTIES TO FILE RESPONSE TESTIMONY**

Mailed Date: December 22, 2004

I. STATEMENT

1. On June 4, 2004, Staff of the Commission (Staff) filed its Third Six-Month Review Report of Qwest Corporation's Colorado Performance Assurance Plan (Staff Report). Qwest Corporation (Qwest), Eschelon Telecom, Inc., DIECA Communications, Inc., doing business as Covad Communications Company, and MCI, Inc. (MCI), on behalf of its regulated subsidiaries, filed comments on the Staff Report. The Staff Report and the comments were filed in Docket No. 02M-259T, *In the Matter of Qwest Corporation's Colorado Performance Assurance Plan*.

2. In Decision No. C04-0931 the Commission, *inter alia*, set nine issues from the Staff Report for hearing before an administrative law judge (ALJ). The undersigned ALJ is assigned to hear this matter.

3. By Decision No. C04-0932, the Commission opened this docket for the purpose of hearing and deciding the contested issues raised by the Staff Report and the comments on that

report. The Commission ordered that participants in Docket No. 02M-259T are parties in this docket and that all filings on the issues set for hearing by Decision No. C04-0931 are to be made in this docket.

4. By Decision No. R04-1072-I, the ALJ set a hearing in this matter for February 2 and 3, 2005 and established a procedural schedule. As pertinent here, the procedural schedule set October 29, 2004 as the date by which Staff and those parties which support the Staff recommendations would file their direct testimony and exhibits; set December 3, 2004 as the date by which the remaining parties would file their answer testimony and exhibits; and set January 7, 2005 as the date by which Staff and the parties which support the Staff recommendations would file their rebuttal testimony and exhibits.

5. On December 3, 2004, MCI filed its testimony in this matter. Review of the testimony reveals that it generally supports the Staff recommendations in this matter. Thus, under the procedural schedule, the testimony should have been filed on October 29, 2004. MCI did not request or obtain permission to file this testimony out-of-time.

6. On December 6, 2004, Qwest filed a Motion for Leave to File Testimony in Response to Testimony of MCI Witness Chad Warner (Qwest Motion). In that filing Qwest notes that MCI's testimony was filed late, that the testimony generally supports the Staff recommendations, and that MCI does not object "to Qwest or anyone else having an opportunity to respond to [the MCI] Answer testimony to the extent the testimony concurs with several of Staff's recommendations." Qwest Motion at ¶ 4. Qwest seeks permission to file its response testimony on the date on which rebuttal testimony is due.¹

¹ The Qwest Motion states that this date is January 21, 2005. This is a misstatement. According to Decision No. R04-1072-I at ¶ 5(c), rebuttal testimony is due on or before **January 7, 2005**.

7. Response time to the Qwest Motion has expired. No party filed a response. Thus, the Qwest Motion is unopposed.

8. The Qwest Motion states good cause. The absence of any response and the MCI statement quoted above establish that granting the Qwest Motion will not prejudice any party. Granting the motion will enhance the evidentiary record and will avert Qwest's having to provide its response testimony orally at hearing. The Qwest Motion will be granted.

9. Qwest and any other party which filed answer testimony on December 3, 2004, will be permitted to file, on or before **January 7, 2005**, its testimony in response to the testimony of MCI witness Chad Warner filed on December 3, 2004. At the hearing and with appropriate notice, Staff and any party supporting Staff's recommendations may offer oral rebuttal to the response testimony to MCI witness Warner.

10. Except as modified by this Order, the procedural schedule and filing requirements established in Decision No. R04-1072-I control this proceeding.

II. ORDER

A. It Is Ordered That:

1. The Motion for Leave to File Testimony in Response to Testimony of MCI, Inc. Witness Chad Warner is granted.

2. On or before January 7, 2005, Qwest Corporation and any other party which filed answer testimony on December 3, 2004, shall file its testimony in response to the testimony of MCI, Inc. witness Chad Warner filed on December 3, 2004.

3. At the hearing and with appropriate notice, Staff of the Commission and any party supporting Staff of the Commission's recommendations may offer oral rebuttal to the response testimony to MCI, Inc. witness Warner.

4. Except as modified by this Order, the procedural schedule and filing requirements established in Decision No. R04-1072-I remain in effect and control this proceeding.

5. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge