BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 97I-198T

IN THE MATTER OF THE INVESTIGATION INTO U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH § 271(C) OF THE TELECOMMUNICATIONS ACT OF 1996

QWEST'S LEGAL BRIEF REGARDING LOOP ISSUE 24, xDSL FOC TRIAL

INTRODUCTION

Qwest Corporation ("Qwest") submits this brief to the Commission in support of its compliance with checklist item 4 (unbundled loops) of the competitive checklist items in Section 271(c)(2)(B) of the Telecommunications Act of 1996 (the "Act").[1] This brief addresses one issue: Loop 24, the results of the Colorado xDSL FOC Trial. In December 2000, Qwest proposed a two-month Trial involving all Colorado CLECs to test the efficacy and benefits of changing Qwest's Firm Order Confirmation (FOC) processes for xDSL Loops (2/4 Wire Nonloaded Loops, ADSL Compatible Loops, ISDN Capable Loops and xDSL-I Capable Loops) from a 24-hour FOC to a 72-hour FOC. The additional 48 hours permitted Qwest to confirm the availability of compatible loop facilities. The primary purpose of the Trial was to determine if moving to a 72-hour FOC provided CLECs with a "more meaningful" FOC. The parties agree – Qwest should move to a 72 hour FOCand should so modify its ROC PID (PO-5).

In addition, Qwest and CLECs agreed as part of the Trial to evaluate whether data contained in Qwest's Raw Loop Data (RLD) Tool, the tool that permits CLECs to qualify loops for xDSL service prior to placing an order, was accurate. The Trial showed that the information in Qwest's RLD Tool was generally accurate and at parity with that which Qwest provides to itself. Qwest did uncover; however, some databases gaps, which, as a result, Qwest has already planned to remedy through

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[1] 47 U.S.C. § 271(c)(2)(B)(iv).

system upgrades. Thus, although Qwest is meeting its legal obligations with respect to RLD Tool (i.e.: retail parity), Qwest has taken action to ensure that the loop make up information available to all carriers, including Qwest, is as accurate as possible.

BACKGROUND

For the benefit of the Commission, Qwest summarizes the results of the Trial and the data reconciliation process in this section.

A. FOC Delivery and Due Date Performance

The results of the Trial demonstrate that it has been a tremendous success. The underlying document initiating the trial, upon which all parties agreed, stated that "the Trial will be deemed a success if 90% of the FOCs accurately reflect a 5 day or 15 day interval." During the two month trial, ten Colorado CLECs submitted 2,375 LSRs for xDSL Loops.

The final Trial results demonstrate outstanding performance:

- The ROC determined that Qwest should return 90% or more of its FOCs on time (PO-5). Qwest returned 91.1% of FOCs within 72 hours in March and 97.7% of FOCs within 72 hours in April.
- The ROC determined that Qwest should meet 90% or more of its installation commitments (OP-3). In March 2001, Qwest met its committed due dates 98% of the time and in April it met the due dates 97.5% of the time.
- The ROC determined that Qwest should provide 2-wire analog and non-loaded loops in an average of 6 days or less (OP-4). In March 2001, Qwest delivered loops that did not require conditioning in an average of 4.9 days and the same loops in 5.0 days in May.
- While the ROC did not set agreed upon benchmarks for conditioned loops, Qwest's conditioning interval is 15 business days. In March, Qwest delivered conditioned loops in an average of 9.5 days and similar loops were provided in May in 11.6 days.

In each instance, this data is not only passes, but passes with flying colors.

The Trial also included a data reconciliation process whereby Qwest agreed to provide underlying data from the Trial to any participating CLEC that wished to verify Qwest's results. Only three CLECs requested that Qwest provide CLEC-specific data to them. Only one CLEC, Covad, requested data reconciliation with Qwest. Covad presented its data on Qwest's performance at the follow up Workshop 5 session in May 2001. However, Qwest uncovered numerous, fundamental errors in Covad's initial data. During a June 11 meeting between Qwest and Covad to discuss data reconciliation, Qwest identified the following errors in Covad's data:

- Covad does not track when Qwest completes the loop order; Covad only tracks when Covad turns over the loop to its own customer. In round one of Covad's analysis, it determined that the due date was made based on an assumption associated with the delivery of the FOC.
- Covad included line shared orders in its analysis of Trial results.
- Covad assumed that all orders were due in 5 days, even if the loop required conditioning.
- Covad incorrectly counted all orders submitted up until midnight as placed on the same business day. Qwest's processes and procedures, however, specify that orders must be placed by 7:00 p.m. to be considered as placed on that business day.
- Covad used calendar days to calculate its results. Qwest's intervals, however, are based on business days.
- Covad attributed misses to Qwest that were missed due to Covad's own fault.

As a result of these meetings, Covad revised its Trial data on June 15, 2001. This data allegedly showed that Qwest met its due date less than 50% of the time. Qwest examined every Covad order, focusing on the percentage of due dates met. This data, too, however, had fundamental flaws that Qwest raised immediately with Covad. The most significant errors included:

- In round two of Covad's analysis they used the due date on the FOC to determine if Qwest met its commitment. In this analysis Covad counted the number of days from the Application date to the due date on the FOC. If the interval was greater than 5 days,

Covad counted it as a miss. Thus, even though Qwest would meet its due date commitment to Covad, Covad would count it as a Qwest miss regardless of the reason why the interval was greater than 5 days.

- Covad failed to take into account the customer requested due date. In other words, when Covad or its customers requested a due date greater than 5 days, which Qwest clearly permits CLECs to do, Covad counted the order as a Qwest miss, regardless whether Qwest met the customer requested due date. This error affected approximately one-third of Covad's orders and dramatically skewed Covad's results.
- At the Washington Loop workshop on July 11, Covad also revealed to Qwest that its EDI systems has a six-day due date default. Covad established the 6 day installation interval default in order to accommodate different ILEC intervals.
- Qwest again found that loops that required conditioning were included in Qwest misses because Covad assumed a five-day interval even if conditioning was required. Covad counted these orders as Qwest misses even if Qwest met the 15-business day interval for conditioned loops.
- The Covad tracking report did not always match the actual FOC or application date. Covad's application date reflected Covad's first attempt at placing an LSR and did not reflect when the LSR was accepted by IMA.

Qwest recalculated Covad's data correcting for these errors and found that even using Covad's data, Qwest had met its committed due date more than 90% of the time. After Qwest alerted Covad to the errors in Covad's revised data, Covad withdrew its data in the Washington workshop.

Qwest appreciates Covad's candor in withdrawing its data, and does not relate this data reconciliation process to criticize Covad. Rather, an important component of the xDSL Trial was the performance data Qwest presented and Qwest's ability to track data accurately. CLECs suggested that reconciliation of this data was critical to evaluating the Trial, even though only one CLEC chose to

engage in the process. The data reconciliation process was extremely time consuming, spanning several weeks and numerous on and off-line conference calls. In the end, Qwest's data stands unrefuted.

B. Raw Loop Data Tool

As mentioned above, a second component of the xDSL FOC Trial entailed an evaluation of the Raw Loop Data (RLD) Tool, a mechanized pre-order loop qualification Tool Qwest makes available to CLECs that draws from the same loop make up information Qwest uses to qualify retail customers for Qwest DSL. For each loop ordered during the Trial, Qwest accessed the IMA Address Validation Tool and requested raw loop data. The analysis revealed that the information in the RLD Tool is accurate at least 80% of the time.[2] However, Qwest also found that approximately 35% of the time, the RLD Tool generated a "No Working Telephone Number" response and provided no raw loop data at all. Qwest investigated this response, found the RLD Tool had a gap that applied equally to retail and wholesale, and has already planned to remedy the gap through system upgrades. Thus, Qwest has proactively addressed the one situation when CLECs cannot obtain accurate information from the RLD Tool.

Qwest and Covad also engaged in a data reconciliation process regarding the RLD. As Qwest already acknowledged above, Covad was unable to obtain results for some orders because of the "No Working TN" response. To reconcile their remaining issues, Qwest and Covad focused on 18 orders that allegedly showed errors in the RLD Tool. Again, Covad vastly overstates the purported errors in the RLD Tool. Some of the errors in Covad's analysis are:

- For some orders, Covad claims that the RLD Tool erroneously omits MLT distance. However, Qwest noted that for some of these orders, a segment of the loop was on a pair gain system. Qwest has previously testified that MLTs can only be performed on copper

[2] The data showed that the RLD Tool clearly provided accurate data 80% of the time. The data also showed that the Tool provided inaccurate data 1% of the time. The remaining 19%, however, is impossible to assess. Attached *Exhibit JML-1* shows that there were instances when the RLD Tool showed that the loop was not provisioned on copper, but Qwest found a copper alternative. The problem, of course, is that Qwest has committed to seeking alternatives (i.e.: line and station transfers) when a copper alternative is necessary. Thus, for these 19%, the tool may very well be accurate, but in an effort to meet its obligations, Qwest provisioned the loop when it could. All Qwest can say, therefore, is the tool is accurate at least 80% of the time.

loops. Thus, Covad should have known that if there is any pair gain on the loop, Qwest cannot perform an MLT. Qwest recently clarified this for Covad in workshops in Washington. Thus, for those loops with pair gain, the RLD (correctly) does not include an MLT distance.

- For several loops without MLT distances, Covad claimed that there was no overall loop length provided. However, the RLD reports the length of each segment of the loop. Covad can calculate the loop length based upon the length of each segment. Significantly, Qwest does not aggregate the lengths by segment for CLECs because each segment may have a different gauge, thereby affecting the functional total loop length. Qwest specifically provides gauge and length by segment to permit the CLEC to perform its own calculations to determine the loop length, as the FCC requires.
- Covad claimed that the Tool incorrectly reported pair gain for certain PONs. Covad claimed that the Tool was reporting this information for addresses that Covad had not asked the Tool to validate. However, upon examination of Covad's data, it appears that Covad is confusing the Terminal ID with the service address. The Terminal ID is where each segment of the loop terminates and is wholly unrelated to the service address.
- Covad claimed that when it requested loop information by working telephone number, the Tool only turned up one loop, but when it requested information by address, the Tool returned information on a second line. This is true and as it should be. If a CLEC requests information on a particular telephone number, the Tool returns information for the loop associated with that telephone number only. If the CLEC requests information for an address, the Tool returns information on all working telephone numbers to that address.

After much debate, Qwest and Covad have agreed that a 72-hour FOC is beneficial and that Qwest should modify PID PO-5 to include a 72-hour FOC interval for xDSL loops. One impasse issue does remain, however: whether the RLD Tool provides CLECs with meaningful loop make up

information. KPMG is testing (as part of the OSS Test) to ensure that the RLD Tool provides CLECs with information on parity with that Qwest provides to itself. Moreover, Qwest believes the Trial provided all parties with valuable information showing that the information in the Tool is generally accurate.

DISCUSSION

A. Loop Issue 24a: Should Qwest Provide a 72-hour FOC for xDSL Loops?

Qwest and Covad have agreed that a 72-hour FOC is appropriate for xDSL loops. As the Trial results summarized above demonstrate, when utilizing a 72 hour FOC Qwest was able to provide CLECs with meaningful FOCs and meet its committed due date the overwhelming majority of the time.

Revising the PO-5 measure at the ROC will benefit all carriers for several reasons. As mentioned above, extending the FOC interval to 72 hours permits Qwest to perform the work necessary to provide CLECs a more meaningful FOC for xDSL loops. CLECs in Colorado have stated that it is more important to them that Qwest provide a meaningful FOC than a "quick" FOC. In addition, Qwest's interconnection agreements with many carriers already carry a 72-hour FOC for xDSL loops. By making the interval uniform, Qwest will be able to implement standardized processes and procedures for these loops, further enhancing its performance. Finally, under the current PO-5 measure, loops that now carry the 72-hour FOC are excluded from the performance measure. By revising the measure to reflect a 72-hour interval, Qwest's provision of all xDSL will be measured. Accordingly, Qwest asserts that revising the PO-5 measure to provide a 72-hour FOC for xDSL loops is in the interest of all carriers. Covad endorses this effort as well. Accordingly, the Commission should deem this issue closed and should accompany Qwest to the ROC and recommend a change in PO-5.

B. Loop Issue 24b: Does the RLD Tool Provide CLECs with Meaningful Loop Make Up Information?

As mentioned above, part of the xDSL Trial focused on the Qwest RLD Tool. As Ms. Liston testified at length during the workshop, the RLD Tool and the tool that Qwest uses to qualify loops for Qwest DSL draw from the same underlying loop qualification database. Thus, there is no issue regarding parity of access to loop make up information. Furthermore, any lingering concerns CLECs or the Commission may have regarding whether Qwest will provide CLECs with access to loop make up information at parity will be specifically resolved as part of the ROC OSS test. The ROC Master Test Plan provides that the third-party test will address the following questions:

- Does a wholesale loop qualification transaction result in the same information as a retail transaction for the same loop?
- Does the loop qualification come from the same database (directly or indirectly) with the same frequency of update?
- Are the wholesale responses returned in accordance with benchmarks set?
- Are any differences in the sub-processes or remedial options available in the retail loop qualification process versus the wholesale process?[3]

In light of this evidence, Covad cannot argue that Qwest does not provide parity of access. Instead, Covad's claims regarding the RLD Tool boil down to this: Covad believes that Qwest does not provide loop qualification information in compliance with Section 271 because the RLD contains inaccuracies. Putting aside that Covad has failed to identify any meaningful inaccuracies beyond those Qwest has committed to fix, the same loop make up information feeds both RLD and the Qwest MegaBit Tool. Thus, any inaccuracies in the underlying loop make up information affects Qwest and CLECs identically. The FCC has twice addressed this identical issue and both times it determined that where the incumbent LEC and CLEC both experience inaccuracies in the database, there is no

[3] Qwest presented an excerpt from the ROC Master Test Plan as Exhibit 5-Qwest-60.

discrimination and no Section 271 issue. Parity is all Qwest must provide. For example, in the *Kansas/Oklahoma Order*, the FCC stated:

> IP Communications claims that SWBT's actual loop makeup information database is inaccurate and thus harms competing carriers when they place orders for loops based on inaccurate information. As we noted above, when searching for loop qualification information, both competing carriers and SWBT utilize the LFACS system. Thus, any inaccuracies in SWBT's database, because they affect SWBT in the same fashion as competing carriers, are not discriminatory.[4]

The FCC reached a similar conclusion in its most recent *Verizon Massachusetts Order*. There, Covad raised the same argument it raises here: that Verizon failed to satisfy Section 271 because its LiveWire database contained inaccuracies. The FCC rejected that claim:

> ALTS and Covad claim that Verizon's mechanized loop make-up information database -- LiveWire -- fails to meet *UNE Remand* requirements because it sometimes contains inaccurate and incomplete information, hampering competing carriers' ability to order xDSL loops. *As we noted above, the LiveWire database Verizon makes available to competing carriers is the same database used by Verizon's retail affiliate to qualify loops. Thus, any inaccuracies or omissions in Verizon's LiveWire database are not discriminatory, because they are provided in the exact same form to both Verizon's affiliate and competing carriers*.[5]

Thus, it is irrelevant for Section 271 purposes that the RLD Tool, which is drawn from the same loop make up information Qwest uses to qualify Qwest DSL, may have some inaccuracies. Those inaccuracies affect Qwest and CLECs alike. The FCC has conclusively determined twice that under such circumstances, the BOC provides loop qualification information consistent with the requirements of the Act.

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[4] Memorandum Opinion and Order, *Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, FCC 01-29 at ¶ 126 (rel. Jan. 22, 2001) ("*SBC Kansas-Oklahoma Order*").

[5] Memorandum Opinion and Order, *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., For Authorization to Provide In-Region InterLATA Services in Massachusetts*, CC Docket No. 01-9, FCC 01-130 ¶ 66 (rel. Apr. 16, 2001) ("*Verizon Massachusetts Order*").

Covad has suggested that because it must identify the need for conditioning, and Qwest does not condition facilities for its retail DSL services, that Qwest must go beyond the parity requirements in the FCC's orders in providing loop make up information to CLECs. This argument, however, makes no sense. Because Qwest does not sell Qwest DSL if the retail customer's loop requires conditioning, if the underlying loop qualification database does not accurately reflect the need for conditioning, Qwest is clearly affected by that inaccuracy as much (if not more) than a CLEC. For example, if the loop qualification database wrongly reports that conditioning will be required, Qwest will not make the DSL sale at all. Covad, on the other hand, clearly can and does make that sale even though conditioning may later be found to be unnecessary. Under this scenario, Qwest is more disadvantaged than Covad.

Some CLECs suggested at the workshop that Qwest should be forced to improve the quality of the RLD Tool even though Qwest undeniably provides parity access and the FCC has not required BOCs to exceed that standard. Those CLECs, however, have presented no evidence of any alleged inaccuracies in the RLD Tool. The *only* CLEC that has challenged the accuracy of the Tool is Covad, and, as set forth above, its analysis is seriously flawed. Regardless, Qwest is undertaking significant efforts to improve the quality of its underlying loop qualification databases. Specifically, it is initiating the system fixes identified above to resolve the "no working TN" errors that it uncovered in the Trial. Second, its technicians are instructed to update the LFACS database that feeds the loop qualification database if they discover errors in the underlying loop information. With these efforts, Qwest has demonstrated that it is committed to improving the quality of the loop make up information all carriers share.

CONCLUSION

The unrefuted results of the xDSL Trial demonstrate that it was a success. Qwest demonstrated that by moving to a 72-hour FOC for xDSL loops, Qwest provided FOCs on time and met its promised due date the overwhelming majority of the time. Only one carrier challenged Qwest's results and, upon data reconciliation, that carrier has withdrawn its data completely. Thus, Qwest

demonstrated not only its ability to provide CLECs with a meaningful FOC, it demonstrated that it is accurately collecting and reporting its performance results. Covad, the most active participant in the Trial, has endorsed the 72 hour FOC. Qwest requests that the Commission close Loop Issue 24(a) and endorse Qwest's efforts before the ROC to revise the PO-5 to provide for a 72-hour FOC for xDSL loops.

The xDSL Trial also taught Qwest and CLECs much about the RLD Tool. First, the information in the Tool is at parity with that which Qwest provides to itself. No one disputes this issue and KPMG is testing to ensure retail parity. According to the FCC, the inquiry ends once parity is established. Nonetheless, as a result of findings in the Trial, Qwest has proactively undertaken system enhancements to cure one gap found in the Tool.

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Respectfully submitted,

QWEST CORPORATION

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Charles W. Steese, No. 026924
Kris A. Ciccolo, No. 17948
QWEST CORPORATION
1801 California Street
Suite 4900
Denver, CO 80202
(303) 672-2709

Kara M. Sacilotto
PERKINS COIE LLP
607 Fourteenth Street, N.W., Suite 800
Washington, D.C. 20005
(202) 628-6600

ATTORNEYS FOR QWEST CORPORATION