LTPA Impasse Document and Recommendation
Loop Splitting

Dispute: Should Loop Splitting products be added to the PIDs, and if so, what standard should apply?

Overview

Generally speaking, Loop Splitting involves one or two CLECs providing both voice and data services using UNE-Loops. CLECs requested that Loop Splitting be added as a separate product category to all PIDs where Line Sharing is currently included. Line Sharing is similar to Loop Splitting except that the voice service is provided by the ILEC and not a CLEC. Specifically, CLECs requested that Loop Splitting be added to the following PIDs: PO-5; OP-3, 4, 5, 6, 15; MR-3, 4, 6, 7, and 8.

According to Qwest, they have zero loop splitting lines in service and therefore opposed the request. Initially, parties agreed to table the issue in hopes that they could use the volume threshold/product addition process (that was being negotiated by the parties) as the vehicle to determine if Loop Splitting should be added to the PIDs, although the parties recognized that they had to reach agreement on that process in order to use it with respect to Loop Splitting. The parties were not able to develop a general process for adding new products to the PIDs and were also not able to agree on whether Loop Splitting should be added to the PIDs. Since the parties were not able to agree on the addition of Loop Splitting to the PIDs, they did not reach agreement on what standard should apply.

Process

The following process will be used for addressing Loop Splitting issues:

1. Apr. 9 – Position statements presented to the LTPA facilitator.
2. Apr. 21 – Recommendation by the LTPA facilitator.
3. May 3 – Vote by the state staff.

It is assumed that since multiple CLECs have participated in the negotiations, CLECs will confer and submit a joint statement.

CLEC's Position on Adding Loop Splitting Products to the PIDs

It is indisputable at this point that the competitive industry is at its greatest moment of uncertainty since the Act was passed in 1996. There is uncertainty around:

» whether Qwest will be required to provide access to UNE-P,

» whether a relatively rapid, mass cutover of customers from UNE-P to UNE loops will be required,

»who or which commission(s) will have the authority to make the UNE-P access and transition determinations,

»when industry stakeholders will know the scope of their respective rights and obligations, and

»whether any appeal will be sought, and granted, from the Supreme Court on the *USTA II*/TRO decisions.

Compounding the uncertainty is the FCC's recent call for carriers to negotiate commercial arrangements for access to UNE-P, which would take heretofore regulated network elements out of the realm of regulation.

It is against this backdrop that Covad and MCI seek the inclusion of loop splitting in the PIDs enumerated above. Loop splitting is the provision of voice and data over a single unbundled loop. Unlike line splitting, which is voice and data provided together over the UNE-P, there is no doubt that access to local loops for purposes of loop splitting is required now and will be required in the future. It is precisely because of the certainty of access to unbundled loops, and their consequent use as an assured and certain delivery mechanism for a bundled voice and data offering to customers that MCI, among others, is investigating loop splitting as an alternative service option.

Because of the existing and growing importance of loop splitting, driven as it is by significant shifts and uncertainties in the regulatory landscape, Covad and MCI request that loop splitting be added as a product disaggregation for the PIDs identified above. And in light of the fact that carriers may have to undertake mass cutover from UNE-P arrangements to UNE loop arrangements, it is imperative that performance backstops be in place to ensure the smooth and efficient transition to an unbundled loop/loop splitting environment.

Notably, not only will use of UNE-L for purposes of loop splitting ensure that CLECs can continue to provide bundled services to customers, but also it has the salutary effect of encouraging and increasing CLEC investment, since use of the UNE-L necessarily requires that a CLEC collocate in all serving central offices and invest in and deploy the facilities-based equipment necessary to access and provide service over unbundled loops. Consequently, loop splitting not only benefits consumers, who will have access to competitive bundled offerings, but it also ensures facilities-based competition by CLECs with Qwest. Both of these goals are appropriately endorsed and supported by state commissions, and the inclusion of loop splitting in the PIDs will facilitate achievement of these dual goals.

Qwest's sole objection to the inclusion of loop splitting in the PIDs is that there is zero volume. As MCI pointed out during the face to face meeting in Denver, however, that statement is not accurate since MCI, at least, has begun placing loop splitting test orders.

MCI has placed orders to test Qwest's two LSR Loop Splitting process. This contradicts Qwest's repeated statement that there is "zero" volume for Loop Splitting. Currently, Qwest's Loop Splitting is provided on existing 2-Wire Non-Loaded, 4-Wire Non-Loaded or ADSL Compatible Loops. If you have an existing analog loop it must be converted to one of the above listed loop types prior to ordering Loop Splitting. So, the process requires one LSR to convert an analog loop to a 2-Wire Non-Loaded, 4-Wire Non-Loaded or ADSL Compatible Loops and then the second order adds the Loop Splitting or data. MCI is also working with Qwest on the process requirements for changing from UNE-P to Loop Splitting. These processes are currently slated to change to a one LSR process with the release of IMA version 16.0. Given this is a new process for Qwest and that there are plans to change from a two LSR to one LSR process, it is critical to begin the reporting of Qwest's performance in this area.

Undoubtedly, Qwest will retort that the volumes are so low that loop splitting should not be included in the PIDs. But, low volumes are a reality whenever a carrier rolls out a new product. More importantly, given the regulatory uncertainties discussed above, the necessity of providing certainty to competitive carriers more than outweighs any concerns about the use of Qwest resources to report on currently low volume products (but products for which volumes will certainly increase). Thus, any potential efforts undertaken by CLECs to shift their existing and new lines to unbundled loop splitting arrangements should be supported in the form of ensuring that that process will go smoothly and adequately via constant reporting and monitoring of loop splitting in the PIDs. Absent any confidence that unbundled loop splitting provisioning and repair will go smoothly, CLECs likely will not make the transition from line splitting to loop splitting, to the detriment of consumers, who benefit from competitive alternatives. Equally important, absent confidence that the transition from line splitting to loop splitting can be undertaken successfully (i.e. smoothly, well and with adequate performance by Qwest), CLECs will opt not to invest in facilities, since such investment would just be a waste of time and money if loop splitting performance is poor and there is no recourse via discussions over the performance reflected in the PIDs. Thus, it is absolutely clear that loop splitting should be included in the PIDs.

Covad and MCI are willing to make a concession to Qwest's concern about using resources for low volume products. In exchange for the inclusion of loop splitting in the PIDs enumerated above, Covad and MCI will agree to six months of diagnostic reporting, with a standard to be established at the end of that six month period.

Qwest's Position on Adding Loop Splitting Products to the PIDs

The CLECs request that Qwest report loop splitting on a disaggregated basis where line sharing is currently reported and be assigned the same standards as line sharing. Qwest disagrees that reporting loop splitting is appropriate at this time because there are no volumes. Qwest further disagrees that it is appropriate to assign a standard to a product without volumes.

Loop Splitting Has No Volumes and Does Not Justify Incurring the Expense Involved in Reporting

Loop splitting has no demonstrable market interest because there is no commercial activity. By order of the FCC[1], Qwest made loop splitting available as a wholesale product in 2001. Qwest developed product and process requirements, created technical specifications and modified systems, processes, methods and procedures to support ordering, provisioning, repair and billing functions. Employees, who support the business functions listed above for loop splitting, were trained. This was a sizeable work effort which brought loop splitting to market for any CLEC who chose to order it. Qwest stands ready to process orders; however, there have been none.[2]

The lack of activity supports Qwest's position that the expense of developing a reporting capability is not needed. Similar to the product development process, Qwest follows a rigorous process to implement the reporting capability of new products or new product disaggregations. Qwest develops reporting requirements, translates them into technical specifications and modifies the reporting code. Using actual data, that code is tested to ensure it will perform properly and produce accurate, reliable results. Once testing is complete, the code is then incorporated into the official production system. The overall development process requires a significant number of resources since multiple pieces of code and reporting formats must be modified and tested. Qwest should not be forced to assign scarce analyst and programming resources to a project on the hopes that someday there will actually be something to report.[3]

Furthermore, Qwest applies strict quality controls to its systems development processes. One requirement is that actual data be used. This requirement ensures that the new system, or the new system capability, is properly developed and thoroughly tested with real data. Ultimately, this process ensures that the system accurately processes the data. A deployment based on test data, which would be necessary in the case of loop splitting, does not provide this assurance. In addition, once new code is implemented, the results are evaluated during the initial months of reporting to further ensure that results are accurate and reliable. However, it is not possible to evaluate the accuracy of results when there is no activity and no embedded base.

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1 *See* In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order On Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, Sixth Further Notice Of Proposed Rulemaking in CC Docket No. 96-98, FCC 01-26 ¶18 (rel. Jan. 19, 2001) (Subsequent Line Sharing Order).

2 Over three years later, Qwest has only received one order that was subsequently cancelled prior to provisioning.

3 Qwest's monthly reporting effort is large. Qwest reports performance for 55 PIDs and potentially over 1,000 disaggregations. Qwest provides monthly reports at regional, state aggregate and CLEC-specific levels for a total of about 1,300 reports on performance alone. If a product has no activity for a given month, no entry is made on the performance report; therefore, even if Qwest went through the development, loop splitting would not appear.

No Evidence Has Been Offered By the CLECs to Substantiate Reporting Loop Splitting

The CLECs have not provided any evidence that Qwest is not meeting any of its obligations with respect to loop splitting that would justify their request. They have not pointed to any performance data, any report or any other data. In fact, it is not apparent what evidence might exist since no CLEC is currently ordering loop splitting.

Applying a Standard to Loop Splitting is Not Reasonable

The issue of setting a standard is not ripe for discussion because there is no commercial activity. Without activity, there is no performance data and no business experience with provisioning loop splitting. Setting a standard without information and experience is unreasonable.

Conclusion

In the past 3 years, there has been no commercial loop splitting activity. As a result, there is no embedded base. There is no evidence that establishes Qwest is failing to meet its obligations. It is, in fact, impossible to conclude that Qwest is failing to meet its obligations because there is no performance data. Therefore, no justifiable reason exists to require Qwest to report loop splitting.

Facilitator's Recommendation

The following CLECs submitted a joint position statement for this disputed issue: Covad and MCI. Because a single CLEC position was submitted, this disputed issue is addressed under Section B, Part 2, of the Governance Document.

After reviewing the positions submitted by the parties and as discussed below, the facilitator recommends that that CLEC's position be adopted and Qwest should begin reporting loop splitting for PO-5, OP-3, 4, 5, 6 and 15, MR-3, 4, 6, 7 and 8. The facilitator also accepts the CLEC's proposed standard of a six month diagnostic period.

The cornerstone of Qwest's position is that there are no volumes for loop splitting. In support of this position, Qwest asserts that over the last three years, only one order has been submitted and that order was subsequently cancelled prior to provisioning.[4] Qwest further asserts that it's inappropriate to expend resources developing the capability to report loop splitting when there are no volumes. Qwest states that its quality assurance program used in its systems development processes relies on using actual data to test the systems to ensure they are accurately processing the data. Without actual data, Qwest asserts that it would have to use test data to ensure that the systems worked accordingly.

[4] See Qwest's position statement, footnote 2.

Qwest further asserts that CLECs have offered no evidence to substantiate the reporting of loop splitting. Finally, Qwest asserts that it is unreasonable to develop a standard without any commercial activity.

The facilitator disagrees with Qwest's position. As a threshold matter, the CLECs stated in their position statement that MCI has been placing test orders with Qwest for loop splitting. While test orders are not the same as commercial activity, it does suggest that at least MCI is attempting to understand how to place loop splitting orders to begin commercial operations. The facilitator also notes that Qwest has, "developed product and process requirements, created technical specifications and modified systems, processes, methods and procedures to support ordering, provisioning, repair and billing functions" associated with loop splitting. The next logical step is for Qwest to begin reporting on these various functions.

The facilitator also agrees with the CLECs that low volumes are a reality whenever a carrier rolls out a new product. However, unlike other new products that begin with low volumes, Qwest may see the volume of loop splitting orders grow considerably as a result of the FCC's Triennial Review Order (TRO). It is well known that incumbent carriers like Qwest have lobbied hard for the elimination and/or re-pricing of the UNE-P. CLECs like MCI and Covad use the UNE-P to offer voice and data services (a.k.a. line splitting) to customers. If Qwest and the other incumbent carriers are successful in eliminating or otherwise modifying the UNE-P (either by the TRO, carrier negotiations or revised FCC rules), CLECs will be required to undertake a rapid, mass migration of customers from line splitting to loop splitting.[5] As a result, what may be a small volume product today, has the potential to expand significantly in the near future. Given this likely result, the facilitator agrees with the CLECs that, "it is imperative that performance backstops be in place to ensure the smooth and efficient transition to an unbundled loop/loop splitting environment."

Turing to the question of an appropriate standard, the facilitator accepts the CLEC's proposal for six-months of diagnostic reporting, with a standard to be established at the end of that six month period. This six month period can be used by Qwest to test, and if necessary, adjust their systems to ensure they are accurately processing the data.

[5] The facilitator acknowledges the uncertainty surrounding the status of the TRO. The point however is not what will happen to the TRO; rather the point is what will happen to the UNE-P. If the availability of the UNE-P is reduced or eliminated, CLECs will have to migrate from line splitting to loop splitting.