

LINE SPLITTING STANDARDS

Background

Before discussing the impasse issues around line splitting, it is important to understand the universe of products in which it is situated. Generally speaking, there is a category of products that can generically be called “shared loop” offerings. A “shared loop” offering is nothing more than a product that provides both voice and data over the same line to the end user customer. The data occupies the high frequency portion of the loop, and the voice service occupies the low frequency portion of the loop.

Line sharing, line splitting and loop splitting all fall into the category of “shared loop” offerings, and the technical and functional differences between the three products are nominal. In a line sharing arrangement, Qwest is the voice provider, and a CLEC is the data provider. In a line splitting scenario, CLEC(s) provide both the voice and data service over the UNE platform. In a loop splitting arrangement, CLEC(s) provide both the voice and data service over an unbundled loop. In the line splitting or loop splitting arrangement, one CLEC may provide both the voice and data service, or two CLECs can partner together and one CLEC, like MCI, provides the voice service, and another CLEC, like Covad, provides the data service.

Importantly, regardless of the provider, these three products are the only economical means by which to provide service to residential users, and all three represent the only way carriers provide the highly desired “bundle” to residential customers. It is also imperative to keep in mind that line splitting and loop splitting provide a direct threat to Qwest because they result in the complete loss of an access line to competitors, whereas line sharing allows Qwest to retain a customer and associated access line, while simultaneously receiving revenue from a data CLEC for a portion of the loop that otherwise might lie idle.

Line Splitting Impasse Issues

Introduction

The parties have made a great deal of progress with respect to resolving line splitting issues. Not only were they able to reach agreement that line splitting should be included in the PIDs, but also they have agreed on the standard for a number of the PIDs. Covad and MCI believe that all parties should be commended for their efforts and for the progress made to date.

As set forth above, however, the parties disagree in three areas – (1) the appropriate standard for PIDs MR-3, 4, 6, and 8, (2) whether the “one free miss” concept should be forced in novel fashion into the PIDs, and (3) whether six months of diagnostic data is required before a standard can be set for OP-5 and, if not, what the appropriate standard is. In general, Covad and MCI believe that the parties should stick with what has been demonstrated to work in the past. That is, CLECs believe that the appropriate standards for line splitting for OP-5 and the MR PIDs should be those used for line sharing, and that the one free miss concept should be confined to where it currently exists – the PAPs.

Qwest has failed to provide any evidence, much less compelling evidence, demonstrating why the agreements, standards and methods of approach that were agreed upon and successfully used in the past (through today) should be set aside.

Standard for PIDs MR-3, 4, 6, and 8

Covad and MCI believe that the appropriate standard for line splitting for the four MR PIDs at issue is the standard that is currently being used for line sharing – parity with Res and Bus POTS. This standard is appropriate and should be used for three reasons.

First, line sharing and line splitting are virtually technically identical from a network perspective, and are wholly identical when looked at from a product, service and functional perspective. It makes sense, therefore, to utilize the same standard against which Qwest's performance should be measured for technically, functionally and service identical products. To use different standards for what are essentially the same product from a consumer perspective invites and, indeed, allows Qwest to provide different levels of service, which may very well harm the CLEC(s) and impede their ability to attract and retain customers. Particularly when taking into account the fact that line splitting represents total access line loss, whereas line sharing does not, it is imperative that Qwest be held to the same standards when repairing line shared and line split loops so that CLECs can compete fair and square with Qwest. If different standards are applied, Qwest can perform in a fashion that disadvantages line splitting CLEC(s), but remains undetected, while continuing to provide adequate service for a product that directly impacts its own retail customers.

Second, the parties agreed upon and have successfully used the Res and Bus POTS standard for line sharing for over two and an half years. During the 271 process, the ROC TAG began discussing the appropriate standard for line sharing in approximately August of 2001. The parties agreed upon the standard for the line sharing PIDs in November 2001. Since that time, the parties have lived by and successfully used as an appropriate standard parity with Res and Bus POTS. All reporting kinks and anomalies have been ironed out, and all carriers are comfortable with and knowledgeable about the reporting format, how it should be interpreted, and what it means with respect to the retail service against which the line sharing wholesale service should be compared. The time and effort that have gone into developing and implementing the Res and Bus POTS parity standard for line sharing should be maximized upon, and used for line splitting. It is wasteful, and unnecessary to go through the same exercise again for line splitting.

Third, Qwest has made no showing that Res and Bus POTS is not an appropriate retail analogue. Given that the parties have operated quite well under the current parity regime of Res and Bus POTS, there exists a presumption that that analogue is appropriate and should be used for all like products. Significantly, at no point, did Qwest ever dispute that line splitting is virtually functionally and technically identical to line sharing. At no point did Qwest ever dispute that the only technical difference between line sharing and line splitting is where the voice portion of the loop terminates. At no point did Qwest ever dispute that there are no differences in the provisioning and repair of line shared

loops and line split loops. And at no point has Qwest provided any evidence that the standard against which line splitting's shared line offering twin, line sharing, is measured is in any way inappropriate or results in performance reporting that held Qwest unfairly or inappropriately accountable for performance failures. At best, Qwest has pointed to the existence of another possible retail analogue but that potential replacement, standing alone, is an insufficient basis to throw aside a standard that has worked well to date. In the absence of demonstrating that there is anything wrong with the standard that is in use today for line sharing, it should be retained for line splitting.¹

Despite all this, Qwest argues that Qwest DSL is the appropriate retail analogue. Qwest explains that, when it originally proposed Res and Bus POTS in 2001 as the retail analogue for line sharing, that that decision was driven by the fact that its retail DSL product was provisioned via the designed services flow and that it wanted an analogue that was a POTS flow product, just like line sharing was. When Qwest changed its DSL technology from CAP DSL to DMT DSL, that change of technology also moved Q DSL to a POTS flow. Ergo, according to Qwest, its retail DSL product is now the appropriate analogue. Qwest's argument rings hollow.

Qwest changed its DSL technology and, by its own account, moved to a POTS flow for its retail DSL in April of 2001. *See* Qwest FCC Tariff No. 1, Sec. 8.4.1.B.1. This move occurred *prior* to Qwest's voluntary proposal of the Res and Bus POTS standard every time the opportunity came up. So, for instance, when the parties discussed and then agreed upon Res and Bus POTS as the appropriate standard for line sharing in August and November of 2001, that was almost 7 months after Qwest moved to a POTS flow for its retail DSL. Then, again, when the parties discussed the appropriate analogue for the expanded OP-5 categories for line sharing, Qwest confirmed in March 2003 – almost 2 years after the move to a POTS flow -- that the appropriate retail analogue was Res and Bus POTS. *See* Qwest Proposed OP-5 (Expanded) – New Service Installation Quality – 07 Mar 03 Draft. Qwest also could have raised it as an issue before finalizing the expanded OP-5 PID in November 2003 – 2 and an half years after the move to a POTS flow, but it did not. Consequently, while Qwest has had at least three clear opportunities to propose what it now calls the correct retail analogue after its own retail DSL service had moved to a POTS flow, it chose not to do so. Its failure to do so amply demonstrates that Qwest itself believes that Res and Bus POTS is the appropriate standard.

Equally important, Qwest has had additional opportunities to request changes to the line sharing standards to address what is the use of a supposedly incorrect retail analogue. In the first six month review for the Washington PAP, Qwest could have requested a change in the retail analogue for line sharing. It chose not to do so. Qwest could have made that request in its comments on the second six month review of the Washington PAP. It

¹ Notably, this is consistent with Qwest's own LTPA advocacy. Time and again, Qwest made clear during the LTPA its view that new PIDs should be created, or existing PIDs should be modified, only where there is a problem. Qwest has failed to show that there is any problem with the current retail analogue of Res and Bus POTS. Consistency alone therefore demands that Qwest adhere to the Res and Bus POTS standard unless and until it can demonstrate a problem with that standard, which it has totally and utterly failed to do.

chose not to do so. Qwest also could have requested a change in the line sharing standard in this first round of LTPA. It chose not to do so.

Qwest attempts to explain away its failure to request such a change by stating it was deterred from making this kind of proposal in light of the resistance to what it perceived to be unexceptional changes to the PIDs. That explanation is patently absurd. In the first place, the parties submitted their proposed PID changes at one time to John Kern. *See* Email from John Kern, dated October 24, 2003, requesting that PID changes be submitted by November 6, 2003. Thus, at the time Qwest submitted its changes, it was wholly, totally and completely unaware that any of its changes would encounter any resistance whatsoever. And to suggest that Qwest would ever be deterred from pursuing a desired result because of CLEC opposition defies reality.

Standard for Line Splitting for OP-5

The heart of this dispute goes to how long a CLEC must wait before a standard will be set for a particular product and PID. CLECs originally requested that Qwest include a separate product category for Line Splitting with a parity or benchmark standard back in March of 2003 during the discussions on the expanded OP-5 measure. Qwest's objection at that time was that it was pre-mature and the parties should wait for increased volumes and the release of the TRO. Well, the TRO has since come out and volumes for Line Splitting have significantly increased. However, Qwest has done nothing to address CLECs original request back in March 2003 and now wants parties to wait again.

As the participants to LTPA well know, the product adds and standard setting process discussions were particularly contentious. CLECs and Qwest disagreed as to whether any volume thresholds had to be met before a product would be added, and how product volumes would impact, if at all, the amount of reporting time before a standard would be set. At this point, however, the issue surrounding the OP-5 standard for line splitting is whether three to four months of reported results, with the apparent capability of rerunning those results back to September 2003, for a product demonstrating prodigious volumes from the get-go, is sufficient information for the parties to be able to set a standard. The answer to this question is an unequivocal "yes." Further, the standard should be parity with Res and Bus POTS.

It appears that Qwest has the ability to generate OP-5 line splitting results going back to September 2003. More particularly, OP-5 measures trouble tickets. So, once Qwest implements the ability to pull the line splitting trouble ticket data, it can generate PID results that are driven by trouble ticket data. Qwest implemented line splitting reporting for the MR PIDs in January 2004, and reran the MR PID line splitting results back to September 2003. *See* Qwest Summary of Notes, <http://www.qwest.com/wholesale/downloads/2004/040331/RGJan04-Feb04NotesSummary.pdf>. Consequently, it appears that Qwest has the capability of pulling the trouble ticket data underlying the OP-5 results and providing those reports all the way back to September 2003. Equally important, on a regional basis, Qwest has actually been reporting its line splitting performance for three months (with the fourth month to come out shortly). So, as of today, we have three,

possibly four months of actually reported results, and the capability of generating five and possibly six months worth of results.²

On a gross numbers basis, as of the end of November 2003³, Qwest testified that it had provisioned almost 750 line splitting orders, *see* Testimony of Dennis Pappas, WUTC Docket No. UT-033044, dated January 23, 2004. Since then, Qwest has provisioned almost another 2500 lines, with the regional results for MR-8 showing that Qwest has 3,223 line split lines in service as of the end of February 2004. *See* Regional Results, MR-8 (Feb. 2003)⁴.

Clearly, the volume of line split lines provisioned, and the time period over which Qwest has had the capability to report that performance, is more than sufficient to allow the parties to set an appropriate standard. There has been ample time for Qwest to develop the experience and expertise in provisioning line split loops (although such experience was largely unnecessary, since the provisioning process for line split loops is 99% identical to the provisioning process for line sharing). There has also been ample time for Qwest to review its reported performance, detect any anomalies (of which there have been none so far, *see* Summary of Notes, <http://www.qwest.com/wholesale/downloads/2004/040331/RGJan04-Feb04NotesSummary.pdf>) and correct any such anomaly and rerun results. For Qwest to refuse to set a standard given these facts is unreasonable, and a standard should and must be established. As set forth more fully above in the discussion regarding the line splitting standard for the MR PIDs, that standard should be parity with Res and Bus POTS.

Qwest's failure and refusal to set a standard, much less engage in discussions regarding a standard, is made more egregious by the fact that Qwest is willing to establish a standard for every other PID to which line splitting will be added. One conclusion that can be drawn from Qwest's refusal to set an OP-5 standard is that it wants to avoid consequences for poor and inadequate performance in the correct installation of competitors' line split loops, which represent a direct, and ever increasing threat to Qwest's hold on its retail access line cash cow. Indeed, one can reasonably assume that Qwest's refusal is nothing more than the barefaced insertion of a marketing/win back opportunity into the line splitting provisioning process since, if CLEC customers have a bad experience in attempting to receive the entire bundle of services (voice and data) from a competitor, they likely will go to Qwest to get its retail bundle offering.

The ability to provide a functional and timely bundle to customers is essential to CLECs' ability to compete with Qwest in the local market. The rapid transition from separate, standalone voice and data services to one bundled voice and data service cannot be seriously disputed. Newspaper articles, analyst reports and carrier advertisements regularly tout voice and data bundles as the "next wave." For example, J.P. Morgan

² It is unclear at this point why the OP-5 results for February have not yet been provided.

³ Since December results are not available until the end of January, it is reasonable to assume that January 23, 2004 testimony would refer to numbers as of the end of November 2003.

⁴ The denominator of MR-8 indicates the total number of the specified services that are in service in the reporting period.

Securities, Inc. reports that “By 2006, we expect that half of all consumers will be taking a bundle in some form or another from an ILEC or an IXC [CLEC],” and that “over 50% of customer[s] [will] purchase[s] bundled services from a single carrier by 2006.”

Moreover, J.P. Morgan further reports that:

The market for broadband Internet access is expected to balloon over the next several years, as customers continue to migrate from dial-up service and first-time users sign up for Internet service. We estimate that current penetration, at 10% of households, is expected to rise to roughly 30% by 2006, with DSL capturing roughly a third of this growing market.

Thus, J.P. Morgan reports that “while most DSL customers are currently on standalone service plans, over the next several years, we expect to see penetration of bundled offerings for DSL customers to rise significantly.” Accordingly, J.P. Morgan predicts that by 2006, 55% of all DSL will be bundled with voice offerings

The J.P. Morgan report also underscores that bundles are seen as essential by the ILECs. In a section of the report entitled, “ILECs Bundle to Defend Their Crown Jewels – Local Voice,” J.P. Morgan reports that “ILECs are reciprocating by bundling their local and long distance services together with DSL and wireless in an effort to both drive greater penetration of these services, but more importantly, defend their market share of the large and highly profitable local voice segment of the industry.” Given the importance of its own bundles, Qwest’s conduct in provisioning competitors’ bundles must be scrutinized carefully so that its own economic and business interests do not impair or impede its competitors’ ability to compete on the same footing and with comparable products.

As a final note, it is important to know that Qwest’s refusal to establish an OP-5 standard for line splitting is particularly unreasonable since a standard would be set under the Qwest volume threshold proposal – or at least, would have been set had Qwest not unilaterally, without notice, and without sufficient justification, withdrew its agreement to use its own proposal on the last day of the LTPA, citing PAP consequences as grounds for its withdrawal. Of course, while Qwest felt free to invoke the PAP for conduct or decisions it made during LTPA, it refused to have any discussions with CLECs around PAP issues in the LTPA, claiming that the LTPA was reserved solely for PID discussions. Qwest cannot invoke the PAPs as both a sword and a shield. And its conduct in doing so should not be condoned by State Commissions or their Staffs.

One Free Miss

While the parties have agreed on the standards for OP-3 (95%) and OP-4 (3.3 days) for line splitting, they do not agree as to whether Qwest should have “one free miss” where order volumes are 20 or less in a given month. The purpose of the “one free miss” provision is simple and best explained by example. Where volumes are less than 20, Qwest will fail to meet the OP-3 benchmark of 95% if it fails to deliver every loop in 3.3

days or less. In other words, Qwest supposedly cannot meet the OP-3 standard if even one miss will render Qwest unable to deliver loops on time 95% of the time. While the concept may not be unreasonable, the appropriate place to account for low volumes are in the PAPs, and not the PIDs.

First, the PIDs have never been used to account for low volumes; the PAPs have. For instance, the Washington PAP, like the PAPs in many other states, very clearly spells out that:

2.4 For performance measurements that have no Qwest retail analogue, agreed upon benchmarks shall be used. Benchmarks shall be evaluated using a “stare and compare” method. For example, if the benchmark is for a particular performance measurement is 95% or better, Qwest performance results must be at least 95% to meet the benchmark. Percentage benchmarks will be adjusted to round the allowable number of misses up or down to the closest integer, except when a benchmark standard and low CLEC volume are such that a 100% performance result would be required to meet the standard and has not been attained. In such a situation, the determination of whether Qwest meets or fails the benchmark standard will be made using performance results for the month in question, plus a sufficient number of consecutive months so that a 100% performance result would not be required to meet the standard. For purposes of section 6.2, a meets or fail determined by this procedure shall count as a single month.

Consequently, Qwest has the protection it seeks in a number of states and should not receive “double protection” by injecting it into the PIDs as well. And where the PAP in a particular state does not include such a provision, Qwest can seek modification of the PAP in order to include that protection. Importantly, as demonstrated by the Washington PAP, Qwest has been cognizant of the one free miss issue for years. To the extent that Qwest has failed to include that kind of protective factor in the PAP of any other state, it has only itself to blame, and should not be allowed to shift its own oversight or failure to competitive carriers.

Second, it is simply not appropriate to inject a “protection factor” in the PIDs, which are designed only to report performance, nothing more and nothing less. The only time the free miss issue arises is in the context of whether that miss generates a payment opportunity under a PAP. Reporting mechanisms like the PIDs should report what they report. They should not be modified to take into account the payment impact of what they report.

Third, any kind of free miss concept should be included in all the PIDs or not at all. It is unfair and inappropriate to inject the one free miss concept into one PID, at the expense of just a handful of carriers. Allowing the one free miss concept to be incorporated into the OP-3 and OP-4 line splitting PIDs will result in discriminatory treatment between

competitive carriers, and will be only felt by CLECs attempting to provide bundles of services. Such discrimination between carriers is illegal and prohibited by the Act.