

LTPA Impasse Document and Recommendation xDSL-i

Dispute: How should xDSL-i products be added to the PIDs and what standard should apply?

Overview

According to the CLECs, xDSL-i capable loops have been available for at least 2 years and therefore should be separately reported in the PIDs. Initially, parties agreed to use the volume threshold/product addition process (that was being negotiated by the parties) as the vehicle to determine if xDSL-i capable loops should be reported separately and at what standard. While the parties could not agree on a volume threshold/product addition process, Qwest did agree to report xDSL-i capable loops but only as a “star measure.” According to Qwest, a star measure will not be contained in the PIDs, but will be reported in Qwest’s publicly available monthly performance results with a notation that specifically states that the reporting of xDSL-i capable loops will not flow to the state PAPS

CLECs opposed the concept of a star measure and requested that xDSL-i capable loops be reported in the same manner as any other product in the PIDs.

Process

The following process will be used for this disputed issue:

1. Apr. 9 – Position statements presented to the LTPA facilitator.
2. Apr. 29 – Recommendation by the LTPA facilitator.
3. May 11 – 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 xDSL-i Capable Loops

Eschelon and USLink (“CLECs”) request that Long-Term PID Administration (“LTPA”) include the product “xDSL-i capable loops” into the ordering/provisioning (“OP”) and maintenance/repair (“MR”) Performance Indicator Definitions (“PIDs”). CLECs request that the performance standards for xDSL-i loops be the same as the standard for ISDN capable loops.

I. Background

Digital Subscriber Line (“DSL”) service is distance sensitive. The further away an end user customer is from a central office, the slower the transmission speed of the DSL. IDSL, based on a technology similar to Integrated Services Digital Network (“ISDN”), is the slowest “flavor” of DSL at 128Kbps. However, IDSL is the DSL product of last

resort for many customers too far from central offices to receive data faster than dial-up but below the costly T-1 level of service. CLECs order xDSL-i capable loops to provide ADSL to end user customers.

When CLECs identified that xDSL-i loops are not currently measured products in key Ordering/Provisioning (“OP”) and Maintenance/Repair (“MR”) performance measures, CLECs requested that xDSL-i loops be added to the PIDs. Qwest originally argued that volumes were not sufficiently large as of October 2003 and that Qwest would be willing to add the product to the PIDs when total lines in service reached 1,000 lines under its New Product Addition proposal.¹

CLECs had concerns about Qwest’s one-size-fits all approach given the significant hurdles Qwest proposed before products could be added to PIDs, standards could be established, etc. Nevertheless, CLECs did not believe the addition of the xDSL-i loop product to the PIDs would go to impasse because the product volume for xDSL-i loops was so close to the 1,000-line threshold in Qwest’s New Product Addition proposal.

Qwest withdrew its New Product Addition proposal on March 11, 2004. On March 25, Qwest agreed to measure xDSL-i loops in the requested PIDs but only as “star” measures. Qwest takes the position that, “if a new product is added to the PIDs, it will be considered a “light” PID which means that reporting of any new product will have no affect on state PAPs.”²

Qwest (selectively) refuses to discuss PAP issues in LTPA. Nevertheless, Qwest now takes the position that if a CLEC wants performance for new products measured, it must go outside the bounds of the current PIDs and PAPs treatment of provisioning and repair reporting for all other circuits/services. Whether states decide to add or subtract products from their PAPs is not within the scope of the LTPA. As such, CLEC rejected Qwest proposal and the matter was brought to impasse.

CLECs request that xDSL-i loops be added to the following PIDs with the corresponding standards:

PID	Standard
OP-3	Parity with retail ISDN BRI
OP-4	Parity with retail ISDN BRI
OP-5A	Parity with retail ISDN BRI
OP-5B	Benchmark to be determined. This benchmark will be the same as for ISDN-capable loops and implemented at the same time.
OP-5R	Diagnostic as long as ISDN-capable loops are diagnostic, then the same standard.

¹ See LTPA Issues 13 and 33.

² See Final LTPA Issues Matrix, Issue 13, March 29, 2004 at 15.

OP-5T	Diagnostic as long as ISDN-capable loops are diagnostic, then the same standard.
OP-6	Parity with retail ISDN BRI
OP-15	Parity with retail ISDN BRI
MR-3	Parity with retail ISDN BRI
MR-4	Parity with retail ISDN BRI
MR-6	Parity with retail ISDN BRI
MR-7	Parity with retail ISDN BRI
MR-8	Parity with retail ISDN BRI
MR-10	Diagnostic

II. Discussion

A. The purpose of performance measures is to detect discriminatory treatment.

The FCC has long emphasized the importance of performance measures. For example, in rejecting Ameritech's second Section 271 Application in Michigan, the FCC found that Ameritech had:

Failed to provide all of the data that we believe are necessary in order to evaluate its compliance with the statutory nondiscrimination standard. As the Department of Justice stated, "proper performance measures with which to compare BOC retail and wholesale performance, and to measure exclusively wholesale performance, are necessary prerequisites to demonstrating compliance with the Commission's 'nondiscrimination' and 'meaningful opportunity to compete standards.'"³

In its Notice of Proposed Rulemaking on Performance Measures the FCC stated that:

Section 251 of the Act imposes on all incumbent LECs the duty to provide requesting telecommunications carriers interconnection, access to UNEs, and collocation, at "rates, terms and conditions that are just, reasonable, and nondiscriminatory." National performance measurements and standards may be used to help determine whether incumbent LECs are in compliance with these duties and other requirements under the Act.⁴

Qwest argues that there is value in focusing performance reporting. However, such "focus" has already occurred. It has already been determined that Qwest's performance should be measured in key areas (e.g., pre-ordering, ordering, provisioning, maintenance and repair, etc.). PIDs were developed in each of these functional areas (e.g., the PO, OP, and MR PIDs groups). The task before LTPA is to "update" the existing PIDs to include

³ In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, August 19, 1997 at para 204. Footnotes omitted.

⁴ In the Matter of Performance Measurements and Standards for Unbundled Network Elements and Interconnection, CC Docket No. 01-318, November 19, 2001 at para 14. Footnotes omitted.

additional products to evaluate whether Qwest is providing non-discriminatory service as required by state and federal law.

B. xDSL-i loops should be added to OP and MR PIDs to detect and deter discrimination.

1. xDSL-I loops are important to CLECs and their end user customers.

Qwest offers IDSL service to its retail customers.⁵ CLECs use xDSL-i loops to provide competitive alternatives in this under-served portion of the DSL market. Qwest may argue that few CLECs order this product. Many CLECs are not able to compete with Qwest in this market due to the costly equipment necessary to provide the service. Eschelon and USLink have to been able to use this product to provide competitive data services that otherwise would be unavailable.

Even if few CLECs use xDSL-i loops, there is a long history of xDSL-i loops in service. For example, Qwest has stated that 892 loops were in service in October 2003 with growth of approximately 20/month.⁶ Thus, as of April 2004, the volume may very well exceed even Qwest's previously proposed 1,000 lines in service threshold under the New Product Addition issue.⁷

Should Qwest argue that no CLEC asked to have xDSL-i loops included when the PIDs were developed, two points should be recognized. First, many CLECs, including Eschelon, did not participate in the development of the PIDs. Second, the PIDs' descriptions of which products are and which products are not measured are not always clear. xDSL-i loops, for example are included in some PIDs (primarily Pre-Order or "PO" measures) aggregated with other types of loops.⁸ This partial inclusion led Eschelon to initially ask Qwest which PIDs measure the product.⁹ Once Qwest identified that xDSL-i loops had been omitted from certain PIDs, CLECs proposed their addition to the OP and MR PIDs.

2. Qwest's refusal to add new products to the PIDs should be rejected given Qwest's own requests to change the PIDs.

Qwest has proposed that LTPA change or delete many PIDs. CLECs have accepted some Qwest requests. For example, CLECs acknowledged Qwest's claim that "times had changed" post-271 and the PID PO-10—LSR Accountability-- could be deleted. Qwest should not be allowed to suggest that LTPA should only fix errors and omissions made in the PIDs when such changes benefit Qwest.

⁵ See Section 8.4, Qwest FCC Tariff No. 1, available at http://tariffs.uswest.com:8000/docs/TARIFFS/FCC/FCC1/fcc1_s008p281.pdf#USW-TOC000028

⁶ See LTPA Meeting Minutes, January 8, 2004, at 2. Minutes are available at: http://www.qwest.com/about/policy/ltpa/docs/LTPA_010804_Minutes.pdf

⁷ An individual CLEC knows only the number of xDSL-i loops it has in service. CLECs do not visibility into the number of lines in service for all CLECs. Only Qwest has this information.

⁸ In addition, Qwest has agreed to include xDSL-i loops in the newly agreed upon measure PO-20.

⁹ See LTPA Issues Matrix, March 25, 2004 at 13.

3. xDSL-I loops are similar to ISDN loops so standards can be easily set¹⁰

CLECs have proposed that the standards for xDSL-i capable loops be the same standards established for ISDN-capable loops for the OP and MR PIDs. The two products are so similar that Qwest's ordering and repair guidelines for xDSL-i capable loops and ISDN-capable loops are the same. To be precise, the ordering and repair guidelines are not just the same; Qwest considers the two products so similar that the products are *combined* in the SIG.¹¹ As Qwest agrees that it should provision and repair xDSL-i loops in the same manner as it does ISDN capable loops, the standards should be the same.

C. Qwest's current proposal is a step back from Qwest's volume proposal and is not even an LTPA proposal.

1. "Star" measures are not PIDs.

Qwest's proposal to report xDSL-i loops as "star" measures is not a PID proposal at all. "Star" measures are not PIDs. Until now, star measures have been limited to areas of performance unilaterally proposed and defined by Qwest. Qwest's proposal to relegate xDSL-i loops allows Qwest to determine which products it can provide inferior performance. Such a request goes against the heart of the non-discrimination tenants of the Act and the bargain that Qwest struck with state commissions when it sought their approval to get back into the long distance business.

Qwest's star proposal is much more objectionable than Qwest's original volume proposal. CLECs and Qwest were working within Qwest's proposal to ensure that certain products (such as high capacity circuits or products unique to rural areas) would not be excluded forever from the PIDs while at the same time respecting Qwest's concerns. As mentioned above, under Qwest's original proposal, xDSL-i loops likely would have qualified for "full PID status" at this time.

2. Qwest's proposal to exclude some measured products from the PAPs is not an LTPA issue.

CLECs (and Qwest's own SIG) believe xDSL-i loops should receive the same treatment as ISDN-loops. State commissions have found important ISDN-loops important

¹⁰ CLECs do not know if the standard is a disputed issue. On April 1, 2004, the LTPA facilitator indicated in the email containing the impasse documents that, "at this time, the standard for xDSL-i capable loops was not included as a disputed issue. If Qwest does not agree with Eschelon's proposal, the Impasse Document will be updated accordingly." The impasse documents do not reflect this as a disputed issue. Nevertheless, CLECs briefly describe the basis for the proposed standards in this section. In the event that Qwest opposes these standards in its comments, may request that LTPA allow them to respond.

¹¹ Many products have the same intervals in the SIG, they are however, documented separately in the SIG. See Qwest's Standard Interval Guide available at: <http://www.qwest.com/wholesale/downloads/2004/040329/SIGInterconnectionV31.pdf> at 112.

enough to add to the PAPs. If Qwest believes PAP payments are not appropriate, Qwest should bring that issue to state Commission's in a six-month review.¹²

III. Conclusion

CLECs request that LTPA include the product xDSL-i capable loops into the OP and MR PIDs. CLECs request that the performance standards for xDSL-i loops be the same as the standards for ISDN capable loops. CLECs propose that reporting of this new product begin with June performance reported in July.

Qwest's Position on xDSL-i Capable Loops

The dispute at impasse between Qwest and the CLECs addresses how to report, not whether to report, xDSL-i capable unbundled loops ("xDSL-i capable loops") and whether a standard applies to that reporting. On March 25, 2004, during the LTPA conference call, in an effort to provide a reasonable way for CLECs to obtain more specific data on xDSL-i capable loops, Qwest offered to report xDSL-i capable loops as "Star Measurements." Star measurements are not PID measurements, but are reported for informational purposes in Qwest's publicly available performance reports. The data elements provided for PID measurements are also provided for Star Measurements.

Reporting xDSL-i in this manner is reasonable for two reasons. First, this reporting method addresses the CLECs request that performance data be easily-accessible because it will be provided in the monthly performance reports. Regional level, state level, and CLEC-specific reports would be provided for this product. Second, this reporting method addresses Qwest's concerns that its willingness to report new performance data beyond that currently captured in the PID measurements does not result in additional PAP obligations.

Star Measurement reporting for xDSL-i meets the stated CLEC need

After various discussions involving product reporting, the issue remaining at impasse between Qwest and the CLEC LTPA participants involves how to report xDSL-i loops. CLECs want xDSL-i capable loops to be reported on a disaggregated basis; disaggregated reporting isolates performance for an individual product and reports it separately from the performance of other products.

A product reported as a star measurement is not contained in PID or the Performance Assurance Plan ("PAP"); however, it is reported in Qwest's publicly available monthly performance reports on an informational basis. The information provided includes data, charts and graphs that are available in the PIDs and is easily accessible within the monthly performance reports.

¹² CLECs will have to ask the Colorado and Minnesota to add the xDSL-i product to the PAPs. In other states, the burden is on Qwest to show that xDSL-i loops are so different from any other product that they should be excluded from the PAPs.

Star measurements satisfy the ostensible business purpose that the CLECs articulated in LTPA, namely, that CLECs be able to monitor the level of xDSL-i loop performance. Since the necessary data points would be available in such a measurement, their need is met.

Additionally, the CLECs proposed that the retail analogue of ISDN BRI be applied as a retail standard; however, if the CLECs truly want to monitor xDSL-i capable loop performance, the Star method of reporting would address this need. The CLECs could track the performance of ISDN BRI by reviewing existing provisioning or maintenance and repair measurements that already utilize ISDN BRI as the retail analogue, and then compare it to xDSL-i capable loops. This would be easily accomplished because the performance for both xDSL-i capable loops and ISDN BRI would be provided in the same monthly report.

In the LTPA, Qwest offered to report xDSL-i capable loops on a starred basis. In fact, in March 2004 Qwest had begun to develop the capability to report these loops on a disaggregated basis even though ordering levels had only grown very slowly. The development effort indicates Qwest's continuing commitment to respond to CLEC requests. Qwest remains willing to report xDSL-i capable loops on a disaggregated basis as Star Measurements.

In the 271 workshops and Technical Advisory Group ("TAG") meetings, CLECs and Qwest, with the participation of State Commission Staffs, defined the products and services that are disaggregated in the PIDs. CLECs had every opportunity to include xDSL-i capable loops in the PIDs during PID development. Instead, the parties chose not to do so. No significant xDSL-i capable loop product changes have occurred. Thus, no justification exists warranting modification to the PIDs or reporting based on a particular standard. However, Qwest's offer to report xDSL-i capable loops as Star Measurements represents a reasonable alternative to the CLECs' request.

Conclusion

Qwest's offer to report xDSL-i capable loops as Star Measurements satisfactorily addresses the CLECs' need for performance data. Furthermore, the Star reporting method addresses Qwest's legitimate concern that additional reporting and performance obligations not be inappropriately assumed. Since there is no showing of a compelling need to add xDSL-i capable loops to the PIDs reporting them as Star Measurements is a reasonable response to the CLECs' request. Qwest's offer to report xDSL-i capable loops as a Star Measurement should be accepted.

Facilitator's Recommendation

The following CLECs submitted a joint position statement for this disputed issue: Eschelon and US Link. 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 the CLEC's position be adopted and Qwest should begin reporting xDSL-i capable loops in the aforementioned PIDs using the same standard that is used for ISDN-capable loops beginning with June performance reported in July.

Qwest proposed to report xDSL-i capable loops as a "Star" measure. According to Qwest, a Star measure is not a PID but performance results are reported to CLECs for informational purposes only. Qwest made its proposal to treat xDSL-i capable loops as a Star measure to address its concerns that additional PID reporting will result in additional PAP obligations. Qwest also stated that, since xDSL-i capable loops would not be included in the PIDs, there is no need for a standard. According to Qwest, CLECs will be able to compare the results of xDSL-i capable loops with results for ISDN-capable loops. Finally, Qwest states that CLECs had opportunity to request the inclusion of xDSL-i capable loops in the PIDs during the 271 workshops and Technical Advisory Group (TAG) meetings and chose not to do so. According to Qwest, since no significant changes have occurred with xDSL-i capable loops, there is no justification to include them in the PIDs.

The facilitator disagrees with Qwest that xDSL-i should be reported as a Star measure and not a PID due to PAP related issues. Qwest has consistently stated from the beginning (and repeated many times throughout the LTPA process) that PAP related issues are not to be discussed in the LTPA. Qwest's position on this point was clearly articulated by Ms. Nancy Lubamersky in an email sent to the LTPA back on November 3, 2003 which states that,

"... Qwest is committed to the LTPA process identified in the March 2003 Governance document and stands ready to discuss PIDs including appropriate standards (parity or benchmark)... Discussion of Performance Assurance Plan issues such as designation of a PID as High, Medium or Low and whether performance misses result in Tier 1 or Tier 2 payments is a state specific issue and is not a part of the LTPA charter at this time. While the LTPA Governance plan states "It is possible that additional collaborative functions may be considered in the future including, but not limited to, audits and overall performance assurance plan reviews", it is important that consideration of possible future functions not impede progress of the LTPA group. Therefore, as issues are identified that relate to elements of the 6-month state reviews, reserving them for consideration in those 6-month Performance Assurance Plan reviews, will allow the LTPA group and the LTPA facilitator to better focus on the current LTPA PID agenda."¹³

Therefore Qwest should follow the position it advocated at the beginning of the LTPA collaborative and take any concerns regarding PAP related issues resulting from the adoption of new PIDs to the appropriate state commissions.

¹³ Email to the LTPA from Nancy Lubamersky, Nov. 3, 2003.

The facilitator also disagrees with Qwest's position that xDSL-i capable loops cannot be added to the PIDs due to CLEC inaction back in the 271 workshops. In the same memo just discussed, Qwest fully understood that new PIDs could be added as a result of the LTPA process.

“Qwest is pleased that the LTPA facilitator, John Kern, is aboard and has requested identification of PIDs which the parties want added, deleted or changed.”¹⁴

At the beginning of the LTPA process, CLECs recommended that new PIDs be added (e.g., Line Loss, Loop Splitting, etc.) and at no time did Qwest object or otherwise indicate that a CLEC could not request the addition of a new PID. As a result, all parties understood that adding new PIDs was contemplated within the LTPA collaborative.¹⁵

Given that xDSL-i capable loops will be added to the OP and MR PIDs, the next issue to be address is what standard should apply to xDSL-i capable loops. For this issue, the facilitator agrees with the CLECs and Qwest should begin reporting xDSL-i capable loops using the same standard that applies to ISDN capable loops. According to the CLECs, “The two products are so similar that Qwest's ordering and repair guidelines for xDSL-i capable loops and ISDN-capable loops are the same. To be precise, the ordering and repair guidelines are not just the same; Qwest considers the two products so similar that the products are *combined* in the SIG.”¹⁶ (emphasis in original and footnote omitted). As a result, the ISDN standard should apply to xDSL-i capable loops.

In its response to a CLEC counter-proposal to tie this issue with another disputed issue (i.e., PO-2), Qwest asserts that combining xDSL-i loops with ISDN capable loops is inappropriate because ISDN capable loops utilize different network elements than xDSL-i capable loops. Qwest therefore concludes that by extension, this would create an improper retail analog comparison to Qwest ISDN BRI.

The facilitator notes that this information was never presented to the LTPA in any meeting or conference call. Nor was it presented in Qwest's Position Statement submitted in response to this disputed issue. But for the CLEC's counter-proposal to PO-2, Qwest's arguments would never have been presented to the LTPA. Qwest's arguments therefore are untimely and out of process.

Finally, Qwest's arguments against using ISDN-capable loops as the retail analogue are belied by arguments presented in their Position Statement. In its Position Statement, Qwest states that under its Star Measure proposal, “The CLECs could track the performance of ISDN BRI by reviewing existing provisioning or maintenance and repair measurements that already utilize ISDN BRI as the retail analogue and then compare it to

¹⁴ Id

¹⁵ See also CLEC's Position Statement at pg. 5 where the CLECs agreed to deleting a PID based on Qwest's claim that “times have changed” since the 271 proceeding.

¹⁶ Id., pg. 6

xDSL-i capable loops.”¹⁷ If ISDN-capable loops are the proper comparison for xDSL-i capable loops under a Star Measure, they are also the proper comparison for PIDs.

¹⁷ Qwest’s Position Statement