

The Commission met on **Thursday, September 19, 2002**, with Chair Scott and Commissioners Garvey, Johnson, Koppendraye and Reha present.

Comment [COMMENT1]: Minutes by Eric Witte. 12 motions were made.

TELECOMMUNICATIONS AGENDA

The following items were taken up by the Commission:

P-421/CP-00-686

In the Matter of the Request for Service in Qwest's Tofte Exchange

Commissioner Johnson moved to –

1. deny the proposal of Qwest Corporation for serving petitioners living within its Tofte exchange boundary,
2. reaffirm the Commission's ORDER REQUIRING SERVICE TO THE UNSERVED AREA OF QWEST'S TOFTE EXCHANGE AND REQUIRING CUSTOMER CONTRIBUTION (June 21, 2002) and
3. clarify the following as recommended by the Minnesota Department of Commerce (the Department):
 - Qwest should provide order forms to each of the petitioners and other residents in the Tofte exchange within 90 days.
 - Qwest should extend its facilities along all public, private and forest service roads serving the customers.
 - Customers should be assessed a \$55 installation fee and a \$0.51 per foot charge from the newly-installed facilities to their homes.

The motion passed 3-2. Commissioners Garvey and Koppendraye voted no.

Commissioner Reha moved to grant Qwest's request to allow the change in its Tofte and Grand Marais exchange boundaries and require that Qwest submit, within 20 days of the Commission's order, revised maps and other necessary documentation to approve the exchange boundary change.

The motion passed 5-0.

P-421/CI-02-582

In the Matter of a Commission Investigation into the Issues Raised by New Access Communications Regarding the Application of Qwest's Avoided Cost Discount to its Competitive Response Program

Commissioner Reha moved to –

1. find that Qwest's competitive response program ("winback" tariff) is discriminatory and anticompetitive, and

2. disapprove the winback tariff.

The motion passed 5-0.

P-421/AM-01-1376

In the Matter of Qwest's Performance Assurance Plan

Commissioner Reha moved to do the following:

1. Reconsider the Commission's ORDER ADOPTING PLAN AND SETTING FURTHER PROCEDURAL SCHEDULE (July 29, 2002) which adopted for Minnesota a performance assurance plan (PAP) matching the plan adopted in Colorado (the CPAP).
2. Modify the CPAP as follows:
 - c. Adopt the undisputed housekeeping amendments to add references to the Department and the Residential and Small Business Utilities Division of the Minnesota Office of the Attorney General (RUD-OAG).
 - d. Replace language in CPAP § 18 regarding changing the agreement with the following language (change control):

18.6 The Commission retains the right to add topics and criteria to the six-month review, retains the ability to order changes if the MPAP [Minnesota performance assurance plan] is not in the public interest, and retains the ability to hear any disputes regarding the six-month review. The Commission may conduct joint reviews with other states. Any changes in the six month review pursuant to this section shall apply to and modify this agreement between Qwest and CLEC.

18.7 If any agreement on adding, modifying or deleting performance measurements are reached between Qwest and CLECs participating in an industry Regional Oversight Committee (ROC) PID administration forum, those agreements shall be incorporated into the MPAP and modify the agreement between CLEC and Qwest at any time those agreements are submitted to and approved by the Commission, whether before or after a six-month review.
 - e. Modify CPAP § 16.4 to eliminate references to surrendering rights or remedies under state wholesale service quality rules (election of remedies).
3. Allow CLECs to amend their interconnection agreements (ICAs) with the CPAP immediately even though remedies will not apply until Qwest receives 271 relief.
4. Reject Qwest's contention that a CLEC may replace the CPAP only upon expiration of its ICA, and clarify that CLECs may replace the CPAP in their ICAs with any

wholesale service quality regime the Commission creates in Docket No. P-421/M-00-849 *In the Matter of Qwest Wholesale Service Quality Standards*.

5. Require that Qwest produce a compliance document within 14 days of the Commission's Order.

Commissioner Reha amended her motion to propose additional modifications to the CPAP as follows:

- d. Modify CPAP § 17 regarding an Independent Monitor as follows:
 - Specify that the "Independent Monitor" would be an administrative law judge appointed by the Office of Administrative Hearings.
 - Incorporate the expedited and informal proceeding practices from the Commission's rules of practice and procedure.
 - Allow the ALJ to adjust those procedures as needed to ensure a just decision.
 - Replace the removal process at § 17.3 with the removal provision in Minnesota Rules, part 1400.6400.
- e. Modify CPAP Appendix A regarding collocation as follows:
 - Direct Qwest to pay \$2,500 for each day a collocation is provided late.
 - State that the applicable standard for making collocation space available shall be 90 days, determining the due date from the date the CLEC submits an acceptable application, approving the FCC process for addressing defects in the original application, allowing Qwest 10 calendar days to identify deficiencies found in the collocation application, and allowing the CLEC 10 calendar days to cure the defect. If the CLEC fails to cure the defect within the 10 calendar days, the application would be considered cancelled.

Commissioner Reha withdrew her motion.

Commissioner Reha moved to –

1. reconsider the Commission's July 29, 2002 Order and
2. adopt the housekeeping amendments stated above.

The motion passed 5-0.

Commissioner Reha moved to adopt the change control amendment as stated above.

Commissioner Johnson moved to do the following:

3. Adopt the change control amendment as stated above.
4. Modify CPAP § 16.4 with modified election of remedies language, specifying that the election to be governed under the CPAP and the resulting surrendering of rights shall last –

- for six months after the Commission has issued a final Order in its wholesale service quality docket (Docket No. P-421/AM-00-849);
 - until terminated upon mutual agreement between Qwest and the CLECs; or
 - upon specific order regarding the CLEC's election by the Commission.
3. Modify CPAP § 16.6 to require CLECs to elect between receiving CPAP liquidated damages or contract damages.
 4. Adopt the Independent Monitor amendment as stated above.
 5. Modify CPAP § 7.3 and Appendix A regarding high-value service remedies as follows:
 - a. Direct Qwest to pay a CLEC for each day a message trunk (e.g. LIS trunk), entrance facility, or interoffice transport facility (including unbundled dark fiber) is provided later than the requested due date or the installation interval established in the plan, whichever is later. Qwest should pay \$1000 for occurrence involving a Tier 1A line with DS1 capacity; \$3000 for each occurrence involving a Tier 1A line with DS3 capacity or more is late; and \$2500 for each day an interconnection trunk is late.
 - b. Put all services and facilities used at rates of DS1 or higher into the Tier 1A category.
 6. Adopt the collocation amendment as stated above.

The motion failed 2-3. Commissioners Garvey, Koppendraye, and Reha voted no.

Commissioner Koppendraye moved to adopt the change control amendment as noted above.

Commissioner Koppendraye withdrew his motion.

Commissioner Garvey moved to adopt the following language regarding special access:

The Commission, in Docket No. P421/CI-00-849 (March 4, 2002), ordered Qwest to provide special access data in accordance with the measures introduced by MCI WorldCom and TimeWarner Telecom. However, in the event that Qwest is, in some way, relieved of any obligations set forth in that Order, the Commission remains firm in its position that a need exists to measure Qwest's performance regarding special access circuits.

Furthermore, in the event that Qwest is, in fact, relieved of its obligation under that Order (P421/CI-00-849), Qwest shall begin monitoring its performance for special access circuits by use of the project field as set forth in the Regional Oversight Committee (ROC) PIDs within thirty days of a directive by this Commission to do so.

Accordingly, if Qwest is relieved of its obligations under that Order, we direct

Qwest to include all relevant ROC PID measures for these circuits in the Minnesota PAP. Qwest shall monitor and report special access circuit performance for PIDs OP-3, OP-4, OP-5, OP-6, OP-15, MR-5, MR-6, MR-7, MR-8, and PO-5 and any other PID to the extent a CLEC orders such special access in lieu of UNEs. Qwest's performance shall be measured as another level of disaggregation in all UNE measures and Qwest shall take only the exclusions listed in the PID for each measure. The standard shall be diagnostic.

The motion failed 2-3. Chair Scott and Commissioners Koppendrayer and Reha voted no.

Koppendrayer moved to adopt –

1. the change control amendment as stated above,
2. the modified election of remedies amendment as stated above, and
3. the Independent Monitor amendment as stated above.

The motion passed 3-2. Chair Scott and Commissioner Garvey voted no.

Commissioner Johnson moved to adopt –

1. the high-value service remedies amendment as stated above and
2. the collocation amendment as stated above.

The motion failed 2-3. Commissioners Garvey, Koppendrayer and Reha voted no.

Commissioner Garvey moved to adopt the collocation amendment as stated above.

The motion passed 4-1. Commissioner Koppendrayer voted no.

Commissioner Garvey moved to –

1. allow CLECs to amend their ICAs with the CPAP immediately even though remedies will not apply until Qwest receives 271 relief, and
2. require that Qwest produce a compliance document within 14 days of the Commission's Order.

The motion passed 5-0.

Commissioner Koppendrayer moved to establish a work group and comment period to finalize draft PAP language and/or legislation on the Tier 2 Special Fund issue.

Commissioner Koppendraye amended his motion to eliminate the work group, and to delegate timing and administrative matters to the Executive Secretary.

The motion passed 5-0.

Commissioner Reha moved to invite parties to file comments in Docket No. P-421/M-00-849 30 days from today.

The motion passed 5-0.

There being no further business, the meeting was adjourned.

APPROVED BY THE COMMISSION

Approval Date:

October 3, 2002

Burl W. Haar
Executive Secretary