

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott	Chair
Edward A. Garvey	Commissioner
Marshall Johnson	Commissioner
LeRoy Koppendrayner	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of Qwest's Performance
Assurance Plan

ISSUE DATE: February 6, 2002

DOCKET NO. P-421/AM-01-1376

In the Matter of a Commission Investigation
Into Qwest's Compliance with Section
271(d)(3)(C) of the Telecommunications Act of
1996 that the Requested Authorization is
Consistent with the Public Interest,
Convenience and Necessity

P-421/CI-01-1373

ORDER SETTING PROCEDURAL
SCHEDULE FOR QPAP PROCEEDING

PROCEDURAL HISTORY

In an Order¹ issued September 11, 2001 establishing proceedings related to Qwest's Section 271 application² the Commission directed Qwest to file testimony on its Performance Assurance Plan (QPAP) by November 3, 2001.

Qwest duly filed its QPAP on November 6, 2001.

On December 11, 2001, the Commission issued a notice of its December 18, 2001 meeting to discuss procedures and issues related to the QPAP filing. The Notice called for written comments by January 3, 2001 on several specific issues regarding the QPAP.

On December 18, 2001, the Commission met to discuss with the parties how the QPAP filing should be processed. The Commission took no action at this time except to approve a protective order negotiated by the parties.

¹ *In the Matter of an Investigation Regarding Qwest's Compliance with Section 271 of the Telecommunications Act of 1996 with Respect to the Provision of InterLATA Services Originating in Minnesota*, Docket No. P-421/CI-96-1114, NOTICE AND ORDER FOR HEARING (September 11, 2001).

² 47 U.S.C. § 271 (c).

On January 3, 2002, the CLEC/Agency Coalition³ filed comments, Qwest filed comments, and WorldCom, Inc. and AT&T Communications of the Midwest, Inc. filed joint comments.

On January 8, 2002, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

I. Background

Section 271 of the Telecommunications Act of 1996 (the Act) provides for Regional Bell Operating Companies (RBOCs) to enter interLATA long distance markets. Such entry, however, cannot take place within an RBOC's current local service region until the RBOC has filed for entry with the Federal Communications Commission (FCC) and the FCC has found that the RBOC satisfies the conditions set forth in section 271 of the Act for opening its local markets to competition. The Commission in its Order of September 11, 2001⁴ ordered a contested case proceeding to be held on issues relevant to Qwest's compliance with Section 271 of the Telecommunications Act of 1996.

Besides considering whether the RBOC has opened its markets to competition the FCC will also consider whether the RBOC has provided sufficient assurance that the markets are irreversibly open.⁵ Qwest offers its QPAP to demonstrate to the FCC its commitment to keep the markets open after the application is granted and to ensure against backsliding. The present Order addresses procedures for considering Qwest's QPAP.

³ The CLEC /Agency Coalition consists of the Department of Commerce (DOC), Office of the Attorney General's Residential and Small Business Utilities Division (OAG-RUD), AT&T Communications of the Midwest, Inc., Covad Communications Company, Eschelon Telecom of Minnesota Inc., Global Crossing Local Services, Inc., McLeodUSA, Inc., New Edge Networks Inc., Onvoy Inc., WorldCom, Inc., Encore Communications L.L.C., North Star Access L.L.C., US Link and Time Warner Telecom.

⁴ See footnote 1, supra.

⁵ See Memorandum Opinion and Order, *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In Region, InterLATA Service in the State of New York*, 15 FCC Rcd 3953, 4161-62 (1999) aff'd, 220 F.3d 607 (D.C. Cir. 2000). Qwest follows the lead of Bell Atlantic New York by offering a post-entry performance plan.

Further, the Commission has a pending docket, the Qwest wholesale service quality docket,⁶ which is intended to establish wholesale service quality standards in Minnesota. On the record, proceedings were held in this docket in April, May, September and October 2001, and the issue will come before the Commission in early 2002. In its September 11, 2001 Order the Commission stated that it would like to consider the QPAP in the context of the wholesale service quality proceeding and for that reason the Commission decided to develop QPAP issues itself and not refer it to the Office of Administrative Hearings.

II. Issues Raised for Comments

The Commission asked for written comments by January 3, 2002, on the following issues:

- Timing for processing the QPAP and the issues to be addressed;
- What should the interplay be between the QPAP and the wholesale service quality case? (For example, should the QPAP contain the wholesale service quality standards plus other conditions upon Qwest's Minnesota operations. Or, should there be two stand-alone sets of performance standards of which CLECs can choose which one applies to them?)
- Should investment commitments be a part of any Commission approval of the QPAP?
- Should the QPAP include other conditions the Commission finds necessary in the event of dramatically poor performance by Qwest's wholesale operations, such as
 - a condition building in the intent of Minn. Stat. § 237.462 of monetary penalties for anti-competitive conduct;
 - a condition to revoke Qwest's interLATA authority in Minnesota;
 - a condition requiring structural separation.

This Order will address only the procedural issues on which the parties filed comments; substantive issues will be addressed in the proceeding on the merits.

III. Parties' Comments on the Relationship Between the QPAP and the Wholesale Service Quality Docket

A. CLEC/Agency Coalition

The Coalition argued that the QPAP and wholesale service quality proceedings should be considered concurrently but should be separate dockets because they represent different histories and basic methodologies and they serve different purposes.

⁶ Docket No. P-421/AM-00-849

It argued that the wholesale service quality standards are intended to provide a permanent set of standards upon which wholesale competitors can rely for wholesale service in Minnesota. The QPAP proposed standards, however, are limited to the provision of service at parity with retail performance. Thus, instead of being held to fixed minimum standards proposed by the Coalition, Qwest can choose to provide any level of wholesale service quality as long as that service level is not worse than the retail service quality it provides.

The Coalition argued that the Commission should proceed with the wholesale service quality proceeding as originally intended and establish permanent wholesale quality standards. Further, the Coalition urged that the wholesale service quality standards should form the basis of any backsliding plan. It argued that the Commission should incorporate the additional measures in the currently filed QPAP, as well as any additional measures the Commission deems appropriate, into the Coalitions's proposed service quality standards to create a single set of wholesale service standards that can also act as the QPAP.

B. Qwest

Qwest argued that the QPAP and Qwest's proposal for the wholesale service quality standards should be considered on their own separate merits. The QPAP is patterned after Performance Assurance Plans that have been adopted by RBOCs in other states in connection with 271 approval. It is different from wholesale service quality standards because it is a voluntary offer by Qwest to commit to certain performance standards not otherwise required by state or federal law in exchange for the right to provide in-region interLATA service.

Qwest argued that the QPAP and the wholesale service quality standards can stand side-by-side. The wholesale service quality standards are available to CLECs without the QPAP and once the QPAP is in place a CLEC can elect the QPAP in lieu of the wholesale service quality standards.

IV. WorldCom and AT&T's Comments on the Interrelationship between the Public Interest Docket and the QPAP

WorldCom and AT&T raised the issue of the interrelationship between the public interest docket and the QPAP. It was their position that the review of and the development of a satisfactory QPAP is only a part of the Commission's role in determining whether Qwest has met its overall public interest obligations. For this reason, they argued, it would be more efficient for the Commission to review the merits of Qwest's QPAP in conjunction with its overall public interest review. Accordingly, the parties recommended that the Commission refer the QPAP docket to the ALJ to develop and provide the Commission with an adequate record and that the Commission retain its decision-making authority for consideration in the Commission's own public policy, public interest review.

V. Comments on Timing

A. The Coalition

The Coalition proposed the following schedule:

February 28, 2002	Comments on the QPAP
March 14, 2002	Reply comments
March 21, 2002	Surreply
April 4-5, 2002	Hearing

B. Qwest

Qwest proposed the following;

Mid-late January	Comments on the QPAP
Four weeks later	Reply comments
	No Surreplies
Mid-March	Hearing

VI. Commission Action

The Commission will process the QPAP and the public interest dockets as originally planned, that is, having the QPAP docket remain with the Commission for development while the public interest docket is developed by the ALJ. This allows the Commission to have a complete record on both without limiting the Commission's public interest review.

Further, the Commission will process the QPAP and the wholesale service quality dockets concurrently. All parties agree on this course of action. By adopting a schedule for the QPAP proceedings that provides for the parties' comments by February 28, allows four weeks for Qwest to reply, does not allow surreplies and anticipates holding hearings in April, with post hearing documents due two weeks after the hearing, the Commission will move forward in a timely manner on this docket. Such schedule also allows for the conclusion of the wholesale service quality case prior to the Commission's decision on the QPAP, providing useful background.

The Commission will so order.

ORDER

1. The QPAP docket will be processed as a separate proceeding.
2. The following procedural schedule is approved:

- (a) Comments shall be due February 28, 2002;
 - (b) Replies shall be due four weeks later (March 28);
 - (c) No surreplies;
 - (d) Post hearing documents shall be due two weeks after the hearing;
3. The Commission delegates to the Executive Secretary the authority to vary the deadlines set in this Order.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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