ORDER NO. 04-164

ENTERED MAR 22 2004

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1133

In the Matter of	)	
	)	
STAFF OF THE PUBLIC UTILITY COMMISSION OF OREGON	)	ORDER
	)	
	)	
Complaint against QWEST CORPORATION for Violation of Statutory Service Quality Standards between January and December 2003.	)	

DISPOSITION: 2003 SERVICE QUALITY PENALTY ASSESSED

At its public meeting on March 2, 2004, the Public Utility Commission of Oregon adopted Staff's recommendation to assess penalties against Qwest. Staff's recommendation report is attached as Appendix A and is incorporated by reference.

ORDER

IT IS ORDERED that Qwest Corporation is assessed penalties in the amount of $215,000 for violation of statutory service quality standards between January and December, 2003, as described in Appendix A.

Made, entered, and effective ______________________________.

____
Lee Beyer
Chairman

____
John Savage
Commissioner

____
Ray Baum
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A party may appeal this order to a court pursuant to ORS 756.580.

ITEM NO. 3

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: March 2, 2004

REGULAR __X__ **CONSENT** ____ **EFFECTIVE DATE** __N/A__

DATE: February 24, 2004

TO: Commissioners Lee Beyer, Ray Baum, and John Savage

FROM: Irvin Emmons

THROUGH: Lee Sparling and Phil Nyegaard

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF: (Docket No. UM 1133) Public Utility Commission of Oregon Staff complaint for imposition of service quality penalties for the year 2003.

STAFF RECOMMENDATION:

Staff recommends that Qwest statutory service quality penalties for 2003 be directed to the targeted investment that provides Digital Subscriber Line (DSL) service to remote customers in selected small rural wire centers.

DISCUSSION:

Background

Qwest is in violation of ORS 759.450, Section 30 service quality standards between January and December 2003. A complaint was filed by the Department of Justice on behalf of the Public Utility Commission on February 13, 2004, and amended on February 19, 2004, which was within the required 90-day anniversary date of Qwest becoming subject to regulation under ORS 759.405 and 759.410. See attachment 1. The penalty of $215,000 does not exceed two percent of Qwest's gross intrastate revenue from the sales of telecommunications services in the calendar year 2003, as required by ORS 759.450 Section 30(5)(a). Penalties imposed under ORS 759.450, Section 30, must be:

1. Paid in the form of bill credits to the telecommunications carrier's customers in a manner approved by the commission; or

2. Directed by the commission to targeted investments by the telecommunications carrier to address specific issues of service quality.

The following summary provides a history of Commission actions on the three previous complaint dockets.

> UM 1015: The 2000 statutory penalty was directed to the targeted investment of replacing all analog carrier systems within Qwest's Oregon territory, per Order No. 01-272. Analog carriers were an excellent solution for delivering voice lines before the introduction of CLASS services and the demands of the Internet. However, the analog carrier system severely limits modem speed throughput, has limited reach compared to today's digital carrier systems, and provides marginal voice service. Forty-three analog carrier systems were replaced in Ashland, Athena, Florence, Klamath Falls, Lowell, Milton-Freewater, North Plains, Pendleton, Prineville, Sisters, Stanfield, Veneta, and Warm Springs exchanges for a total of 226 subscribers. Total cost was $965,523, exceeding penalty amounts by $240,523.
>
> UM 1049: The 2001 statutory penalty was directed to the targeted investment of increasing the remote testing capabilities at selected digital loop carrier (DLC) locations, per Order No. 02-344. This option added cards to the DLC to allow subscriber lines to be tested with a Remote Test Unit (RTU). This card was not installed in some of the earlier DLC models used by Qwest. It greatly improved testing capabilities and reduced repair times. The testing card was installed at sixty-three DLC locations in the Bend, Blue River, Culver, Eugene, Grants Pass, Junction City, Newport, Prineville, Rainier, Redmond, Rogue River, Seaside, Siltez, Toledo, Warm Springs, and Warrenton exchanges affecting 42,948 subscribers. Work under UM 1049 was completed, but all DLCs were not modified. The cost for this UM 1049 project was $263,340.60, exceeding the penalty amount by $8,340.60.
>
> UM 1072: The 2002 statutory penalty was directed to the targeted investment of increasing the remote testing capabilities at selected digital loop carrier locations, per Order No. 03-192. This completed the project that was started in the previous year. The testing card was installed at sixteen DLC locations in Lake Oswego, Portland-Atlantic, Salem Main, and Salem-Keizer exchanges. The cost to complete the project was $104,241,81, exceeding penalty amounts by $9,241.81.

Seven statutory service standards were not met in 2003. The violations are summarized in Table 1. The total penalty is $215,000.

Table 1. Qwest 2003 Statutory Service Quality Penalty Summary

Section 30(1)		Quarter 1	Quarter 2	Quarter 3	Quarter 4	2003 Penalty
(a)(A)	Held Orders	0	0	0	0	0
(b)	Held Orders over 30 Days	0	0	0	0	0
(c)	Trouble Report Rate	$75,000	$50,000	0	$50,000	$175,000
(d)	Network Blockage	0	0	0	$10,000	$10,000
(e)	Trouble Reports Cleared	0	0	0	0	0
(f)	Repair Center Access	0	0	0	0	0
(g)	Sales Office Access	0	0	$15,000	$15,000	$30,000
	Penalties	$75,000	$50,000	$15,000	$75,000	$215,000

FIRST QUARTER

- Lowell's quarterly averaged Trouble Report Rate (4.12) did not meet standard (4.0). Lowell had a quarterly average of 1761 lines with a 70-report-per-month-threshold to be out of standard. The January through March average of 72 reports exceeded this threshold. Because Qwest exceeded the 70-report threshold in just one month, March, the penalty is $25,000.

- The Mapleton quarterly averaged Trouble Report Rate (4.19) did not meet standard (4.0). Mapleton had a quarterly average of 723 lines with a 29-trouble-report-per-month-threshold to be out of standard. The January through March average of 30 reports exceeded this threshold. Qwest exceeded the threshold of 29 in January and March, thus, the penalty is $50,000.

SECOND QUARTER

- The Marcola quarterly averaged Trouble Report Rate (5.17) did not meet standard (4.0). Marcola had a quarterly average of 1,027 lines with a 41-trouble-report-per-month-threshold to be out of standard. The April through May average of 53 reports exceeded the threshold. Since Qwest exceeded the threshold in April and May, the penalty is $50,000.

THIRD QUARTER

- The Sales Office Access for September (68 percent) did not meet standard (75 percent). Measurements for each month are compared to the standard. July was at 90 percent, August at 87 percent, and September at 68 percent. Qwest's penalty is $15,000.

FOURTH QUARTER

- The Lowell quarterly averaged Trouble Report Rate (5.68) did not meet standard (4.0). Lowell had a quarterly average of 1,711 lines with a 68-report-per-month-threshold to be out of standard. The October through December average of 97 reports exceeded the threshold. Since Qwest exceeded the threshold in October and November, the penalty is $50,000.

- The Sales Office Access for November (72 percent) did not meet standard (75 percent). Measurements for each month are compared to the standard (75 percent). October was at 79 percent, November at 72 percent, and December at 77 percent. Qwest's penalty is $15,000.

- Network Blockage (97.66 percent) in Warm Springs' November measurement, where the standard is 98 percent. Measurements for each wire center for each month are compared to the standard. The Warm Springs wire center failed to achieve this level. The associated penalty is $10,000.

Qwest had no held orders for the entire year. This was so impressive, that I was asked by another large ILEC how Qwest was able to accomplish that level for over a year. The standards for trouble reports cleared and repair center access were met every month during 2003.

Analysis

Staff offers, for consideration, the following options for use of the 2003 penalties.

OPTION 1 - TARGETED INVESTMENT

Staff has discussed, at length, with Qwest, various network improvement proposals for the 2003 penalties. Both parties agreed on the project to provide Digital Subscriber Line (DSL) service to outlying customers in selected rural exchanges.

This project would install Digital Subscriber Line Access Multiplexer (DSLAM) equipment to rural exchanges in Oregon that experienced service quality problems in 2003. This equipment extends Digital Subscriber Line (DSL)[1] service to isolated customers who are beyond the operating distance of central office DSL equipment. The DSLAM also provides a voice path for basic telephone service that is forwarded to the Public Switched Telephone Network.

The following criteria were established for the initial selection of locations that would receive the DSLAMs:

- Exchanges that had service quality violations during the reported year;
- Rural exchanges that would not be considered for DSLAM placement, or where DSLAM placement was turned down;
- Exchanges with groups of customers within the range of the DSLAM that have shown support for DSL service.

Based on these criteria, the candidate exchanges are Blue River, North Plains, Lowell, Marcola, Mapleton, and Warm Springs. The latter four exchanges are the individual exchanges that failed to fully meet the statutory standards during 2003. Blue River and North Plains were selected, although they met statutory standard, because they were the remaining two of five wire centers, in addition to Lowell, Marcola, Mapleton, that did not meet the Oregon Administrative Rule (OAR) trouble report rate standard in the December 2003 report.

The cost of equipment and installation per DSLAM is estimated at $20,000. It is anticipated that eleven units can be installed. The exact number will be determined once a formal engineering assessment is provided. The total cost of the project will at least equal the amount of the penalty.

This project would be implemented in the exchanges that failed to meet statutory standards in 2003 or experienced significant OAR service quality violations. The new service would enhance existing service to the chosen communities. Staff recommends that if this option is selected, the project be completed no later than December 31, 2004.

[1] Definition from Newton's Telecom Dictionary, 18th Edition: Digital Subscriber Line DSL. A generic name for a family of digital lines (also called xDSL) being provided by CLECs and local telephone companies to their local subscribers. Such services go by different names and acronyms – ADSL (Asymmetric Digial Subscriber Line), HDSL (High Bit Rate Digital Subscriber Line) and SDSL (Single Pair Symmetrical Services). Such services propose to give the subscriber up to eight million bits per second one way, downstream to the customer and somewhat fewer bits per second upstream to the phone company. DSL lines typically operate on one pair of wires – like a normal analog phone line.

OPTION 2 - BILL CREDITS

The $215,000 in penalties could be distributed to all Qwest customers, only to the customers in the affected wire centers, only to individual customers that were affected by the sub-standard condition, or a mixed distribution. Staff has selected two possible distributions and estimated the bill credits. Other distributions could be selected at the discretion of the Commission.

- A general distribution of the $215,000 to all Qwest customers (using the 2003 average number of 1,118,291 access lines) would generate $.19 per customer.
- A selected distribution of the $215,000 is listed in Table 2. The amounts were calculated using the specific monthly access line count for those wire centers that accrued a penalty.

Table 2. 2002 Bill Credit Distribution Estimate

PENALTY CATEGORY	PENALTY $	LINE COUNT	$/CUSTOMER
Trouble Report Rate			
- Lowell (Mar)	$25,000	1,752	$14.27
- Lowell (Oct)	$25,000	1,715	$14.58
- Lowell (Nov)	$25,000	1,714	$14.59
- Mapleton (Jan)	$25,000	726	$34.44
- Mapleton (Mar)	$25,000	722	$34.63
- Marcola (Apr)	$25,000	1,026	$24.37
- Marcola (May)	$25,000	1,024	$24.41
Network Blockage			
- Warm Springs (Nov)	$10,000	1,004	$9.96
Sales Office Access			
- All Qwest Customers (Q3)	$15,000	1,098,905	$0.01
- All Qwest Customers (Q4)	$15,000	1,080,559	$0.01

This would provide a total estimated credit to Lowell customers of $43.46, to Mapleton customers of $69.09, to Marcola customers of $48.80; and to Warm Springs $9.98. Remaining customers in the Qwest Oregon territory would receive $0.02. These estimates assume that all customers received service during the entire time of the penalty.

Questions can be raised regarding any bill credit distribution method. Questions raised include:

- What criteria were used to determine which customer should receive a bill credit?

- How would one determine the specific customers affected? This task would be especially difficult because some customers might have experienced service problems, but did not generate a trouble report.
- How can one really select a fair distribution of the credits, i.e., where do you draw the line? Is the line drawn for statewide distribution, by exchange, by customers that reported a trouble, or does Qwest try to find all customers that were affected, regardless if they formally reported a trouble?
- Should customers have a higher credit if they had more than one complaint?
- How extensive a search is Qwest expected to make to find customers who have moved?

Staff feels there is really no fair, yet reasonable, way to distribute credits to the customers. Additionally staff feels that, although it is nice to receive a credit, the best way to distribute the penalty is to provide a targeted project that would have a longer term effect and improve overall service to customers.

OPTION 3 – WAIVE PENALTY PAYMENT

Option three is to waive Qwest's penalty. In considering this option, I note the following information:

- Qwest spent $1,333,105, under UM 1015, UM 1049, and UM 1072 for the targeted projects, while they were only required to spend $1,075,000. Even with the $215,000 in 2003 penalties, Qwest would still spend more than the total four-year accumulation of $1,290,000 in penalties.
- Qwest's focus and success in improving its service quality has been impressive.
- The fact that although violations occurred (often by slight margins), Qwest had good explanations for each occurrence. Many trouble reports were generated, and violations occurred, in attempts to improve service within the exchange. Should they be penalized for those efforts?

Table 3 provides a summary of Qwest's statutory penalties by year.

Table 3. Qwest's Statutory Penalties Summary for 2000 through 2003

Year	Accumulated Penalty	Penalty $ Spent
2000	$725,000	$965,523
2001	$255,000	$263,342
2002	$95,000	$104,242
2003	$215,000	TBD
TOTAL	$1,290,000	$1,333,107

The monthly service quality reports have shown the results of Qwest's emphasis on improving its network. Held orders were zero for the entire year. Only five of the company's 77 wire centers are presently out of the trouble report standard. Qwest does need to improve its sales office access answering time performance. Nevertheless, Qwest has come a long way in improving its service quality over the last four years and consideration should be given to waiving this final payment. Since this is the last year money can be collected for the statutory penalties, no precedent would be set.

CONCLUSION:

Qwest had seven statutory service quality violations in 2003 in the areas of Network Blockage, Trouble Report Rates, and Sales Officer Access. Qwest has worked hard to meet the statutory standards and has improved its service quality. The few times a standard was not met, Qwest took immediate action to correct the cause of the violation.

I commend Qwest for its voluntary improvements to the network and the present quality of service. Staff could support either Option 1 or 3. Staff does recognize that a select number of Qwest customers did suffer from poor service, but does not recommend Option 2. Staff recommends Option 1 be accepted. If the Commission adopts staff's recommendation, Qwest and staff will formally select the locations that will receive the DSLAMs and provide a memorandum of understanding to the Commission with the details.

PROPOSED COMMISSION MOTION:

Penalties in the amount of $215,000 for violation of statutory service quality standards, between January and December 2003, be directed to the targeted investment that provides Digital Subscriber Line service to remote customers in selected small rural wire centers.