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BEFORE THE PUBLIC UTILITY COMMISSION**

OF OREGON

IC 2

RIO COMMUNICATIONS, INC.,)	
)	
Complainant,)	
)	
v.)	ORDER
)	
QWEST CORPORATION, formerly known as)	
U S WEST COMMUNICATIONS, INC., ¹)	
)	
Defendant.)	

DISPOSITION: REMEDIAL PLAN ISSUES RESOLVED

On April 7, 2000, Rio Communications, Inc. (Rio), filed a complaint against Qwest Corporation (Qwest), alleging Qwest violated ORS 759.455 (Senate Bill 622) and breached the interconnection agreement entered into by the parties pursuant to the Telecommunications Act of 1996.

On June 19, 2000, the parties filed a stipulation resolving the issues in the complaint and a joint motion for an order approving the stipulation. In the stipulation, Qwest admitted that it breached its interconnection agreement with Rio and that it violated ORS 759.455(h). Qwest agreed to remedy the breaches and violations by complying with the stipulation and submitting a remedial plan for Commission approval. The Commission approved the stipulation in Order No. 00-490.

On July 5, 2000, Qwest filed its proposed remedial plan. On September 6, 2000, Rio submitted objections and proposed modifications to the proposed plan. On September 13, 2000, Qwest replied. On November 8, 2000, the Commission issued Order No. 00-723. In that order, the Commission reviewed and commented on the parties' positions. The Commission directed the parties to file a coherent set of options from which a remedial plan can be fashioned. If the parties were unable to reach an

¹ This name change officially occurred on June 30, 2000. The company is referred to as Qwest throughout this order.

agreement, we directed them to submit a joint statement identifying the provision at issue and each party's alternative proposed language for incorporation into the remedial plan.

On January 3, 2001, in compliance with Order No. 00-723, the parties filed the requested documents. The parties submitted a master document and positions on their differences. The master document is attached as Appendix A.

On January 25, 2001, the ALJ held a conference to resolve ambiguities in the master document. On March 6, 2001, Qwest filed a letter setting forth its position on the questions asked by the ALJ. On March 9, 2001, Qwest informed the ALJ that the parties were negotiating over a provision of the proposed remedial plan involving billing credits. Qwest indicated that the parties would report back if they are unable to resolve their dispute.

On April 20, 2001, the parties indicated that they are still negotiating the issue of billing credits. On April 24, 2001, however, they agreed, that the Commission should proceed with an order resolving the other issues in dispute.

Paragraphs 1-4 of the Master Document

Qwest and Rio position.

The parties agree that the language of paragraphs 1-4 should be adopted as revised.

Commission disposition.

The Commission adopts the parties proposed language in paragraphs 1-4.

Paragraph 5 of the Master Document

Qwest position.

Qwest proposes language that will oblige Rio to use the training and guidance for ordering unbundled network elements (UNEs) that Qwest provides under the parties' interconnection agreement. Qwest claims that many problems encountered by Rio are the result of Rio's failure to implement the training or guidance that Qwest has provided. Qwest states that absent this provision, Qwest would be required to provide detailed training and specific guidance to Rio without any assurance that Rio will actually follow Qwest's instructions.

Rio position.

Rio objects to Qwest's proposal. Rio asserts that Qwest's language seeks to blame Rio for the problems in Qwest's preordering, ordering, processing, billing and

provisioning systems. Rio argues that the reason for this remedial plan is to correct problems with Qwest's systems.

Commission disposition.

The Commission adopts Rio's language. The purpose of the remedial plan is to address problems with Qwest's ordering system, not impose additional obligations on Rio. Furthermore, Rio has an incentive to implement Qwest's training and guidance. Failure to follow the training may result in financial loss to Rio. Little would be gained if the Commission adopted language requiring Rio to follow Qwest's training and guidance when ordering UNEs.

Paragraph 6 of the Master Document

Rio position.

Rio proposes language that would require Qwest to submit accurate and understandable bills and invoices. Rio asserts that the accuracy of Qwest's bills and invoices was a central issue in its complaint. Rio points out that this issue was raised in the request for relief in its complaint. Rio also notes that, until Rio filed the complaint, Qwest had denied Rio access to its Operations Support System and refused to provision services or accept new service orders. Rio claims that the reason Qwest did so was, in part, because of Rio's refusal to pay Qwest's inaccurate and confusing bills for services.

Qwest position.

Qwest argues Rio's proposed language is unnecessary. It claims that it sends Rio accurate bills. It also notes that one of the performance measures currently being negotiated by the Regional Oversight Committee (ROC)² addresses billing accuracy.³

Qwest also objects to the proposal that Qwest send Rio "understandable" bills and invoices. It asserts that this language sets a standard that is impossible for Qwest to satisfy because only Rio can judge whether bills and invoices are "understandable" to it. Qwest also claims that, even if this provision could be satisfied, it

² The ROC consists of representatives of regulatory commissions from the 14 states served by Qwest. Representatives from eleven of the states, Qwest, competitive local exchange carriers (CLECs), and interested parties are participating in collaborative workshops to develop a plan that will ensure Qwest continues to provide interconnection and unbundling services to CLECs after it receives authority to provide interLATA long distance service from the FCC under §271 of the Telecommunications Act of 1996. Thirteen of the states are participating in ROC Operations Support System collaborative that includes identification of the Performance Indicator Definitions (PIDs).

³ For a detailed discussion of the ROC's efforts to develop performance measures applicable to Qwest, see the discussion of the Qwest Performance Assurance Plan (PAP) and Performance Indicator Definitions (PIDs) in Order No. 00-723 at 10-13. The PAP has been renamed the Post Entry Performance Plan (PEPP).

could constitute impermissible discrimination to treat Rio more favorably than other CLECs by sending Rio special bills and invoices in a format that no other CLEC receives.

Finally, Qwest notes that this provision is entirely new. It was not in Rio's Supplemental Brief Regarding Qwest's Proposed Remedial Plan that was filed with the Commission on or about September 6, 2000, so Qwest did not have an opportunity to address this provision in its response brief. In addition, Qwest points out that the topic of this provision was not addressed in Order No. 00-723.

Commission disposition.

We conclude that Rio's proposed language should not be adopted. Nothing in the stipulation suggests that we should address this issue in the remedial plan.

Our decision does not leave Rio without recourse if Qwest's bills are inaccurate or confusing. Paragraph 7 of the Master Document provides a mechanism for Qwest to explain bills and correct mistakes should they occur. If that process is unsatisfactory, disputes over bills can be addressed in individual complaint proceedings. Finally, the issue of bill accuracy is a subject of the ROC negotiations. This body is better suited to address generic issues that affect all CLECs.

Paragraph 7-8 of the Master Document

Qwest and Rio position.

The parties agree that the language of paragraphs 7-8 should be adopted as revised.

Commission disposition.

The Commission adopts paragraphs 7 and 8 of the Master Document.

Paragraph 9 of the Master Document

Rio position.

Rio proposes to require Qwest to provide copies of internal policies, guidelines, regulations, rules, or the like if Qwest misses a deadline based on such internal documents. Rio claims this provision is consistent with Order No. 00-723 at 13.

Qwest position.

Qwest does not believe that the order requires it to provide the information specified in paragraph 9. The order only requires Qwest to provide a written explanation

when it encounters problems with Rio's orders. Qwest also notes that the order states that Qwest must provide a written explanation "as simple as an email." Qwest notes that the Commission did not state that Qwest must provide Rio copies of internal documents. Qwest asserts that, because Qwest will provide Rio with a written explanation of problems, it is complying with the Commission's Order. Qwest asks the Commission to reject Rio's proposal.

Qwest also asserts that Rio's proposal calls for the production of highly sensitive, confidential and proprietary internal documents without any restrictions on the use or dissemination of such documents. In compliance with the Commission's Order, Qwest has agreed to provide a written explanation of any ordering problems Rio may have. Requiring Qwest to produce internal, confidential documents without adequate protection goes too far. The proposal should be rejected.

Commission disposition.

The order provides, in pertinent part:

Written responses to ordering problems (Elements 4, 5, and 6).

Rio requests that Qwest provide a written explanation when it encounters problems with Rio's orders or when it cannot meet a performance interval. We adopt this provision. We understand that this type of documentation may be burdensome for Qwest. However, this is a remedial plan to address violations of law and breaches of an interconnection agreement by Qwest. Given the history between these two companies, written explanations as simple as an email, may improve and clarify communication. ...

Order No. 00-723 at 13.

Qwest reads our order too narrowly. Our intention was that Qwest explain to Rio, in a meaningful way, the reason for a delay. That may entail providing an internal document, if necessary, and an explanation of why the document applies to the particular failure to meet an obligation under the agreement. Qwest cannot simply refer to internal documents as an explanation for missing deadlines in the interconnection agreement.

We note, however, that often the underlying documentation may not be necessary. Rio has an obligation to avoid making burdensome and unnecessary requests for information, when a simple email communication would be sufficient. We also note that Qwest may have legitimate competitive concerns about releasing some documents.

Consequently, we adopt the following language in place of Rio's proposed paragraph 9:

Whenever Qwest provides a reason for not meeting a deadline that is based on internal Qwest policies, guidelines, regulations, rules, or similar documents, Qwest shall provide a written explanation of such document and, at Rio's request, a photocopy of the document along with a reference to the page and volume where it can be found. If Qwest asserts the requested documentation contains confidential material, it shall provide the requested information to a qualified person under Order No. 00-532, the protective order issued in docket IC 2.

Paragraphs 10 and 12-14 of the Master Document

Qwest proposed paragraph 10. Rio proposed paragraphs 12-14. These paragraphs address the performance indicators that will be incorporated into the remedial plan, the effective date of the remedial plan, and the enforcement mechanism.

Which performance indicators should be included in the remedial plan?

Qwest position.

Qwest asserts that its proposed performance measurements apply to the services ordered by Rio and addressed by the order. For example, Qwest states that it has agreed to performance measurements for firm order confirmations, installation commitments and intervals, and billing accuracy and completeness, among others. Qwest also notes that its proposed performance measurements are chosen from among the performance measurements Qwest has proposed to the ROC workshop that is considering performance (remedial) payments to CLECs. Qwest does not believe that the order requires it to adopt performance measures adopted in the ROC workshops (i.e., Performance Indicator Definitions (PIDs)) that have no application to the problems raised in this case.

Specifically, Qwest objects to Rio's request that the remedial plan contain all of the PIDs and the PAP, as of September 19, 2000. Rio's list is set forth in Appendix B entitled "Tier-1 and Tier-2 Performance Measurements."

Tier-1 measures are enforced with payments that are paid directly to CLECs experiencing the substandard service. In its letter dated March 6, 2001, Qwest noted that the Tier-2 performance measures are inappropriate because they apply to aggregate measurements of performance for CLECs in general. These penalties are paid to a state fund. Qwest noted that it would be extremely difficult to isolate performance for Rio from the aggregate measures.

Qwest objects to one indicator enforced with Tier-1 penalties. The indicator on Jeopardy Notice Intervals (PO-8B) measures the average time elapsed between the date the customer is first notified that an order may not be filled and the

original due date of the order. Qwest asserts that the indicator applies to services that are not subjects of the complaint. It points out that DS-1 capable loops (which are a subject of the complaint) are measured in aggregate with other unbundled loops and number portability, which are not subjects of the complaint.

Qwest also objects to Rio's proposal that the September 19, 2000, provisions be "final and legally binding" unless Rio chooses to adopt a revision. Qwest notes that the PIDs are under development. They are being audited by a third party and, undoubtedly, will be revised. Qwest disagrees that this version of the PIDs and the methods of gathering data, processing data, and reporting data should be final and legally binding. Qwest supports its proposal in paragraph 10 to adopt current PIDs and any subsequent revision approved in the ROC section 271 workshops.

Rio position.

Rio urges the Commission to adopt Paragraphs 12, 13 and 14 of the master document and reject paragraph 10.

Rio argues that Qwest is picking and choosing only those performance measurements and standards it wishes to follow. It claims that all the performance measurements, including categories for "Gateway Availability," "Pre-Order/Orders," "Ordering and Provisioning," "Maintenance and repair," "Billing" and "Collocation," should be included in the remedial plan. Rio claims that all of those measurements apply to matters raised in the complaint and fall within the scope of the Remedial Plan as outlined in Order No. 00-723.

Commission disposition.

Rio and Qwest agree on most of the PIDs to be included in the remedial plan. With one exception, Qwest included all of the performance measures for preorder/orders, ordering and provisioning, maintenance and repair, and billing that were enforceable with Tier-1 payments. As described in Order No. 00-723 at 11, Qwest makes Tier-1 payments directly to the CLEC when Qwest fails to meet a standard for service to the particular CLEC.

We agree with Qwest that PIDs enforceable with only Tier-2 payments are not appropriate for the remedial plan. Tier-2 payments are payments to a state fund when Qwest fails to meet parity and benchmark standards on an aggregate basis. They were not designed, nor are they appropriate, for measuring performance for a single CLEC.

We also reject Rio's proposal to include PIDs for Gateway Availability, Network Performance, and Collocation. Order No. 00-723 requires PIDs only for preordering, ordering, processing, billing, provisioning, and enforcement for DS1 loops, DS3 UDITs, DS 3 entrance facilities, and combinations of those elements. Order No. 00-723, at 10. Qwest's proposal meets the requirements of the order.

We conclude that the performance indicator on Jeopardy Notices, PO-8B, should be included in the remedial plan. This is a performance indicator enforceable by payments to the carrier adversely affected by the substandard service. While Qwest may have some difficulties sorting out the DS-1 Jeopardy Notices from notices for services not subject to the complaint, we conclude the effort should be undertaken. Qwest's service failures that gave rise to this complaint resulted, in part, from poor communication. This indicator provides a remedy for substandard communication. We conclude that Qwest should be subject to penalties if it is unable to provide the notice at the intervals prescribed in PO-8B. If it chooses, Qwest could forego sorting out DS-1 Jeopardy Notices and apply the PO-8B indicator to all Rio orders for services that are subject to PO-8B.

We agree with Qwest that the PIDs are a work-in-progress. We do not agree that Qwest should freeze some PIDs for one CLEC and maintain a separate system of performance measurement for Rio. The PIDs applicable to Rio will be the PIDs agreed upon, at any given time, in the ROC workshops.

The parties shall redraft paragraph 10 of the master document in compliance with these conclusions.

How should the remedial plan be enforced?

Qwest position.

Qwest also disagrees with Rio's claim that the stipulation requires self-executing payments for violations of the PIDs. It argues that neither the stipulation nor the Commission's Order requires self-executing payments. Qwest notes that the stipulation provides:

Rio and US WEST acknowledge that wholesale service performance indicators are being developed in the Regional Oversight Committee ("ROC") workshops. US WEST and Rio shall cooperate to develop self-executing performance measurements and standards based upon the indicators being developed by the ROC. Those measurements and standards shall be defined and incorporated into the Remedial Plan. *Violations of the standards shall be established and imposed pursuant to ORS 759.455(3).*

Stipulation, ¶ 16 (emphasis added).

Further, Qwest notes that the order adopted "the provision in Qwest's proposed remedial plan on enforcement" because it is "consistent with the terms of the stipulation." Order No. 00-723 at 9. As a result, Qwest concludes that the appropriate method for enforcing the remedial plan is described in paragraph 10 of the proposed remedial plan (Appendix A). Qwest also asserts that Rio's proposal is inconsistent with the provision of the Qwest PAP that states that self-executing payments will not be made to CLECs until the FCC grants section 271 approval to Qwest.

Rio position.

Rio asserts that Qwest's proposed paragraph 10 seeks to delete Qwest's obligation to pay the penalties contained in the PAP for violations of the standards. It notes that Qwest offers only to "report to Rio performance results" Rio claims the Stipulation requires Qwest to agree to "self-executing performance measurements and standards based upon the indicators being developed by the ROC." Rio argues that the only way the performance measures and standards can be "self-executing" is if Qwest is subject to the payment schedule in the PAP. Rio explains that the self-executing nature of the ROC standards was the very reason the parties agreed to use the ROC standards as a starting point in the first place.

Commission decision.

We do not adopt Rio's proposed paragraph 12. We decided this issue in Order No. 00-723 at 8-9. We stated, "(T)he provision in Qwest's proposed remedial plan on enforcement is consistent with the terms of the stipulation." We affirm that decision.

When should the remedial plan be effective?

Qwest position.

Qwest disagrees with Rio's request in paragraph 13 that Qwest be subject "immediately" to the PIDs. Qwest asserts that the effective date should be tied to the Commission's approval, not the date the plan is agreed between Rio and Qwest.

Rio position.

Rio is concerned that there might be a delay between a final agreement and Commission approval of the agreement. Its proposal would avoid the delay.

Commission disposition.

We do not consider Rio's concern of major consequence. We have engaged in extensive review of the remedial plan and are familiar with its terms. Once the parties submit an agreed upon remedial plan, we can provide prompt approval.

Paragraphs 11 and 15 of the Master Document***Qwest position.***

Qwest's proposal in paragraph 11 addresses the same topic as Rio's proposal in paragraph 15. Qwest proposes that the performance measures in the plan stay in effect until the Commission adopts performance measurements under section 271. Qwest proposes that, at that time, Rio may negotiate replacement performance measures or adopt the performance measures that Qwest anticipates will be available for all CLECs when it files its Statement of Generally Available Terms (SGAT).⁴ Qwest argues that, either way, the purpose of the remedial plan, which was to impose performance measurements on Qwest to remedy the problems experienced by Rio that are the subject of the Order, will be satisfied.

Rio position.

Rio objects to the language of Paragraph 11, primarily because it could potentially allow Qwest's obligations to discontinue before applicable performance measurements, standards, and remedies become fully binding upon Qwest. Rio proposes in paragraph 15 that it retain the option to continue the performance measurements in this plan after the Commission adopts the final section 271 PIDs. Rio proposes that, after the Commission adopts the final guidelines, the parties negotiate to determine whether the standards under this plan should be updated or modified.

Commission disposition.

We believe that our decision in paragraphs 10 and 12-14, regarding the performance measures to be included in the plan, also addresses this issue. In that section of the order, we concluded that the performance measures applicable to Rio would be the measures agreed upon, at any given time, in the ROC workshops.

To clarify how the performance measures will be changed over time, we adopt the following:

Measures adopted in ROC workshops will remain in effect until they are superseded by the measures the Commission adopts in its recommendation to the FCC, under 47 U.S.C. § 271(d)(2)(b). Those measures will remain in effect until modified by the Commission in a proceeding to approve a Statement of Generally Available Terms under

⁴ In Docket UM 973, the Commission is considering Qwest's proposed SGAT. This document, authorized in 47 U.S.C. § 252(f), is a standard offer of terms of an interconnection agreement. The terms of the SGAT, when approved by the Commission, will incorporate terms agreed to in UM 823, the docket in the Commission considering Qwest's authority to provide intraLATA toll service under 47 U.S.C. § 271.

47 U.S.C. § 252(f)(2). Upon Commission approval of an SGAT, the reporting requirements of this plan (paragraph 10 of the master document) shall terminate. By mutual agreement, Rio and Qwest may modify any performance measure in the plan so long as the modification is consistent with the requirements of the Act.

Paragraph 16 of the Master Document

Rio position.

Rio proposes paragraph 16 to require Qwest to inform Rio, in writing immediately, if any applicable performance interval will not be met. Rio asserted that the language was based on Order No. 00-723, which requires Qwest to provide a written explanation when it encounters problems with Rio's orders or when it cannot meet a performance interval. Order No. 00-723, p. 13.

Qwest position.

Qwest seeks to limit paragraph 16 to "installation" intervals specified in performance measurement OP-4, Installation Interval. Rio objects to Qwest's proposed modification on the grounds that it is inconsistent with the order.

Qwest argues that, in its proposed elements 1, 2, and 3, Rio suggested that the remedial plan include installation intervals for specific services. In proposed element 5, Rio proposed that Qwest give a written explanation if it became aware that it was going to miss any of the "above intervals." Therefore, according to Qwest, Rio's proposed element 5 applies only to applicable installation intervals. According to Qwest, the order adopted Rio's proposal in element 5 that Qwest provide a written explanation for failure to satisfy an interval. Thus, Qwest argues, the remedial plan should only include an interval performance measure for installation. None of the other performance measurements specify installation intervals, so they simply do not apply.

Commission disposition.

Qwest's reading of our order is overly restrictive. The purpose of the remedial plan is to promote communication and provide Rio the type of information it needs to operate its business effectively. Qwest should provide Rio immediate, written notification if it is going to miss any applicable performance interval. We adopt Rio's paragraph 16.

Paragraph 17, 18, 20, and 21 of the Master Document

Qwest position.

The parties agree that the language of paragraphs 17, 18, 20, and 21 should be adopted as revised.

Rio position.

Qwest made no suggested changes to the language of Paragraph 17.

Rio will agree to the language of Paragraph 18 of the master document.

Qwest has made no suggested changes to the language of Paragraph 20 or 21.

Commission disposition.

We adopt paragraphs 17, 18, 20, and 21.

Paragraph 19 of the Master Document

Qwest has proposed adding the following sentence to paragraph 19, "Qwest has issued and is in the process of issuing appropriate credits to Rio for these circuits." Rio disputes that assertion. On April 13, 2001, the parties indicated that they are still negotiating over this issue. They agree that the billing credits issue is still unresolved and that this order should leave open the matter of billing credits.

Commission decision.

This issue is not yet ripe for a decision. Until further notice from either party, the last sentence of paragraph 19 should be removed. If it is necessary to address this issue and modify the remedial plan, the parties may bring the matter to the Commission's attention at a later date.

ORDER

IT IS ORDERED that parties shall submit to the Commission a final remedial plan, consistent with this order, no later than 14 days from the date of service of this order.

Made, entered, and effective _____.

Ron Eachus
Chairman

Roger Hamilton
Commissioner

Joan H. Smith
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.