

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE ADOPTION OF)	
A RULE ESTABLISHING CONSUMER)	
PROTECTION AND QUALITY OF SERVICE)	
STANDARDS FOR TELECOMMUNICATIONS)	Utility Case No. 3437
SERVICE IN NEW MEXICO PURSUANT TO)	
HOUSE BILL 400.)	
_____)	

FINAL ORDER ADOPTING 17.11.16 NMAC, AND 17.11.22 NMAC

THIS MATTER comes before the New Mexico Public Regulation Commission (“Commission”) upon the Notice of Proposed Rulemaking (“NOPR”) issued on August 8, 2000, and upon the record developed in this case.

STATEMENT OF THE CASE

On March 7, 2000, House Bill 400 (being 2000 N.M. Laws, Ch. 102; codified in pertinent part as NMSA 1978, § 63-9A-8.2) was signed into law. Among other things, House Bill 400 (“H.B. 400”) requires the Commission to adopt, by no later than January 1, 2001, a rule that will “establish consumer protection and quality of service standards” for local telecommunications services in New Mexico. H.B. 400, section 4(B)(1); § 63-9A-8.2(B)(1).

The NOPR issued on August 8, 2000, proposed, in accordance with H.B. 400, to adopt a new rule that would establish standards, procedures, reporting requirements and penalties to ensure that certified carriers provide telecommunications services at an adequate level of service quality to retail customers, and that retail customers are afforded adequate consumer protection. As proposed, the rule would complement the procedures found in 17 NMAC 13.8, “Slamming and Cramming Protection.” The proposed rule was designed to promote clarity and provide customers with the necessary tools for disputing

any billing inaccuracies; help customers make informed decisions, reduce fraud involving telecommunications billing; and facilitate telecommunications competition by setting minimum standards for bills. The proposed rule was also intended to be consistent with and to further the Commission's universal service goals; ~~because they by~~ establishing the parameters by which customers may be disconnected from the public switched telephone network and carriers' obligations to furnish and maintain connection to New Mexico's telecommunications network. The rule was proposed under the authority granted the Commission by the Public Regulation Commission Act, NMSA 1978, Sections 8-8-4 and 8-8-15, and the New Mexico Telecommunications Act, NMSA 1978, Section 63-9A-8.2.

The NOPR required written comments to be filed by no later than September 8, 2000, and permitted the filing of reply comments. Public Comment hearings were scheduled at various places around the state.

On September 8, 2000, written comments were filed by the Commission's Utility Division Staff ("Staff"), the New Mexico Competitive Carriers ("NMCC"), the New Mexico Attorney General ("AG"), Verizon Wireless ("Verizon"), the New Mexico Exchange Carriers Group ("NMECG"), Qwest Communications Corporation ("Qwest"), VALOR Telecommunications of New Mexico, Inc. ("VALOR"), and the Office of Science & Technology of the New Mexico Economic Development Department. Reply comments were filed on October 6, 2000, by the AG, Staff, the NMECG, Kathy A. Harms, the NMCC and VALOR. Additional comments were filed by A. Re, and Marianne Granoff.

Affidavits attesting to the timely publication of notice in newspapers of general circulation were filed by the Albuquerque Journal on August 23, 2000, by the Farmington

Daily Times on August 24, 2000, and by the Las Cruces Sun-News on October 11 and 24, 2000.

Public comment hearings were held by the Commission on the following dates and locations:

<u>Date</u>	<u>Location</u>
September 13, 2000	Santa Fe, New Mexico
September 14, 2000	Farmington, New Mexico
September 16, 2000	Albuquerque, New Mexico
September 20, 2000	Farmington, New Mexico
October 5, 2000	Silver City, New Mexico
October 6, 2000	Las Cruces, New Mexico
October 31, 2000	Santa Fe, New Mexico

At the conclusion of the October 31 hearing, the Commission issued written Bench Requests to which interested persons were required to respond by no later than November 9, 2000. On November 9, 2000, responses to or supplement comments regarding the Bench Requests were filed by Qwest, the NMECG, Staff, the NMCC, Verizon and the New Mexico Internet Service Providers Group (“NMISPG”). Verizon filed Additional Comments on Staff’s Proposed Wireless Rules on November 13, 2000. On November 16, 2000, the NMCC filed a Motion to Strike Supplemental Post-Hearing Comments of Qwest. On November 21, 2000, Qwest filed its Objection to Consideration of Newly Proposed Rules by the NMISPG.

DISCUSSION

The Commission commends Staff and the many participants in this case for their comments and suggestions about these rules. After considering the comments in this proceeding, and in view of the differing nature and scope of the consumer protection and quality of service rules, we have decided that the rule as originally proposed should be

made into two separate stand-alone rules. One rule will govern consumer protection; the other will cover quality of service. Each of these rules will be individually discussed below.

I. Consumer Protection Provisions

Section 2 – Scope

The scope of the proposed rule was “all carriers authorized by the Commission to provide retail telecommunications services in New Mexico.” Several parties commented that this scope was too broad. The NMECG, comprised of small telephone companies and member-owned cooperatives that provide local exchange service to customers in rural areas of the state, argued that the Commission lacked authority to apply the proposed Rule to rural LECs. NMECG asserted that the Commission’s jurisdiction to regulate rural LECs is “exclusively limited” by the provisions of the Rural Telecommunications Act, NMSA 1978, Section 63-9H-31, and that the directives of H.B. 400 concerning the adoption of consumer protection and quality of service standards were “not intended to apply to Rural LECs.” NMECG’s initial comments did not address the substance of the proposed rule, although in later comments it took the position that, if small, rural carriers were covered under this Rule, they should be treated differently from large ILECs.

Verizon also challenged the Commission’s jurisdiction to apply the proposed Rule on Consumer Protection and Service Quality Standards to wireless carriers. Verizon claimed that wireless providers are not covered by H.B. 400, because, it said, radio common carrier services are excluded from the legislation’s definition of “public

telecommunications services.” Verizon argued that “several of the draft rules will simply not make sense” if applied to wireless providers.

Finally, the NMCC (WorldCom, Inc., AT&T Communications of the Mountain States, Inc., Sprint Communications Company, L.P., e•spireTM Communications, Inc., ACSI Local Switched Services, Inc., d/b/a e•spireTM Communication, and GST Telecom) commented that the term “carrier” should not be used in the Rule, because “the Commission has limited jurisdiction and regulatory authority over other types of carriers, including, wireless carriers, long distance carriers and Internet service providers.”

We have considered the various positions regarding the Commission’s authority to apply the proposed Rule to all carriers who provide telecommunications services in New Mexico. Nothing in the H.B. 400 rulemakings provision explicitly excludes small ILECs or providers of wireless services. Moreover, the provisions in H.B. 400 that require this and the companion rules expressly reflect the Legislature’s concerns with upgrading telephone service in rural areas. Without the ability to apply these rules to small rural ILECs, and other carriers that serve rural areas, the Commission would not be able to carry out the mandates to address the telecommunications needs of rural customers. Thus, as a matter of law we decline to limit the scope of this Rule to only a subset of New Mexico’s telecommunications carriers.

At the same time, H.B. 400 plainly confers on the Commission the flexibility to consider different treatment for different types of carriers. In our judgment, many of the consumer protection provisions should apply to all carriers, regardless of the facilities they employ or the services they provide. However, in formulating the final Rule, the Commission has considered the policy arguments presented by various parties regarding

whether certain sections should apply in whole, in part, or in modified form to particular classes of carriers.

In the Consumer Protection Rule, we have generally made the determination that broad coverage is in the public interest. Thus, several provisions of this rule, including those that deal with access to product and pricing information, audits, bills, the handling and tracking of complaints, fair marketing practices, deposits, and customer privacy, apply to all carriers, including large and small ILECs, CLECs, providers of wireless services, and providers of intrastate toll services.

Section 6 – Objective

The combined rule, as originally proposed, stated an objective that primarily addressed service quality. To correct this oversight, and because of the Commission’s decision to separate the original proposed rule into two rules, it was necessary to state the objective of the Consumer Protection rule.

Section 7 - Definitions

Certain terms that are used only in connection with the Service Quality Rule have been retained only in that Rule and not in the Consumer Protection Rule.

Several parties commented that the use of the term “discretionary services” was ambiguous. For purposes of clarification, we have added a definition of that term.

Because we now provide different treatment in certain rules for “small” and “large” ILECs and LECs, we have defined these terms, based on whether the (I)LEC serves fewer than 50,000 access lines or 50,000 or more access lines, respectively.

There were provisions that some parties suggested should only apply to residential customers, not commercial customers, but that seemed appropriate to preserve

at least for small businesses that may lack the sophistication and clout of larger commercial enterprises. Thus, we have added a definition of “small business customer.”

Additionally, throughout the rule, we have substituted the term “intrastate services” for the term “jurisdictional services,” as some parties claimed the latter term was confusing.

Section 8 – Disconnection of Basic Local Exchange Service and Allocation of Partial Payments

Staff suggested expanding the title of this section to highlight the fact that it also addresses how LECs must allocate partial payments from customers, and we adopt this change. NMCC advocated that the protection offered by this section apply only to residential customers, and Staff agreed. We agree that LECs should not be prevented from disconnecting a business customer for failure to pay an undisputed bill in full and thus adopt this proposed revision.

Section 9 – Access to and Audit of Data

Qwest expressed concern that the proposed rule might conflict with the requirements of federal law (47 U.S.C. § 222) regarding the disclosure of customer proprietary network information. Generally, the rule calls for the LEC to disclose ~~to the Commission~~ of aggregate rather than customer-specific information. However, to ensure consistency with other state and federal laws on data privacy, we have included language to address this concern. We also believe this provision should apply to all carriers.

Section 10 – Complaint Tracking

To support the objectives addressed in the Commission's slamming and cramming rules, Staff asked that this section be clarified to obligate LECs to include even those billing complaints that the LEC resolves with the customer without Commission intervention.

Qwest and VALOR objected that having to file a monthly report of complaints tracked pursuant to this section would be unduly burdensome. Staff proposed alternative language that would have the LEC compile and submit such a report only upon request of the Commission. We consider the Staff's proposal to represent a reasonable approach that permits the Commission to review the performance of specific LECs as the need arises and the Commission's resources permit. We therefore adopt this change.

Upon further consideration, consistent with H.B. 400 and our public policy objectives, we have also revised this section to apply to all carriers.

Section 11 – Access to Product and Pricing Information

Qwest argued that its current business practice does not include maintaining physical sites for walk-in transactions by customers, such as would be needed to accommodate the requirements of the proposed rule. NMCC also asserted that establishing a physical business office would be burdensome, as would maintaining state-specific product and pricing information on their web sites. By contrast, Staff favored continuing to require that every LEC maintain at least one business office in the state, accessible on a walk-in basis. After considering the various points of view expressed on the record, we have made adjustments in this section to require LECs to make comprehensive information available through customer service representatives, accessible by a toll-free telephone number. The rule also encourages LECs to provide

walk-in access to product and pricing information at business offices within the state and to post such information on their web sites.

Provisions previously contained in a separate section, “Public Information,” have been combined into this section, as they also pertained to product/pricing information, and we have also included Staff’s recommended addition of information on the Commission’s procedures on resolving slamming and cramming disputes. This section has also been clarified, consistent with comments from Qwest, to indicate that the state’s Human Services Department, rather than the LEC, determines a customer’s eligibility for the Low Income Telephone Assistance Program.

Upon further consideration, consistent with H.B. 400 and our public policy objectives, we have revised subsections (A) through (C) and (E) of this section to apply to all carriers.

Section 12 – Fair Marketing Practices

The text of the section in the proposed Rule that had this title has largely been deleted, as those directives were general in nature and largely duplicative of other pre-existing statutory and regulatory requirements. The requirements now contained in this section previously were previously found in other sections of the proposed Rule. We have consolidated these requirements here for administrative convenience and clarity.

Section 13 – Tariffs and boundary maps

For simplicity, the term “jurisdictional services” has been changed to “intrastate services.” In subsection (C), for consistency, the term “carrier” in the second sentence has been changed to “ILEC.”

Section 14 – Bills

We have modified this section to state explicitly that bills rendered by carriers to their customers must be “easily readable” and “readily understandable.”

Section 15 – Information Required Semi-Annually

Consistent with comments from the AG and VALOR, the requirement for written notification in Navajo language has been eliminated, as Navajo is not a written language.

The proposed rule distributed among several sections the various requirements regarding information that a LEC was required to include periodically with its bills. In the revised rule, we have consolidated these requirements in Section 15(B) and provided that LECs include this information semi-annually.

We have revised the language in subsection (C) regarding notice to customers of rate changes, to make it consistent with other Commission rules. The revised rule permits carriers to send notice of rate changes to their customers within a reasonable time.

Section 16 – Billing Disputes and Errors, Credits and Refunds

Several parties pointed out that the LEC should only have to refund the overbilled amount for which the LEC had received payment from the customer, and we have clarified the rule in this respect. Qwest and VALOR objected to the requirement to pay interest in overbilled amount. Qwest argued that this treatment was not symmetrical with the treatment of underbilled amounts. We do not necessarily agree that these are fully symmetrical, since experience shows that billing errors in the carrier’s favor occur more frequently than in the other direction. Nonetheless, assuming that the LEC complies with our requirement for prompt correction of billing errors, the amount of interest due is likely to be quite small. Thus, we have eliminated the interest requirement.

Upon further consideration, consistent with H.B. 400 and our public policy objectives, we have revised this section to apply to all carriers.

Section 17 – Discontinuance of Service

This section has been clarified by changing “carrier” to “LEC,” since a LEC is the provider of local exchange service. Staff suggested, and Qwest agreed, that this section should apply to all customers, not just residential, and we have adopted this change.

Section 18 – Prohibitions on Discontinuance of Service

Qwest objected that prohibiting the LEC from discontinuing service to a customer who had agreed to be the guarantor for another customer would render the guarantee mechanism ineffective. We find this to be a valid concern and have therefore removed the pertinent provision from this section.

Section 19 – Requirements Prior to Discontinuance of Service

Qwest commented that in-person contact with a customer did not occur prior to a discontinuance of service. We have eliminated this language from the rule, so that the rule now refers only to the mailing of written notice. Qwest and VALOR assert that the requirement that they send a blank medical certificate with every notice of discontinuance is excessive, particularly in light of the other protections that the rule provides to ensure continuation of basic service to customers with financial and medical problems. Nonetheless, where a customer is having serious medical problems, the customer may not have the resources to seek out the required form. Thus, we decline to remove this requirement. We have deleted subsection (B)(6) from this section.

Qwest and VALOR asked for deletion of the provision dealing with “installment payments,” commenting in part that the provision was too prescriptive. We are unwilling

to do away with this provision, but have modified it consistent with Qwest's comment that its practice includes payment plans other than "installment" plans. We have also taken the ILECs' comments into consideration in our decision to simplify the requirements of subsection (D) regarding third-party notification. Staff agreed with Qwest and VALOR that the proposed subsection dealing with "Information obtained from a residential customer," could put the LEC's employee in a position of making a medical determination and thus raise potential liability issues. We have stricken that subsection. Qwest commented that limiting disconnection of service to the period Monday through Thursday was acceptable, but that further time-of-day restrictions were too limiting. We consider this to be a reasonable approach and have revised subsection (F) accordingly.

Consistent with Staff's recommendation, we have also broadened the coverage of subsections (A) through (C) to apply to non-residential customers.

Section 20 – Restoration of Service

This section has been edited for clarity. We have considered Qwest's comment that the timing of its receipt of notice may prevent it from restoring service within 12 hours after receiving notice of a customer's medical certificate. However, the rule already requires "next day" restoration of service for other disconnected service, and the Commission believes that restoring service to such customers warrants an even higher priority. Thus, we decline to modify the rule as Qwest has proposed.

Section 21 – Complaints and Appeals

The proposed rule could have been read to require a customer service representative to volunteer to the customer that a supervisor would review the customer

service representative's disposition of a complaint, before the customer had actually expressed any dissatisfaction with that action. This was not our intent, and we have clarified the rule to state that the customer service representative shall inform the customer of his or her right to have the complaint reviewed by a supervisor only after the customer expresses dissatisfaction with the original disposition. We continue to require, however, that carriers have a process for internal escalation before the complainant is referred to the Commission's Consumer Relations Division.

Section 22 – Customer Deposit Policy

Staff recommended that ~~all of the sections~~ (Sections 22-27) addressing customer deposits apply to ILECs only and not CLECs, and that they govern the deposits of residential customers, not business customers. ~~We find this position largely persuasive, but have not entirely adopted it. After due consideration of the Staff's position and that of the Competitive Carriers, we remain concerned that limiting the scope of these rules to ILECs alone could expose customers to inappropriate deposit practices by other carriers.~~ Nothing compels a ~~CLEC, or any other carrier for that matter,~~ to require deposits of its customers. However, if it does, it should disclose and be willing to vouch for the fair and nondiscriminatory application of its deposit policy to interested consumers and to the Commission, credit the customer for interest on the amount held, keep a reliable record of the deposit, and refund the customer's funds promptly when the customer discontinues service or otherwise establishes good credit. Thus, the requirements in Sections 22 through 27 ~~will continue to~~ apply to any carrier that requires a deposit, ~~whereas subsequent sections, which are more prescriptive, have been modified to apply only to~~

ILECs. ~~and~~ and these rules, with the exception of Section 23, will apply to all customer deposits.

Section 23 – Criteria for Determining the Need for and Amount of a Deposit

~~We have followed Staff's suggestion—~~Staff also proposed that the protections in the deposit rules apply only to residential customers. We agree that Section 23, which addresses the criteria for determining the need for an amount or a deposit, is not well suited to governing the terms of deposits for larger business customers, but believe that many of the same reasons that justify setting parameters for the deposits required of residential customers would also apply to small business customers. Thus, we have expanded the scope of Section 23 to apply to small business customers.

We have omitted the section that specifically addressed the use of deposits where the ILEC has reason to believe a customer's credit worthiness is in jeopardy, as this was aimed at commercial customers.

Deleted Section – Payment Arrangements on Deposits

The section that immediately followed in the proposed rule, "Payment Arrangements on Deposits," has been omitted. Qwest maintained that customers had commercial alternatives for borrowing money needed to meet a deposit requirement and that the telecommunications provider should not be required to fulfill this role. As other mechanisms exist to assist low-income customers to obtain telephone service, we agree to ~~omit~~remove this provision.

Section 24 – Limitations on Use of Deposits

Aside from changing the scope of this section to apply to all carriers who require customer deposits, Only minor changes for purposes of clarification have been made in this section.

Section 25 – Interest on Deposits

As Qwest stated several times in its comments that it did not charge interest on late payments, this section has been modified to require the ILEC to pay interest on deposits at either its late payment interest rate or at the established legal rate, as specified in NMSA 1978, § 56-8-4. Also based on Qwest's comments, we have simplified the requirement by permitting the ILEC to pay interest at the time it refunds the deposit. For the reasons noted above, we have expanded to scope of this section to apply to all carriers.

Section 26 – Deposit Records

We have also simplified the record-keeping requirement for deposits, consistent with the change in Section 25, which allows interest to be paid once, at the time the deposit is refunded. For the reasons noted above, we have expanded the scope of this section to apply to all carriers.

Section 27 – Refund of Deposits

~~Consistent with Staff's recommendation, this section has been revised to apply to ILECs only.~~ Qwest recommended that we delete ~~sub~~Section G, which attempted to establish a procedure to be followed if a customer claimed to have paid a deposit but could not produce a receipt. Should there be a bona fide dispute about the existence or amount of a deposit, we doubt that the provision in the proposed rule would have significantly reduced the eventual need for the intervention of a neutral third party (most

likely the Commission) to determine the respective rights of the customer and carrier regarding the disputed deposit. Thus, we have eliminated this subsection. For the reasons noted above, we have expanded the scope of this section to apply to all carriers.

Section 28 – Privacy

We have edited the requirements in the subsection (A) of the proposed rule to make them clearer. Qwest directly challenged the requirements in subsection (B), claiming that they were inconsistent with the holding of the U.S. Court of Appeals for the Tenth Circuit, which invalidated similar provisions in the FCC’s rules on Customer Proprietary Network Information. Staff supported the policy reflected in the proposed rule, but also expressed concern about the implications of the Tenth Circuit’s decision.

We have considered the points raised by Qwest and have decided to retain subsection (B). The Tenth Circuit ruling and the FCC’s rule and subsequent Reconsideration Order are all based on federal law and interpretations thereof. This Commission has its own responsibilities to protect New Mexico customers and can come to different conclusions on matters of policy and state law. Nothing in the record persuades us that the “opt-out” strategy is preferable to a rule that protects a customer’s CPNI, unless the customer wishes to have the ILEC use such information for the broader purposes of marketing, etc. However, consistent with Staff’s recommendation to address the contingency that a court of competent jurisdiction might determine that the Commission must adopt a more restrictive approach, we have added language in Section 15 that would, in that event, require semi-annual notification to the customer that he or she has the right to instruct the ILEC not to disclose the customer’s CPNI.

Section 29 – Operator Assisted Calls

This section has been split into two components, one dealing with the customer service aspect's of operator service, such as respecting a customer's privacy and being courteous. The other requirements that were included in this section (e.g., the speed with which such calls are answered by an operator) have been included in the companion Quality of Service rule.

II. Service Quality Standards Provisions

Section 2 – Scope

As discussed above, NMECG argued that the Commission lacked jurisdiction to apply these rules to small ILECs, and Verizon Wireless argued the same for wireless carriers. In our judgment, different policy considerations apply to consumer protection rules than to quality of service standards. As noted above, we have decided to separate the customer protection provisions and quality of service standards into two separate rules, and now have the opportunity to define the scope of those rules separately. We have modified the scope of the Quality of Service Rule to apply to LECs, rather than all carriers, except for 17.16.11.18 NMSA, which applies to all carriers that offer operator services.

Qwest and VALOR raised concerns about “regulatory parity” and proposed that all service quality requirements for ILECs should apply equally CLECs. They also proposed that the Rule apply to all “eligible telecommunications carriers” who are entitled to receive universal service funds. NMECG argued that the many of the provisions in the Service Quality rule were too strict or too burdensome to be applied to small ILECs.

Staff argued that asymmetrical application of the Rule would not jeopardize service quality or the provision of universal service, for several reasons. Staff noted that “[i]n order to retain existing customers and attract new customers, CLECs are compelled to provide a level of service quality that is equal or superior to that of the ILEC. Thus, CLECs have a built-in incentive to provide adequate service quality and customer protection policies.” Staff also argued that although “the vast majority” of ILEC

customers have no alternative provider for their local exchange service, CLEC customers do, and can thus return to the ILEC if they are dissatisfied with the quality of service being provided by the CLEC. On the other side of the cost-benefit equation, Staff and the NMCC argued that such regulation is likely to inhibit entry of new carriers and, thus, the development of competition.

We find the arguments raised by Staff and the NMCC to be persuasive and have restricted the coverage of much of this Rule to ILECs only. We do not find compelling Qwest's and VALOR's request that we apply these requirements to all ETCs. While we agree that all customers are entitled to high-quality service, there is no logical linkage between service quality regulation and a LEC's entitlement to receive funds under a competitively neutral mechanism that supports the provision of universal service in high-cost areas.

We have also limited the application of certain requirements to large ILECs only, and, where warranted and supported by the record, have set different standards for small and large ILECs. Certain limited service quality requirements continue to apply to CLECs as well.

We have also added language that describes how we intend to apply this Rule to ILECs subject to a Commission-approved alternative form of regulation.

Section 7 – Definitions

We have deleted from the Quality of Service Rule any definitions that pertained exclusively to Customer Protection. We have added a definition for “discretionary services,” because parties found this term ambiguous. We have added definitions of “small” and “large” LEC and ILEC, based on whether the (I)LEC has 50,000 or more

exchange access lines or fewer than 50,000 lines. We have also defined “low-density zone” and “high-density zone,” terms used in connection with the designed services installation standard, based on an ILEC’s classification of its wire centers pursuant to the FCC’s rule on zone density pricing. For this purpose, pursuant to 17 NMAC 1.2.37.4, we take administrative notice of 47 C.F.R. §69.123, “Density Pricing Zones for Special Access and Switched Transport,” which establish criteria and procedures for ILECs to identify density pricing zones. Although the zones established pursuant to the FCC rule are used primarily to determine the pricing of high-capacity facilities, the criteria used to sort wire centers among the zones are consistent with the purpose for which such classification will be used in Section 13.

In addition, we have supplied a definition of ~~and~~ “facilities-based CLEC,” a term used in Section 10, “Provision of Service during Maintenance or Emergencies.” Finally, we have defined “circumstances beyond the reasonable control of the ILEC,” as this concept is relevant to several sections of the Rule.

Deleted Section (formerly Section 8) – Relationship of Retail Standards to Wholesale Standards

This section attempted to define circumstances under which a CLEC would not be held accountable for service quality deficiencies caused by the underlying service provided by a wholesale supplier (typically the ILEC). This section drew criticism from the majority of commentors, for a variety of reasons. The AG commented that a LEC should be accountable to its retail customers for its service quality, regardless of the cause of the problem. Qwest noted that ILECs were not the only providers of wholesale service. Staff pointed out that determining culpability would become administratively

burdensome and that, in any event, this provision would be unnecessary if the changes proposed by Staff (which would exempt CLECs from complying with specific service quality standards) were adopted.

In light of these comments, our decision to adopt Staff's recommendation to exempt CLECs from specific service quality standards and the associated sanctions, and our approval today of a separate rule providing for the expedited resolution of disputes between carriers, we have deleted this section from the Rule.

Section 8 – Reporting Requirements for ILECs

Both Qwest and VALOR objected to the degree of detail in the proposed reporting requirements and the frequency. VALOR indicated that it was amenable to reporting wire center-specific data, with reports submitted quarterly, except for held order reports, which it agreed could be filed monthly. In its reply, Staff indicated that quarterly filing was sufficient, but that a report should contain monthly data (for each of three months).

NMECG also expressed concerns about the extent of reporting requirements as they applied to small ILECs. Staff proposed that small carriers be permitted to file once a year, reverting to more quarterly reporting (consistent with large ILECs) whenever the small ILEC's performance (as shown in the annual report) fell short of the Commission-established standard. We are concerned that receiving this information only once a year, even for a small ILEC, may be too infrequent and consequently will hamper the Commission's ability to respond to emerging service quality problems. It is our expectation that once an ILEC has a reporting system in place, reporting semi-annually will not be burdensome.

Thus, we have revised the rule to require large ILECs to report monthly data, on a quarterly basis, and small ILECs to report semi-annually, reflecting data in quarterly increments. We have also eliminated some of the proposed sub-categories from the held order reports and added reporting requirements for designed services, consistent with our decision to include designed services quality of service standards in this Rule. In addition, to reduce the reporting burden, we have eliminated the requirement that the ILECs' report explain instances of substandard performance. We expect ILECs to cooperate should the Commission request further detail on the reasons for any deterioration in service quality reflected in their reports.

Section 9 – Outages

Based on comments from Staff, Qwest, VALOR, NMCC, and NMECG, we have modified this section to apply to LECs, rather than all carriers, and have established separate thresholds (based on the number of affected customers) for service outages that an ILEC must report to the Commission. We have raised the large ILEC threshold significantly, but not to the same level used by the FCC (as proposed by Qwest), as different policy considerations pertain to outages affecting basic local exchange service. We have also lengthened the time for reporting outages from 60 to 90 minutes for both small and large ILECs.

Section 10 – Provision of Service During Maintenance or Emergencies

Qwest suggested that this section, which imposes requirements to maintain certain emergency back-up facilities, to establish emergency recovery plans, and to minimize service disruptions from routine maintenance, should also apply to facilities-based CLECs. We have revised the section accordingly. Consistent with a recommendation

from Staff, we have also required carriers covered by this section to file copies of their emergency plans with the Commission.

Section 11 – Access to and Audit of Data

As discussed with regard to Section 9 of the Consumer Protection Rule, Qwest expressed concern the proposed rule might conflict with the requirements of federal law (47 U.S.C. § 222) regarding the disclosure of customer proprietary network information. Generally, the rule calls for the LEC to provide the Commission with aggregate rather than customer-specific information. However, to ensure consistency with other state and federal laws on data privacy, we have included language to address this concern, that a LEC covered by this rule be required to produce records dealing with customer proprietary network information only to the extent required by law, in accordance with other legal requirements. We have added this caveat to the Rule. ~~**check rule, track language~~

Section 12 – Installation of Basic Local Exchange Service

This section (1) specifies the time intervals required for installation of a customer's primary local exchange line (based on whether the customer's premises is within 1000 feet of a distribution terminal or further than that distance), (2) establishes a requirement for assigning a tracking number to all orders for basic local exchange service, and (3) requires the ILEC to file its line extension policy, for the Commission's review and approval. The tracking requirement in subsection (A) was originally part of a separate section on "Confirmation of Service" that has been deleted.

We have added an installation interval for providing primary local exchange lines to customers whose premises are more than 1000 feet from the distribution terminal,

because we believe that getting telephone service to unserved customers within a reasonable time is consistent with the objectives of H.B. 400, whether or not the ILEC has to deploy some new facilities to provide such service.

The most controversial aspect of the proposed rule was the 98% standard for timely installation of service. The standards for installation of primary local exchange lines and the held order standard are now contained in Section 19. Qwest took the position that the same standard for installation should apply to both ILECs and CLECs, whereas both Staff and the NMCC stated that this section should apply to ILECs only because CLECs cannot attract new customers unless they are able to make service available in a time frame acceptable to the customer. We agree with the position advanced by Staff and the NMCC and have revised this section to apply to ILECs only. Qwest objected that the standard requiring 98 percent of primary local exchange service installations to occur within five business days was too strict, and proposed that the standard lowered to 95 percent and to include not only primary lines, but also additional lines, CLASS features (what we have termed “discretionary services”), and line moves and changes. VALOR proposed a range of between 94 and 97 percent and also proposed broadening the category of services to which the standard would apply. In its reply comments, Staff agreed to using the 97 percent level for primary and additional lines, plus moves and changes (but not CLASS features).

We have considered these positions and made certain changes. We have lowered the percentage standard, but do not agree with the proposals to expand the class of services to which the installation standard would apply. The record shows that customers in New Mexico are extremely dissatisfied when they are unable to get even a single line

~~hooked up to the telephone network. If we included within that measurement additional lines for customers that already have telephone service and moves and changes for existing customers, we would dilute the standard and make it a less potent tool for encouraging ILECs to meet the needs of customers who have cannot get even a primary exchange access line. Since we decline to broaden the coverage of the standard, we have set the percentage standard one percentage point lower than the top of the range used in the VALOR AFOR, at 96 percent.~~

~~In addition, we have included language formerly in a separate provision on “Confirmation of Service” to subsection (A) of this section. This subsection applies to all ILECs, while the remaining parts of this section apply only to ILECs.~~

Section 13 – Alternative Service ~~and Credits~~

The AG strongly felt that any customer who was unable to get telephone service (i.e., a primary line) within the standard interval should receive alternative service, because customer credits or penalties do not directly mitigate the effects of delay. Staff supported this view. We have adopted the language proposed by Staff for this new section.

Section 14 – Installation of Designed Services and Section 15 – Out-of-Service Credits for Designed Services

The proposed rule did not specifically address installation and repair of designed services. At the public hearings, Internet services providers (ISPs) spoke extensively of the difficulties that they were incurring getting service installed and maintained in a timely manner, particularly by Qwest. The ISPs also complained that Qwest had resisted their efforts to have standards for designed services addressed within Qwest’s proposed

AFOR Plan, which is now before the Commission for review. Staff, in its reply comments, suggested including a standard and customer credits for designed services held orders. At the public hearing on October 31, Staff and a representative of the ISPs also commented that ~~they understood that~~ in Minnesota, Qwest had stipulated to designed services quality standards in connection with its AFOR. Pursuant to 17 NMAC 1.2.37.4, we take administrative notice of the AFOR (as amended) to which Qwest and other parties stipulated, and which was approved by the Minnesota Public Utilities Commission in its Final Order entered in ~~Docket No.~~ Docket No. P421/AR-97-1544 on December 11, 1998 (as amended by the Minnesota PUC's Order of June 28, 2000 in Docket No. P-3009, 3052, 5096, 421, 3017/PA-99-1192). That AFOR concerns amended service quality standards under the U S West (now Qwest) AFOR plan for the State of Minnesota.

The Commission's mandate under H.B. 400 includes ensuring the deployment of high-speed data services and the investments in infrastructure necessary for this deployment. In the Infrastructure Rule that we adopt today, an ILEC's performance in meeting its infrastructure deployment obligations relative to the provisioning of high-speed data services is to be judged, at least in part, by its ability to install these services in a timely manner and keep them in good working order. This requires that there be standards for installation and repair of designed services. Standards for designed services installation are included in the VALOR AFOR plan.

In light of the record and the clear intent of the Legislature to promote the availability of high-speed data services, and taking into account the above-referenced Stipulation approved by the Minnesota PUC, we have added two sections to this Rule

based on the designed services quality of service standards and associated sanctions contained in that Stipulation.

Section 167 – Directory Assistance and Intercept

Qwest asked that this section be amended to permit additional time for the required actions in the event that they occur during a period when the ILEC must conduct routine maintenance. We accept this suggestion and have revised the Rule accordingly.

Section 187 – Network Completion Requirements for Direct Dialed Calls

Consistent with comments from Staff and the NMCC, we have amended this section to apply only to ILECs.

Section 198 – Network Completion Requirements for Operator Assisted Calls

This is the only section in the Rule that applies to all carriers who offer operator services. The text defining an “answer” has been deleted, as it is already defined in Section 7.

Section 1920 – Quality of Service Standards for Non-Designed Services

~~The standard for installation of local exchange service is stated in Section 12 and has been omitted from this section. Qwest took the position that the same standard for installation should apply to both ILECs and CLECs, whereas both Staff and the NMCC stated that this section should apply to ILECs only because CLECs cannot attract new customers unless they are able to make service available in a time frame acceptable to the customer. We agree with the position advanced by Staff and the NMCC and have revised this section to apply to ILECs only.~~

~~Qwest also objected that the standard requiring 98 percent of primary local exchange service installations to occur within five business days was too strict, and~~

proposed that the standard lowered to 95 percent and to include not only primary lines, but also additional lines, CLASS features (what we have termed “discretionary services”), and line moves and changes. VALOR proposed a range of between 94 and 97 percent and also proposed broadening the category of services to which the standard would apply. In its reply comments, Staff agreed to using the 97 percent level (based on Period 3 of the VALOR AFOR) for primary and additional lines, plus moves and changes (but not CLASS features).

We have considered these positions and made certain changes. We have lowered the percentage standard, but do not agree with the proposals to expand the class of services to which the installation standard would apply. The record shows that customers in New Mexico are extremely dissatisfied when they are unable to get even a single line hooked up to the telephone network. If ~~we~~ ~~included~~ ~~we~~ ~~included~~ within that measurement additional lines for customers that already have telephone service and moves and changes for existing customers, we would dilute the standard and make it a less potent tool for encouraging ILECs to meet the needs of customers who have cannot get even a primary exchange access line. Since we decline to broaden the coverage of the standard, we have set the percentage standard one percentage point lower than the top of the range used in the VALOR AFOR, at 96 percent.

Staff also suggested including ~~a~~ standard for held orders, based on the VALOR AFOR. We have added language to provide that the annual average of an ILEC’s monthly held order rate (defined as the ~~number of held orders as of the last day of the month, excluding orders for which waivers have been granted, t the end of a given month~~

expressed as a percentage of total number of switched access in lines in service at the end of that month) may not exceed 0.035 percent.

Qwest and VALOR also objected that the ~~remaining~~ standards in this section pertaining to the trouble report and repeat trouble reports rates and out-of-service clearances were ~~also~~ too strict, and suggested levels based on the VALOR AFOR. In its reply comments, Staff agreed to have the standards modified to levels in Period 3 of the VALOR AFOR. We have adjusted the remaining standards in this section consistent with the Staff's changes.

Section 20 – Timely Response by Customer Service Representatives

This section contains material formerly included in the prior section on Service Quality Standards, since those standards apply only to non-designed services, while the requirement for a timely response by customer service and repair center representatives is not limited to any particular subset of an ILEC's services. We are also requiring the filing of an exception report whenever the ILEC fails to meet any of the standards in this section.

Sections 21 and 22 – Aggregate Customer Credits and Calculation of Aggregate Customer Credits

First, we have retitled these sections to reflect the fact that the monetary amounts large ILECs will owe to customers if they fail to meet the required service quality standards are rate credits, rather than penalties. Second, for clarity, we have broken the requirements into two sections, one dealing primarily with the annual compliance report and the required timing of credits, and the other dealing with the calculation of credits, based on the relationship of performance to the applicable standards.

Qwest's comments on this section focused more on the standards themselves than on the credit mechanism. VALOR recommended substituting the aggregate credit provisions from the VALOR AFOR. The AG expressed the view that the ~~amount~~ of amount of the credit (formerly termed "penalty") in subsection (A) was far too low to motivate an ILEC to overcome problems with installation delays and proposed that we increase the monetary amount significantly.

Staff took the approach of adapting the structure of the VALOR AFOR, with some modifications including using Period 3 standard for clearance of out-of-service trouble reports, trouble reports, and repeat trouble reports. We find Staff's proposal to be reasonable, with one significant reservation. Under the Staff's proposed framework, adapted from the VALOR AFOR, the aggregate credits are calculated on the basis of the ILEC's performance *statewide and over an entire year*, with the exception of Staff's proposed subsection (I), which would have calculated credits based on a wire center-based standard for the percentage of out-of-service clearances. Statewide, annual statistics are likely to mask significant service quality problems that may have arisen in particular wire centers during the course of the year. The standards we proposed and the aggregate credit obligations associated with them were intentionally structured to encourage ILECs not to permit service quality to deteriorate in any geographic area of the state. To achieve this objective, it is essential that some of the service quality standards and the associated sanctions apply to monthly performance at the wire center level. Thus, while we have adopted most of the Staff's proposal for an alternative version of this section, we have added back in provisions, in Section 21subsections–(A) and Section 22(KG), requiring for reporting and calculation of credits based on the wire center-based

standards in Section 19. Because the ILEC's monthly rate for out-of-service clearances on a wire center-specific basis is addressed in subsection (~~GK~~), we have revised subsection (~~GE~~) to cover the average performance for out-of-service clearances in all wire centers, on a statewide, annual basis.

We did not adopt the proposed subsection (D) in Staff's alternative version of this section because designed services standards and the credits payable for failing to meet those standards are now addressed in Sections 15 and 16 of this Rule.

Section 232 – Individual Customer Credits

This section applies to all ILECs, and ensures that customers of both small and large ILECs receive some compensation when the ILEC does not install or to restore service to the customer in a timely manner. The comments reflect some confusion as to the purpose of the individual credits for “missed installation commitments.” The term “commitment” here refers to the time frame for service installation specified in Section 12 of the Rule. It did not mean that an ILEC did not show up at the scheduled installation appointment. As Staff pointed out, the proposed credit would have seemed somewhat onerous if they were being imposed for this purpose. We have made edits for the purpose of clarifying subsection (C), including revising the title of that subsection.

Section 243 – Ratemaking Treatment of Penalties and Credits

This rule has been edited to include reference to the Commission's statutory penalty authority, and for clarity.

Section 254 – Exemptions or Variance

To permit us to consider requests by a LEC (or, in the case of Section 19, a carrier) for flexibility in the application of one or more provisions or these rules, we have

added a section permitting the Commission to grant an exemption or variance where the circumstances warrant such treatment.

We have incorporated, as subsection (B), the provisions formerly addressed in the separate section, “Waiver of Time Limits,” dealing specifically with held orders. The proposed rule attempted to establish a standard of financial hardship associated with ILECs’ requests for waiver of time limits on held orders. The mechanics of the proposal drew criticism from Qwest and VALOR, as they would have defined unreasonable cost in terms of a percentage of the ILEC’s intrastate revenues, and these large ILECs objected that such cost-based determinations were inconsistent with the transition away from rate-of-return regulation. The AG, on the other hand, urged the Commission to deny all held order waiver requests unless the ILEC could certify that fulfilling these orders would “trigger the filing of Form 8K of the Securities and Exchange Commission as a material adverse event threatening the financial viability of the company if the company were a publicly traded entity.”

Staff disagreed with Qwest’s proposed changes in this section, stating that the Commission had already expressly rejected the approach to high-cost waivers advocated by Qwest in a previous order on Held Waiver Petitions, SCC Docket No. 96-115-TC, issued on December 15, 1998. Staff agreed with certain aspects of the AG’s recommendation, although not the proposal to use the SEC standard as the sole basis for waivers. Staff proposed the following: (1) ~~that~~ that high-cost not be a basis for waiver of the held-order standard; (2) that a zero-tolerance standard (proposed by the AG) for held orders not apply until orders have been held for more than 180 days; and (3) that the granting of a held order waiver not affect the calculation of credits for ~~late~~ failure to

install the required percentage of primary local exchange lines within the prescribed timeframes.installation.— We have adopted the Staff’s proposal, with modifications, and where necessary have made edits to other sections to conform them.

THE COMMISSION FINDS AND CONCLUDES:

1. The foregoing statements and discussion are hereby adopted as Findings and Conclusions of the Commission.
2. The Commission has jurisdiction over the parties and subject matter of this case.
3. It is in the public interest for 17.11.16 NMAC (Customer Protection), and 17.11.22 NMAC (Quality of Service Standards), to be adopted as provided by this Order and as set out in, respectively, Exhibits 1 and 2 to this Order.
4. The Commission has the jurisdiction and authority to adopt and issue these rules pursuant to NMSA 1978, Sections 8-8-4, 8-8-15 and 63-9A-8.2.
5. Due and proper notice has been given.

IT IS THEREFORE ORDERED:

- A. 17.11.16 NMAC is hereby adopted and approved as provided by this Order. As so adopted and approved, 17.11.16 NMAC is attached to this Order as Exhibit 1.
- B. 17.11.22 NMAC is hereby adopted and approved as provided by this Order. As so adopted and approved, 17.11.22 NMAC is attached to this Order as Exhibit 2.
- C. 17.11.16 NMAC and 17.11.22 NMAC shall be published on or before December 29, 2000 in the New Mexico Register and shall be effective January 1, 2001.

D. This Order is effective immediately.

E. Copies of this Order shall be served on all persons on the attached

Certificate of Service.

F. This Docket is closed.

**ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 12th
day of December, 2000.**

NEW MEXICO PUBLIC REGULATION COMMISSION

BILL POPE, CHAIRMAN

HERB H. HUGHES, VICE CHAIRMAN

JEROME D. BLOCK, COMMISSIONER

LYNDA M. LOVEJOY, COMMISSIONER

TONY SCHAEFER, COMMISSIONER