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July 14, 2004

Airborne Express Mail

Arizona Corporation Commission
Docket Control – Utilities Division
1200 West Washington Street
Phoenix, AZ 85007

Arizona Corporation Commission
DOCKETED

JUL 16 2004

Re: In the Matter of Qwest Corporation's Performance
Assurance Plan
Docket Nos. T-01051B-03-0859

DOCKETED BY	<i>CK</i>
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Dear Sir/Madam:

Enclosed for filing is an original and 15 copies of Eschelon's Reply Comments on the Scope and Procedures for the First Six-Month Review of the QPAP in connection with the above-referenced matter. Also enclosed is our Certificate of Service.

Sincerely,

Kim K. Wagner
Senior Legal Secretary
Eschelon Telecom, Inc.
(612) 436-6225 (direct)
(612) 436-6816 (fax)

Enclosures

cc: Service List (U.S. Mail)

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BEFORE THE ARIZONA CORPORATION COMMISSION

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MARK SPITZER
Chairman
WILLIAM A. MUNDELL
Commissioner
JEFF HATCH-MILLER
Commissioner
MIKE GLEASON
Commissioner
KRISTIN K. MAYES
Commissioner

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AZ CORP COMMISSION
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Arizona Corporation Commission

DOCKETED

JUL 16 2004

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IN THE MATTER OF QWEST
CORPORATIONS PERFORMANCE
ASSURANCE PLAN

Docket No. T-01051B-03-0859

**ESCHELON'S REPLY COMMENTS ON THE SCOPE AND PROCEDURES FOR
THE FIRST SIX-MONTH REVIEW OF THE QPAP**

Pursuant to the Procedural Order dated June 18, 2004 in this matter, Eschelon Telecom, Inc. ("Eschelon") submits these Reply Comments to Qwest's July 7, 2004 Comments regarding the scope and procedures for the first six-month review of the Arizona Performance Assurance Plan ("PAP").¹

I. INTRODUCTION

Eschelon disagrees with Qwest that either the Commission's authority or the Commission Staff's ("Staff's") role in this proceeding is limited. Section 16 of the PAP allows the Commission much more flexibility and authority. Administrative efficiencies will be gained by the Commission using that authority to address issues in this proceeding.

¹ Qwest Corporation's Response to Procedural Order, In the Matter of Qwest's Performance Assurance Plan, Docket No. T-01051B-03-0859, July 7, 2004 ("Qwest's Comments").

Eschelon asks that the Staff develop an issues list that documents agreements and disputed issues. For disputed issues on the issues list, Eschelon asks that the Staff identify the type of process/procedures necessary to resolve the issue. Eschelon does not respond at this stage of the proceeding to Qwest's unsolicited comments on the standard of review for this proceeding. Eschelon reserves the right to do so at the appropriate time in this proceeding.

II. DISCUSSION

A. Qwest's Comments appear to overly restrict the Commission's authority to change the PAP as part of the six-month review.

Qwest states that matters that may be brought under the six-month review are "limited" by Section 16.0.² The PAP, however, specifically provides that:

...[T]he Commission reserves the right to modify the PAP including, but not limited to performance measurements, penalty amounts, escalation factors, audit procedures and reevaluation of confidence levels, at any time as it sees fit and deems necessary...³

The Commission has the authority to change all terms of the PAP.⁴ There is no limitation on the type of proceeding in which the Commission addresses such issues. Therefore, the Commission can resolve all PAP issues identified by the parties in one proceeding, such as the six-month review, while reserving the right to make PAP changes at any time. Particularly because of the administrative efficiencies involved in doing so, the Commission should exercise this power.

² See Qwest Comments at 3.

³ See Section 16.0, Qwest Arizona Performance Assurance Plan, available at: <http://www.qwest.com/wholesale/downloads/2003/030909/Arizona-08-29-03-Exhibit-K.doc>.

⁴ Even Qwest acknowledges this broad authority. See Qwest Comments at 3.

B. Qwest's Comments appear to overly limit the Staff's role regarding proposed changes and presume that discovery, testimony and hearings will be necessary.

Qwest suggests that the Staff's role is limited to addressing certain changes.⁵ Section 16.0 describes the Staff's role in seeking mutual consent of the parties. This is the same section quoted above. It gives the Commission broad authority to change the PAP.

Certainly, the Commission's authority extends to its Staff. Qwest's suggestion that it does not would hinder the Commission's ability to delegate to Staff and to take advantage of the efficiencies gained by using Staff and the Staff's expertise. The Commission should not limit the role of Staff in this six-month review. Eschelon requests that the Staff work with the parties to develop an issues list that documents agreed upon and disputed issues.

Qwest's comments also presume that if the parties do not reach consensus on an issue, that discovery, written testimony, cross-examination, etc., will be necessary.⁶

Before deciding such issues, the Commission should direct the Staff, as part of efforts to define the issues for this proceeding, to identify whether such steps are necessary.⁷

C. Qwest's Comments on the standard of review are beyond the scope of the Commission's Procedural Order.

The Commission did not request that parties comment on the standard of review at this stage of the proceeding. Nevertheless, Qwest provided comments on this issue.⁸ Eschelon reserves the right to comment on the standard(s) of review at the appropriate time in this proceeding.

⁵ See Qwest Comments at 4. Specifically, see Qwest's parenthetical note beginning "i.e., add or delete measurements..." and Qwest's discussion of Staff's role regarding "these types of proposals."

⁶ See Qwest Comments at 4.

⁷ Based on the parties initial comments in this proceeding, Eschelon would simply note that the parties do have disagreements regarding the implementation of PO-20 and OP-5B under the Arizona PAP.

⁸ See Qwest comments at 3.

III. CONCLUSION

Eschelon requests that the Commission not restrict the scope of this proceeding or the role of Commission Staff in its review of PAP issues. Eschelon also requests that the Staff develop an issues list that documents agreements and disputed issues. For disputed issues, Eschelon requests that the Staff identify the type of process necessary to resolve the issues. Eschelon does not respond at this state in the proceeding to Qwest's unsolicited comments on the standard of review for this proceeding. Eschelon reserves the right to do at the appropriate time in this proceeding.

Eschelon appreciates the opportunity that the Commission and its Staff have provided to Eschelon to comment on this matter.

ESCHELON TELECOM, INC.

July 15, 2004

By:



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Chairman

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Commissioner

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Commissioner

MIKE GLEASON

Commissioner

KRISTIN K. MAYES

Commissioner

IN THE MATTER OF U S WEST
CORPORATION'S PERFORMANCE
ASSURANCE PLAN

Docket No. T-01051B-03-0859

Certificate of Service

I hereby certify that an original and 15 copies of the attached Reply Eschelon's Comments on the Scope and Procedures for the First Six-Month Review of the QPAP were filed by express mail on July 14, 2004 with:

Arizona Corporation Commission
Docket Control – Utilities Division
1200 West Washington Street
Phoenix, AZ 85007

and served by United States Mail on July 14, 2004, upon the parties listed on the attached service list.

Dated: July 14, 2004



Kim/K. Wagner

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