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BEFORE THE ARIZONA CORPORATION COMMISSION

1
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3 **CHAIRMAN**
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AZ CORP COMMISSION
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13 IN THE MATTER OF QWEST
14 CORPORATION'S PERFORMANCE
15 ASSURANCE PLAN

DOCKET NO. T-01051B-03-0859

NOTICE OF FILING

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17 The Arizona Corporation Commission Staff ("Staff") hereby files a supplement to its
18 filing of July 30, 2004 to assist the Administrative Law Judge in addressing the issues raised
19 by parties with respect to the six-month review.

20 RESPECTFULLY submitted this 6th day of August, 2004.

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QPAP Six Month Review

The Arizona Corporation Commission (“ACC” or “Commission”) Staff provides the following summary and recommendations as a supplement to its earlier filing to assist the ALJ with the resolution of the issues raised by the parties.

On June 5, 2002, the Commission approved Qwest’s Performance Assurance Plan, with modifications. The PAP became effective when Qwest received Section 271 authorization from the Federal Communications Commission (“FCC” on December 15, 2003. Section 16.0 of the Plan provides for a 6-month review.

On June 10, 2004 Staff filed Request for Procedural Order seeking comment on the following issues:

- 1) the scope of such a proceeding;
- 2) a list of issues which should be addressed in the six month review;
- 3) how such a proceeding should be conducted and whether a hearing is necessary;
- 4) similar proceedings conducted in other states which might be helpful in structuring the Arizona proceeding; and
- 5) any other issues deemed relevant by the parties.

Comments were filed by Eschelon Telecom, Inc. (“Eschelon”), Qwest Corporation (“Qwest”) and MCImetro Access Transmission Services LLC (“MCImetro”). Reply comments were filed by Eschelon, Qwest, MCI and AT&T. The Comments are discussed by issue set out above.

A. Parties Comments

1) The Scope of the 6-Month Review

Qwest. Qwest argues that the matters that are brought under the six-month review by Qwest or the CLECs are limited to the following: 1) whether measurements should be added, deleted, or modified; 2) whether the applicable benchmark standards should be modified or replaced by parity standards; and 3) whether to move a classification of a measure to High, Medium, or Low or between Tier 1 and Tier 2. Qwest claims that the provision relating to the Commission’s ability to modify all terms of the PAP absent mutual consent, is premised upon notice and opportunity for a hearing.

In its reply comments, Qwest states that three issues raised by the CLECs do not relate to the limited scope of the 6-month review: 1) aggregate PAP Performance and Payment Reports, 2) proposal to admit LTPA documents into the record would be overly broad and burdensome, and 3) Qwest’s participation in LTPA.

Eschelon. Eschelon states that the performance measurements (“PIDS”) and remedy plan (“PAP”) work together to ensure the local market remains irreversibly open to competition after Qwest’s entry into the long distance market. Eschelon states that the six-month review needs to consider changes to both the PIDs and the PAP that are necessary based on the events over the two years since the Commission issued its order on the PAP.

Eschelon disagrees with Qwest that the Commission’s and/or Staff’s role in this proceeding is limited. The Commission has the authority to change all terms of the PAP. Because of the efficiencies involved, the Commission should resolve all PAP issues identified by the parties in one proceeding.

MCI, AT&T and Covad. The scope is defined in Section 16.1 of the PAP.

2) Issues to be Addressed

Qwest. Qwest set out the following issues for resolution in this proceeding:

- a. Line Splitting – Standard for MR-3, 4, 6 and 8 and the OP-5 PIDs;
- b. Issues related to PO-20; and
- c. Issues related to OP-5A New Service Quality

In its reply comments, Qwest submitted the following revised list of issues based upon the comments of the other parties.

- a. Line Splitting – Standard for MR-3, 4, 5, 8 and OP-5.
- b. Loop Splitting – should product be added to PO-5, OP03, 4, 5 and 6 and MR 23, 4, 6, 7 and 8 and what standard should apply.
- c. PO-20 – Tier assignment and whether there should be a measurement stabilization period.
- d. OP-5B – whether this new sub-measurement should be incorporated.
- e. Inclusion of PO-2 and BI-5.
- f. Addition of new product xDSL-I.

Eschelon. Eschelon provided the following list of specific issues:

- a. Necessary ministerial changes to the standards for various products measured in the PIDs contained in the PAP. The Agreements reached in the Long Term PID Administration (“LTPA”) forum, should be automatically adopted or incorporated into the PAP. This should include both performance standards and new PAP payments.
- b. The Commission should update the PAP to reflect important PIDs developed since the PAP was approved and include critical PIDs omitted during the

creation of the PAP. Examples given included inclusion of PO-20 with Tier I High and Tier II High designations; and OP-5B. Other critical PIDs to include are BI-5 and PO-2.

c. LTPA Issues Matrix (If LTPA disbanded).

d. The Commission should make necessary changes to the list of products measured in the various PIDs. An example includes incorporation of xDSL-i capable loops.

In its reply comments, Eschelon (with MCI concurring) asked that the Staff develop an issues list that documents agreed upon and disputed issues.

MCI, AT&T and Covad. MCI (with AT&T and Covad concurring) listed the following specific issues for resolution:

a. Line Splitting: what standard should be used for this product for the following PIDs: MR-3, 4, 6 and 8 and the OP-5?

b. Loop Splitting: should this product be added to the following PIDs: PO-5, OP-3, 4, 5, 6 and 15, MR-3, 4 6 7 and 8, and if so, what standard should apply?

c. PO-20: What Tier should be assigned to this new PID?

d. Should Qwest be required to publish its aggregate payments under the QPAP at the product level for Arizona?

e. Agreed upon changes to measures in Exhibit B (such as inclusion of Line Splitting) should result in complementary changes to Exhibit K (the PAP).

3) **Process**

Qwest. Qwest believes that the process in the PAP contemplates that interested parties will make proposals, and then Staff will facilitate a process by which the CLECs and Qwest may review each other's proposed changes. Qwest does not believe that workshops will be necessary at the initial stages in order to ascertain whether mutual consent can be reached with respect to these types of proposals. If mutual consent is not reached, the Commission can review and examine the matter through a hearing.

In its reply comments, Qwest stated that it does not support automatic incorporation of agreements from the LTPA. The benchmarks should only be brought forward into the PAP precisely as they were agreed, and Qwest should be afforded the opportunity to review and confirm that any changes to the PAP fully conform to the agreements made regarding PIDs prior to the adoption of any PAP additions, deletions or

modifications. Qwest does agree that changes to Exhibit B (May 3, 2004) should result in complementary changes to Exhibit K.

Eschelon. The Commission should resolve disputed issues through briefing. This process was used successfully in Washington and Colorado. The Commission should admit LTPA documents into the record in this proceeding. Such documents should include impasse documents, party comments, the facilitator's recommendations, and state staff votes. If there is a hearing, the Commission should allow participating by telephone.

In its reply comments, Eschelon (with MCI concurring) stated that the Staff's role should not be limited in this proceeding as Qwest is suggesting.

MCI, AT&T and Covad. MCI (with AT&T and Covad concurring) believes that a paper process can be used. MCI does not believe that a hearing is necessary.

B. Staff Discussion

1) Scope of the Proceeding

As the parties note, the scope is defined in Section 16.1 of the PAP. Staff does not believe that the scope of the 6-month review is as limited as Qwest advocates. Staff agrees with Eschelon that the Commission reserved the right to review and make changes to any or all provisions of the PAP, as it determined necessary, after notice and the opportunity for a hearing. Further, Staff does not believe that its role in the 6-month review is limited to facilitating agreement among the parties as Qwest suggests. Staff should have the same rights as any other party, including the ability to suggest changes to the PAP as well. Staff further agrees with Eschelon, that to the extent PAP issues are raised, it is expedient to try to address them in one proceeding.

2) Issues to be Addressed

Staff believes that all of the issues raised by the parties should be reviewed in the course of this proceeding. We see no reason, given the Commission's ability to make any changes to the PAP it believes necessary, to put any legitimate issues raised by the parties outside the scope of the 6-month review. We once again concur with Eschelon that to the extent PAP issues are raised, it is expedient to address them in one proceeding.

In addition to the issues set forth above, Staff believes that the parties need to determine whether the issues deferred to this proceeding from the Commission's orders in the 271 proceeding still need to be made a part of this proceeding.

Staff also has several other issues. First, Staff believes that the PAP should become self-executing and applicable to all CLECs, without the need to formally opt-into Exhibit K. The purpose of the PAP is to ensure that the local market remains irreversibly open. To determine its effectiveness in part, Staff would like to see a report by Qwest

which shows the number of CLECs currently participating in the PAP, the number of CLECs to whom payment was made, the amount of the payment, and the number of CLECs and their identity that did not opt-in and the amount of penalties that would have been due to them had they opted-in. Staff would also request that the new PIDs and/or standards be reviewed for possible inclusion in Tier II penalties to the extent this would be appropriate. Staff also believes that comment should be received on other PIDs/penalties and whether any changes or modifications need to be made to those, since such a review is called for in the first sentence of Section 16.1.

With respect to Qwest's withdrawal from the LPTA, and its suggestion to do PID review and modification on a CLEC by CLEC basis, Staff believes that since this Commission originally decided to become part of the LPTA process rather than do its own ongoing PID review, how we will handle PID review and modification in the future needs to be examined.

While Eschelon recommends that Staff put together a list of all agreed to and disputed issues, Staff would prefer a process in which the parties get together by conference call and complete an issues list. Staff would hope to complete this before the August 24, 2004 procedural conference, so that a complete list of issues can be presented at that time. To the extent that there are disputes with regard to particular issues, they can be so noted. In order to facilitate list preparation, Staff would ask Qwest and the CLECs to submit a joint filing which lays out the previously agreed to PID changes through the LTPA process that should be added to the PAP. Staff also provides the following list put together from the parties' comments and Staff's own issues as a starting point for the development of a list of potentially disputed issues:

1. Line Splitting – standards for MR-3, 4, 6, 8 and OP-5
2. Loop Splitting – should it be added to P)-5, OP-3, 4, 5, 6 and 15, MR-3, 4, 6 7, and 8 and if so what standard should apply?
3. What Tier should PO-20 be in and should a “burn in” period be allowed?
4. What should the benchmark be for OP-5?
5. Should BI-5 and PO-2 be included in the PAP?
6. Should the product xDSL-I capable loops be included in the PAP?
7. Should Qwest be required to publish on its website aggregate PaP performance and payment reports at the product level (e.g., report payments for “MR-8-DS-1 capable loops.”)?
8. Whether changes to the PIDs based on agreements reached in the LTPA should be automatically incorporated into the PAP.
9. How Arizona PID changes, additions or deletions will be handled in the future if Qwest withdraws from the LTPA? How will remaining issues on the LTPA matrix be handled.
10. Should changes be made to Tier II penalties based upon new products or standards adopted in the LTPA? Are there any other changes to Tier II penalties that would be appropriate?
11. In accordance with 16.1, whether any other measurements should be added, deleted, or modified? Whether any benchmark standards should be

modified or replaced by parity standards? Whether any changes should be made in classification of any measure to High, Medium, or Low or Tier-1 to Tier-2.

12. Issues deferred from the 271 proceeding.
13. Process for future Arizona PAP reviews.
14. Reporting on CLEC opt-in rates and the amount of additional penalties Qwest would incur if all CLECs in Arizona opted-in to the PAP.

3. **Process**

Staff recommends that a procedural conference be held to discuss how best to implement the requirement of Section 16.1 of the QPAP that “Staff shall seek the mutual consent of the parties to any proposed changes.” The parties should also be prepared to discuss what is required by the term “hearing”. For instance, Staff believes that it could potentially encompass a more abbreviated process than a full blown contested case hearing such as oral argument and briefing before the ALJ. Staff believes that, consistent with its original filing, such issues are best resolved through discussion at a procedural conference.

With respect to the dispute over whether documents from the LTPA should be admitted in this proceeding, Staff recommends that parties be permitted to admit these documents since they contain information that will be highly relevant to the issues in this case. Staff believes that it would be very inefficient to try to reproduce the work of the LTPA in this proceeding. However, Staff does not advocate dumping the entire LTPA record into this proceeding. Rather the parties should be able to identify specific documents that pertain to the issues ultimately examined in this proceeding.