

ORIGINAL



0000017563

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

RECEIVED

32R

BEFORE THE ARIZONA CORPORATION COMMISSION

2005 MAR 25 P 3: 52

COMMISSIONERS

AZ CORP COMMISSION
DOCUMENT CONTROL

JEFF HATCH-MILLER, CHAIRMAN
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

IN THE MATTER OF QWEST
CORPORATION'S PERFORMANCE
ASSURANCE PLAN

DOCKET NO. T-01051B-03-0859

NOTICE OF FILING

Qwest Corporation ("Qwest") hereby files the Rebuttal Testimony of Dean Buhler on behalf of Qwest in the above-captioned matter, pursuant to opposing comments filed on March 4, 2005.

RESPECTFULLY SUBMITTED March 25, 2005.

QWEST CORPORATION

By

Norman G. Curtright
Corporate Counsel
4041 N. Central Avenue, Suite 1100
Phoenix, AZ 85012
(602) 630-2187

Timothy Berg
Theresa Dwyer
Fennemore Craig, P.C.
3003 N. Central Avenue, Suite 2600
Phoenix, AZ 85012
(602) 916-5421

Arizona Corporation Commission

DOCKETED

MAR 25 2005

DOCKETED BY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

BEFORE THE ARIZONA CORPORATION COMMISSION

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

IN THE MATTER OF QWEST
CORPORATION'S PERFORMANCE
ASSURANCE PLAN

DOCKET NO. T-01051B-03-0859

QWEST CORPORATION'S
REBUTTAL TESTIMONY

REBUTTAL TESTIMONY OF

DEAN BUHLER

QWEST CORPORATION

MARCH 25, 2005

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

EXECUTIVE SUMMARY

Q. PLEASE STATE YOUR NAME. CURRENT TITLE, EMPLOYER AND BUSINESS ADDRESS.

A. My name is Dean Buhler. I am a Staff Director in the Regulatory Compliance Organization at Qwest Communication International, Inc. My business address is 1801 California Street, 22nd Floor, Denver, Colorado 80202.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. My testimony responds to opposing comments filed on March 4, 2005, the deadline set by procedural order for responsive testimony from Intervenors and Staff,¹ which were only filed by Ms. Elizabeth Balvin on behalf of DIECA Communications Company dba Covad Communications (“Covad”). Qwest anticipated that Staff would also file testimony on March 4, 2005, given the fact that the Arizona Stipulation² entered into by the parties, including Staff, advances the LTPA issue and provides for participation by

¹ See Procedural Order, Docket No. T-01051B-03-0859, dated December 16, 2004.
² See Stipulation of the Parties, Docket No. T-01051B-03-0859, filed November 1, 2004.

1 Qwest and CLECs only if Staff pursues it.

2 The Arizona Stipulation withdraws the LTPA-related issues as between
3 Qwest and the CLECs. It further provides that Qwest and the CLECs reserve
4 their right to participate in the LTPA issue in the event Staff pursues it.
5 Conversely, without Staff's pursuit of the issue, it remains withdrawn;
6 therefore, whether or not the LTPA issue goes forward depends upon the
7 Staff, not on Qwest or the CLECs. While it appears that Staff has not
8 pursued the issue because they did not file testimony by the procedural
9 deadline, to preserve Qwest's position, I respond here to specific points made
10 by Covad in its testimony.
11
12
13

14 **Q. ON PAGE ONE, MS. BALVIN CRITICIZES QWEST FOR FINDING**
15 **FAULT WITH LTPA ONLY NOW IN A POST-271 ENVIRONMENT.**
16 **WOULD YOU LIKE TO COMMENT?**
17

18 **A.** Yes. First, LTPA did not exist before Qwest was given its 271 grant of
19 authority in all 14 states within its local service region. Thus, experience
20 with LTPA was only possible in a post-271 environment. At the conclusion of
21 LTPA, the facilitator requested that parties provide feedback on LTPA.
22 Accordingly, at the first opportunity to formally do so, Qwest provided its
23 comments on May 28, 2004, based on actual experience with LTPA.
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

REBUTTAL

Q. ON PAGES ONE AND TWO OF HER TESTIMONY, MS. BALVIN ALLEGES THAT QWEST SEEKS TO OWN THE PID MANAGEMENT PROCESS, EXERTING COMPLETE CONTROL OVER THE NEGOTIATIONS WITH CLECS. DOES QWEST'S PROCESS PROVIDE QWEST WITH COMPLETE CONTROL?

A. No. The process does not allow either Qwest or CLECs to exert complete control; on the contrary, the process provides a structure for all parties to freely negotiate based on the merits of issues supported by facts and data. The PID Management Process allows a single CLEC or a group of CLECs to raise issues on any Performance Indicator Definition ("PID") or Performance Assurance Plan ("PAP" or "QPAP") at any time. The only request that Qwest makes is that the CLEC document the issue and establish its relevance to the PID or PAP so that parties can commence a meaningful dialog. If anything, the process gives the parties more control of their own destinies by allowing them to attempt to settle issues prior to engaging commission resources.

Additionally, Qwest has made a commitment to negotiate in good faith

1 with CLECs any time a CLEC (or group of CLECs) elects to raise an issue
2 using the process. Even though Qwest makes that commitment, a CLEC is
3 not similarly obligated to negotiate with Qwest. CLECs may take PID or PAP
4 issues directly to state commissions without first negotiating with Qwest.
5 They may also choose their forum based upon the issue; that is, they may
6 elect to raise some issues first with Qwest while taking others directly to state
7 commissions.
8

9 As I pointed out in my direct testimony filed on January 21, 2005, even
10 when CLECs choose to address a performance measurement issue jointly with
11 Qwest, state commissions remain the final arbiter, whether Qwest and the
12 CLECs agree on the issue or it remains in dispute. Qwest's process requires
13 that agreements reached by the parties be filed with the State Commissions
14 to be given effect. Any party can take a disputed issue to a State Commission,
15 which retains its authority as final arbiter. Since all parties retain the right
16 to have disputes resolved before state commissions, it would serve little
17 purpose for any party, Qwest or CLECs, to attempt to control negotiations.
18

19 Since CLECs can raise performance measurement issues at any time
20 with Qwest, but are not constrained to do so, and Qwest has made a
21 commitment to negotiate in good faith any issue worked through the process,
22 it cannot fairly be said that Qwest exerts control over the PID Management
23 Process.
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Q. IN A SIMILAR VEIN, MS. BALVIN ON PAGE TWO ASSERTS THAT THE NUMBER OF QWEST EMPLOYEES WHO ATTENDED LTPA GAVE QWEST THE UPPER HAND IN THAT FORUM. DO YOU AGREE?

A. No, I disagree. The number of Qwest employees who attended the weekly LTPA calls at various times is a reflection of Qwest's responsiveness. They attended to answer unforeseen questions and to take specific action items when answers were not readily available. In any event, votes were not taken in LTPA based on the number of participants, and the number of Qwest representatives could not have been and was not a deciding factor on any outcome.

Q. ON PAGE THREE, MS. BALVIN STATES THAT IT IS MOST EFFICIENT TO INCLUDE ALL PARTIES WHEN ISSUES ARE FIRST ADDRESSED SO THAT NO PARTY CONTROLS THE EXCHANGE OF INFORMATION. IN DOING SO, SHE ASSERTS THAT LTPA WAS SUCCESSFUL IN ACCOUNTING FOR THE NEEDS OF ALL CLECS AND THAT QWEST'S PID MANAGEMENT PROCESS WOULD NOT. IS THAT TRUE?

A. No. The fact is that all CLECs in Qwest's 14-state local service territory had an opportunity to attend LTPA, but only a handful did.

1 Essentially, the CLECs that attended LTPA were the same CLECs who
2 participated in recent Six-Month PAP Reviews: Colorado's Third and Fourth
3 Six-Month PAP Reviews, Washington's Second Six-Month PAP Review and
4 Arizona's First Six-Month PAP Review.³ Each of these PAP Reviews took
5 place after the conclusion of LTPA.
6

7 Likewise, Qwest's PID Management Process calls for a notification to
8 all CLECs in all of Qwest's 14 states to be provided when Qwest and the
9 CLECs discuss performance measurement issues. There are currently 718
10 CLECs that operate in Qwest's 14-state region. All operating CLECs will be
11 noticed and provided an opportunity to attend PID and PAP negotiations to
12 represent their own or common interests.
13

14 Qwest's PID Management Process provides at least the same
15 opportunities as LTPA – and arguably more – for CLECs to pursue and
16 protect their interests.
17

18
19 **Q. ON PAGE THREE, MS. BALVIN STATES THAT THE BENEFIT OF LTPA**
20 **WAS TO ADDRESS ISSUES BEFORE THEY WERE TAKEN TO STATE**
21 **COMMISSIONS, WHICH ALLOWED TIME SENSITIVE ISSUES TO BE**
22

23
24 ³ AT&T, Covad, Eschelon, MCI, McLeod, and USLink participated in the LTPA. Covad,
25 Eschelon, and MCI actively participated in the Washington Second Six-Month PAP Review. AT&T,
26 Covad, Eschelon, and MCI actively participated in the Colorado Third Six-Month PAP Review and in
the Arizona First Six-Month Review. Covad and MCI actively participated in the Colorado Fourth
Six-Month PAP Review.

1 ADDRESSED IN A TIMELY MANNER. DOES QWEST'S PID
2 MANAGEMENT PROCESS ALLOW FOR ADVANCED CONSIDERATION
3 OF ISSUES AND THE CONSIDERATION OF TIME SENSITIVE ISSUES
4 IN A TIMELY MANNER?
5

6 A. Ms. Balvin's statement is a red-herring. As described above, Qwest's
7 PID Management Process places no time constraints on when a performance
8 measurement issue may be raised. Unless a stipulated agreement from
9 another forum exists, an issue may be raised at any time. This freedom
10 allows any time-sensitive issue to be raised immediately. Furthermore, as
11 stated above, Qwest has made a commitment to address issues with CLECs so
12 that if a CLEC believes an issue is time-sensitive and wishes to address it
13 first with Qwest, it may do so without encumbrance.
14

15 In this regard, Qwest's PID Management Process is an improvement
16 over LTPA. LTPA operated on a fixed six-month timeframe and defined the
17 set of issues that the parties addressed from January, 2004 through April,
18 2004 in a specific timeframe – November/December, 2003. Qwest's process
19 does not have that rigid structure. Instead, Qwest's process allows issues to
20 be addressed as they are raised and in recognition of each party's schedule. If
21 CLECs raised a PID or PAP issue while a significant number of other PID and
22 PAP issues were being discussed, parties would need to schedule discussions
23 of the new issues based on the complexity of the issue and the parties'
24
25
26

1 availability, which is normal business practice. This flexibility was not
2 possible with the more rigid LTPA time table.
3

4
5 Q. ON PAGE TWO, MS. BALVIN ACKNOWLEDGES, AS COVAD HAS
6 PREVIOUSLY ACKNOWLEDGED, THAT PARTICIPATION IN LTPA IS
7 VOLUNTARY; HOWEVER, ON PAGE THREE, SHE CONTINUES TO
8 RECOMMEND THAT THIS COMMISSION ENDORSE LTPA AND
9 REJECT QWEST'S PID MANAGEMENT PROCESS. IS THIS
10 CONTRADICTORY?
11

12 A. Yes. Participation in LTPA was voluntary. As indicated in the
13 comments filed in this docket, both Covad and Qwest agree on that point.
14 Likewise, participation in Qwest's PID Management Process is voluntary.
15 Any CLEC at any time may choose to use it or not. Additionally, a CLEC can
16 elect to raise PID or PAP issues directly with a state commission without first
17 negotiating with Qwest.
18

19 Yet, Covad requests that the Commission endorse LTPA, a voluntary
20 forum, and reject Qwest's process, also a voluntary forum. Nevertheless, even
21 if CLECs chose to never use either forum, they always have access to
22 commissions.
23

24 In light of these existing options available to CLECs to raise and
25 resolve PID or PAP issues, as well as the fact that, without LTPA, Qwest and
26

1 CLECs resolved all measurement and QPAP issues in Arizona's six month
2 review⁴, it is not necessary for this Commission to endorse LTPA or reject
3 Qwest's process.
4

5
6 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

7 **A. Yes, it does.**
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

25 ⁴ See Stipulation of the Parties, Docket No. T-01051B-03-0859, filed November 1, 2004.
26

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF QWEST)
CORPORATION'S PERFORMANCE)
ASSURANCE PLAN)
STATE OF COLORADO)
COUNTY OF DENVER)

DOCKET NO. T-01051B-03-0859

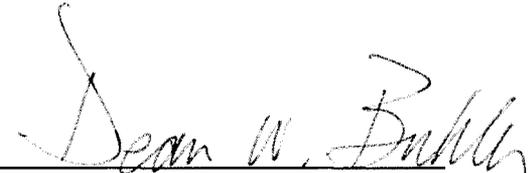
AFFIDAVIT OF
DEAN W. BUHLER

SS

Dean W. Buhler, of lawful age being first duly sworn, depose and states:

1. My name is Dean W. Buhler. I am Staff Director for Qwest Corporation in Denver, Colorado. I have caused to be filed written rebuttal testimony in Docket No. T-01051B-03-0859.
2. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

Further affiant sayeth not.



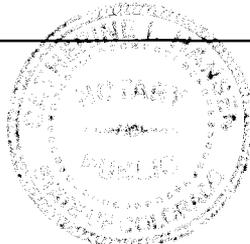
Dean W. Buhler

SUBSCRIBED AND SWORN to before me this 24th day of March, 2005,



Notary Public

My Commission Expires: _____



My Commission Expires July 23, 2006

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**ORIGINAL and 13 copies hand-delivered for
Filing this 25th day of March, 2005 to:**

Docket Control
ARIZONA CORPORATION COMMISSION
1200 W. Washington Street
Phoenix, AZ 85007

**COPY of the foregoing mailed
this 25th day of March, 2005 to:**

Maureen A. Scott, Esq.
Legal Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington Street
Phoenix, AZ 95007

Matt Rowell
ARIZONA CORPORATION COMMISSION
1200 W. Washington Street
Phoenix, AZ 85007

Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington Street
Phoenix, AZ 85007

Daniel Waggoner
DAVIS, WRIGHT & TREMAINE
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101

Lyn Farmer, Chief Administrative Law Judge
Jane Rodda, Administrative Law Judge
Hearing Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington
Phoenix, AZ 85007

Mitchell F. Brecher
Greenberg Traurig, LLP
800 Connecticut Avenue, NW
Washington, DC 20006

Eric S. Heath
SPRINT COMMUNICATIONS CO.
100 Spear Street, Suite 930
San Francisco, CA 94105

Thomas Campbell
LEWIS & ROCA
40 N. Central Avenue
Phoenix, AZ 85004

Joan S. Burke
OSBORN MALEDON, P.A.
2929 N. Central Avenue, 21st Floor
P.O. Box 36379
Phoenix, AZ 85067-6379

Thomas F. Dixon
MCI WORLDCOM, INC.
707 N. 17th Street, #3900
Denver, CO 80202

1 Scott S. Wakefield
RUCO
2 1110 West Washington, Suite 220
Phoenix, AZ 85007
3
4 Michael Patten
ROSHKA, HEYMAN & DEWULF
5 400 E. Van Buren, Suite 900
Phoenix, AZ 85004-3906
6
7 Brian Thomas
Time Warner Telecom, Inc.
8 223 Taylor Avenue North
Seattle, WA 98109
9
10 David Kaufman
ESPIRE COMMUNICATIONS
11 1129 Paseo de Peralta
Santa Fe, NM 87501
12
13
14 Andrew O. Isar
TELECOMMUNICATIONS RESELLERS
15 ASSOCIATION
4312 - 92nd Avenue, N.W.
16 Gig Harbor, WA 98335
17 Jeffrey Crockett
SNELL & WILMER
18 One Arizona Center
Phoenix, AZ 85004-0001
19
20 Michael Morris
Allegiance Telecom of Arizona, Inc.
21 One Front Street, Suite 1850
San Francisco, CA 94111
22
23 Richard Sampson
Z-TEL COMMUNICATIONS, INC.
24 601 S. Harbour Island, Suite 220
Tampa, FL 33602
25
26

Michael M. Grant
Todd C. Wiley
GALLAGHER & KENNEDY
2575 E. Camelback Road
Phoenix, AZ 85016-9225

Mark DiNunzio
COX COMMUNICATIONS
20402 North 29th Avenue
Phoenix, AZ 85027-3148

Traci Grundon
DAVIS, WRIGHT & TREMAINE
1300 S.W. Fifth Avenue
Portland, OR 97201

Joyce Hundley
U.S. DEPARTMENT OF JUSTICE
Antitrust Division
1401 H Street N.W., Suite 8000
Washington, D.C. 20530

Raymond S. Heyman
ROSHKA, HEYMAN & DEWULF
400 N. Van Buren, Suite 800
Phoenix, AZ 85004-3906

Steven J. Duffy
ISAACSON & DUFFY P.C.
3101 N. Central Avenue, Suite 1090
Phoenix, AZ 85012

Kevin Chapman
SBC TELECOM, INC.
1010 N. St. Mary's, Room 1234
San Antonio, TX 78215-2109

Megan Doberneck
COVAD COMMUNICATIONS COMPANY
7901 Lowrey Boulevard
Denver, CO 80230

1 Karen Clauson
ESCHELON TELECOM
2 730 Second Avenue South, Suite 1200
3 Minneapolis, MN 55402

4 Richard P. Kolb
Vice President of Regulatory Affairs
5 ONE POINT COMMUNICATIONS
Two Conway Park
6 150 Field Drive, Suite 300
7 Lake Forest, IL 60045

8 Mike Allentoff
GLOBAL CROSSING SERVICES, INC.
9 1080 Pittsford Victor Road
10 Pittsford, NY 14534

11 
12 _____

Curt Huttzell
State Government Affairs
Electric Lightwave, Inc.
4 Triad Center, Suite 200
Salt Lake City, UT 84180

Diane Bacon, Legislative Director
COMMUNICATIONS WORKERS OF
AMERICA
5818 N. 7TH Street, Suite 206
Phoenix, AZ 85014-5811

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26