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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF QWEST CORPORATION'S PERFORMANCE ASSURANCE PLAN

DOCKET NO. T-01051B-03-0859

BRIEF OF COMMISSION STAFF

I. Introduction

The Arizona Corporation Commission Staff hereby files its Brief on the remaining issue in this case, i.e., the process used by Qwest Corporation ("Qwest") in the future for Performance Indicator Definition ("PID") modification and administration.

II. Background

On June 5, 2002, in Decision No. 64888, as part of the Section 271 approval process, the Commission approved Qwest's Performance Assurance Plan ("QPAP"). The QPAP employs PIDs to measure Qwest's wholesale performance, and was a necessary predicate to Qwest's obtaining Section 271 authority in Arizona. This Commission is charged with enforcement of Qwest's QPAP, the purpose of which is to provide an incentive for Qwest to continue to provide adequate service to wholesale customers following its Section 271 approval.

The QPAP provides individual CLECs with TIER 1 payments if Qwest does not provide parity between the service it provides to CLECs and that which it provides to its retail customers or if Qwest fails to meet applicable benchmarks. Additionally, Qwest is required to make TIER 2 payments to the State if it does not meet other PID parity or benchmark standards on an aggregate basis.

The LTPA process was adopted to ensure that the PIDs remained meaningful and updated so that Qwest's wholesale performance could be effectively measured. On August 5, 2004, Qwest informed parties that it intended to do away with the LTPA multi-state collaborative forum in favor of a much more informal process which Qwest would oversee and be in charge of.

Section 16.0 of the Arizona QPAP provides for a six-month review of the Plan. The Commission's June 18, 2004 Procedural Order established a process to govern the first six-month review of Qwest's Arizona QPAP. On November 1, 2004, MCI, Eschelon, AT&T, Covad, Qwest and Staff filed a Stipulation on all issues, but one. The Parties could not agree on a process for PID modification in the future to replace LPTA. In Decision No. 67575 dated February 15, 2005, the Commission adopted the Stipulation of the Parties, on all issues with the exception of the process to govern LTPA in the future, which remained an open issue.

III. Discussion

A. Qwest Was Not Entitled to Unilaterally Terminate the Long Term PID Administration Process.

Considerable time was spent in the initial phases of the Arizona 271 proceeding developing a set of PIDs to govern Qwest's 271 Operational Support Systems ("OSS") test as well as to ultimately govern Qwest's overall wholesale performance to its competitors. The PIDs developed as part of the Arizona process ultimately were used by Qwest as a basis for development of its regionwide PIDs.

As Qwest Witness Dean Buhler noted in his Direct Testimony, the Arizona Commission initially utilized a "Technical Advisory Group", or "TAG" to oversee the Arizona OSS test and to deal with test and PID issues. *Id.* at p. 7. The Arizona TAG was the predecessor to the post-OSS test LTPA forum. *Id.* Considerable time went into developing the ground rules or governance principles for both the TAG and its subsequent region-wide counterpart, LTPA. Both processes were developed in a collaborative fashion to ensure a democratic process whereby both Qwest and the CLEC community would have the benefit of established ground rules to ensure fair and maximum participation in the process, with a fair

and uncompromised outcome.

The LTPA process is critical to ensure that the PIDs remain meaningful and to ensure that any measurement problems are detected early and rectified. To imply as Qwest Witness Buhler does in his Direct Testimony, that the LTPA is an outdated process, is not accurate. Further Staff does not agree with Mr. Buhler's characterization of the LTPA process as "politically sensitive with brooked discussions of issues independent of facts and figures". Quite to the contrary, both the TAG and LTPA were in Staff's opinion, open and collaborative processes which given their nature lent considerable credibility to the ultimate decisions made therein.

Given the strict governance rules of both the TAG and the LTPA, and the importance of this process to post 271 compliance assurance, Staff does not believe that Qwest was entitled to unilaterally implement a fundamental change in the process without CLEC or Commission agreement. This Commission is charged with monitoring and ensuring Qwest's compliance with its Performance Assurance Plan. The purpose of the Performance Assurance Plan is to ensure that Qwest does not backslide on its 271 obligations. The basis of the Performance Assurance Plan is an effective and updated set of PIDs. The LTPA process provided assurance that the PIDs would continue to be effective and relevant to the CLECs' wholesale business, and provided a set of indicators that the Commission could rely upon to carry out it responsibilities.

While Qwest Witness Buhler identifies several problems with the LTPA process, on page 8 of his Direct Testimony, Staff believes that those issues should have been resolved by all parties, rather than by Qwest's unilateral withdrawal of the LTPA process which the Parties worked very hard to create. In summary, Staff does not believe that Qwest had a right to unilaterally withdraw the LTPA process and substitute a more closed, less transparent process in its place.

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B. The CLECs Are Entitled to Input Into Any New Process.

Staff agrees with the position of the CLECs filed with the Commission on December 10, 2004, attached to the testimony of Ms. Elizabeth Balvin filed on behalf of DIECA Communications Company dba Covad Communications ("Covad"), that the CLECs as an equal partner in this post 271 process, are entitled to input into any changes to the LTPA process and that changes to the process need to be made in a collaborative fashion.

The Commission should require Qwest to enter into a collaborative process with the CLECs to determine what changes should be made to the LTPA process. If an impasse is reached on any issue, Qwest and the CLECs should be required to bring the issue back to the Commission for resolution. As the CLECs indicated in their December 10, 2004 filing with the Commission, "Qwest may be able to reach consensus on some revisions to LTPA, if Qwest was to take a cooperative, rather than a unliteral, approach."

Staff believes that unless the process continues to be a collaborative and transparent process, the Commisison will not be able to rely upon the decisions made to the same extent as decisions resulting from the LTPA process.

C. Qwest's PID Management Process Lacks Structure and a Truly Collaborative Nature to Be Effective.

In reviewing Qwest's website and the brief description contained thereon outlining Qwest's new PID modification process, Staff has several concerns. First, there is little structure to the new process. Unlike the LTPA, there are no ground rules and no governance rules. Second, there are no timelines for the process. The process could theoretically take up to three years or longer. Third, the process is not transparent. Rather, Qwest has unilaterally structured a closed process which will lend little, if any, credibility to the results produced. Fourth, the new PID modification process puts too much control in the hands of Qwest. Unfortunately, Qwest is not at all a "neutral" third party in this scenario, but rather the Company has a lot at stake which leads Staff to believe that the temptation will always be there to "not move quite as fast" or "not to provide as much information as it might otherwise do" all of which will only serve to compromise the entire process and its outcome.

D. The Commission Should Require CLEC Input Into a New Process for LTPA II and Should Require Agreement Between Qwest and The CLEC Community On The Process for LTPA II With Any Impasse to be Resolved by the State Commission. If Qwest is Unwilling to do This, The Commission Should ReConsider Whether To Utilize the TAG In the Future to Review QPAP and PID Changes on an ongoing basis.

Staff believes that in order for the Commission to continue to be able to effectively monitor Qwest's performance for backsliding purposes, the Commission needs to be assured that the PIDs are being developed and fine tuned in a collaborative, open process. Thus, the Commission should require CLEC input into any new process for LTPA II and should require agreement between Qwest and the CLEC Community on the process for LTPA II. Should Qwest be unwilling to do this, the Commission should reconsider whether to utilize the Arizona TAG to review any changes to the PAP or PID's on an ongoing basis in the future.

Qwest Witness Buhler's position that the six month review process would act as a good substitute for the LTPA, in allowing CLECs to bring issues directly to the State commissions, ignores a critical component of the LTPA process. One of the primary advantages of the LTPA process is that it allows for a complete airing of the issues by all affected parties before it ever reaches the State commission for acceptance. By the time a State commission is asked to make a decision, it has well defined positions before it which have been developed over time and which are supported by facts and other information or data. This part of the LTPA process would be difficult, if not impossible, to replicate in the course of a six month review before the Commission.

Finally, Qwest Witness Buhler portrays Qwest's new process as simply Qwest deciding "how it will run its business and what voluntary activities it will and will not engage in." *Id.* at p. 5. This is a grave mischaracterization of the post-271 process and the Commission's role in overseeing Qwest's post-271 performance. The FCC and the Federal Act puts the Commission in charge of Performance Assurance Plan enforcement in Arizona, not Qwest.

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IV. Conclusion

In summary, Staff believes that the Commission should require Qwest to develop, through a collaborative process, any changes to the ground rules for LTPA II. Absent Qwest's willingness to do this, the Commission should consider reinstating the Technical Advisory Group in Arizona to review any changes to the PAP or PID's on an ongoing basis.

RESPECTFULLY SUBMITTED this 28th day of April, 2005.

By: _____

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