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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF QWEST)
CORPORATION'S PERFORMANCE)
ASSURANCE PLAN)
)
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DOCKET NO. T-01051B-03-0859

COVAD'S RESPONSE BRIEF

DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad") files this response brief in support of the Long Term PID Administration ("LTPA") process:

Covad files this response for the limited purpose of rebutting or correcting certain of the representations Qwest made in its opening brief.

First, Qwest would have the Commission believe that the LTPA is a flawed process and that, in particular, nothing significant or fruitful came out of LTPA. This is not accurate. As Qwest acknowledges in its own brief, several agreements, including significant modifications to Qwest's Performance Indicator Definitions ("PID"), were reached in LPTA.

Qwest further argues that because LTPA agreements would require Commission approval that the process is somehow inadequate. This argument makes no sense. To the contrary, the provision in LPTA that it be submitted to the Commission for binding

approval on the parties, including Covad and Qwest, is a signal of the strength of the LTPA process.

Second, Qwest contends that its own PID management process is an adequate substitute for LPTA. Qwest has no factual basis to support this assertion. As it turns, to the best of Covad's knowledge, no CLEC has used Qwest's own internal PID management process and, consequently, it is impossible for this Commission to conclude that it is an adequate substitute to LPTA. The LTPA is a tested process, the fruits of which have been borne out by the agreements reached in that forum. Moreover, the fact remains that a process developed with the participation and agreement of all parties and this Commission is far and away the fairest way to administer an LPTA. Qwest's unused and opaque PID management process was developed by Qwest without the input or approval of the parties most impacted by changes to PIDs, Covad and other CLECs. This is neither fair nor administratively efficient.

Third, Qwest has made several legal arguments in support of the proposition that the Commission has no authority to require Qwest to participate in a voluntary endeavor. This argument is specious. Under section 16 of Qwest's Performance Assurance Plan ("QPAP"), Qwest agreed as follows:

Qwest acknowledges that the 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 it sees fit and deems necessary upon Commission order after notice and hearing. (emphasis added).

The very broad grant of authority the Commission holds under the QPAP undercuts any suggestion that the Commission lacks authority to order Qwest to participate in the LTPA. Modification of the PAP could very well include imposition of a LTPA style

process for PID modification. After all, the LTPA is similar in many respects to the QPAP six month review itself but, quite unlike that process, the LTPA allows parties to make changes to the PID more frequently as needed.

Qwest further argues that the Commission does not have authority to delegate its powers to an LPTA forum. This argument ignores the realities of an LPTA. It is not intended as a grant of power to a third party to impose its will upon Qwest or third parties but rather a forum where such parties endeavor to reach agreement on the definition of PIDs. Moreover, the Commission does in fact have legitimate power to delegate some its responsibilities to hearing officers and arbitrators. Hearing officers could easily preside over and make decisions regarding administration of a LPTA without the regular involvement of the Commission. To the extent the parties reach an impasse, a hearing officer can make non-binding recommended decisions to the Commission regarding particular PIDs.

Fourth, Qwest argues that the willingness of the CLECs to withdraw consideration of the LPTA from the QPAP six month review is an indication that the CLECs did not consider the LPTA to be critical. Nothing could be further from the truth. As Qwest knows, Covad and the participating CLECs agreed to drop its short term attempt to reach consensus on the LPTA in order to get the six month review stipulation executed so that the new PIDs could be implemented. There has never been any indication or signal from Covad that it had waived its right to request this Commission to impose LPTA on Qwest. Covad's continuing participation in this docket is the strongest indication the Commission has to conclude that Covad has not waived any such rights.

In light of the foregoing and the statements made in Covad's direct testimony, Covad proposes entry of an order establishing an LTPA forum on terms and conditions acceptable to the Commission.

RESPECTFULLY SUBMITTED this 13th day of May, 2005.

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