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BEFORE THE ARIZONA CORPORATION COMMISSION

Commissioners
MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

IN THE MATTER OF QWEST CORPORATION'S PERFORMANCE ASSURANCE PLAN

DOCKET NO. T-01051B-03-0859

QWEST CORPORATION'S RESPONSIVE COMMENTS REGARDING STAFF'S REPORT

Pursuant to the Procedural Order dated September 19, 2007 in this matter, Qwest Corporation ("Qwest") submits the following comments relating to Staff's Report in the matter of Qwest's Performance Assurance Plan ("PAP") submitted on January 17, 2008.

I. Introduction

On June 22, 2007, Qwest, Eschelon Telecom, Inc., DIECA Communications d/b/a Covad Communications Company and McLeod Telecommunications Services, Inc filed with the Arizona Corporation Commission ("Commission") a Notice of Stipulation Regarding Certain Performance Indicator Definitions ("PIDs") and Qwest Performance Assurance Plan ("QPAP") Provisions and Joint Motion to Approve Same on Behalf of the Stipulating Parties. Subsequently, the Commission convened a procedural conference to identify the appropriate procedures to review the proposed modifications in which the parties, including Commission Utilities Division Staff ("Staff"), participated. At the procedural conference, it was agreed (and subsequently ordered by the Administrative Law Judge), that because a Six Month Review had not been held for some time comments on the Stipulation would be sought in conjunction with any other items

generally concerning the PIDs and QPAP.

Parties in the docket were first asked to notify the Commission if they wanted to remain on the service list. Initial comments were due November 19, 2007 (60 days after the conference). Reply comments were due on December 17, 2007; Qwest filed reply comments. Then on or before January 17, Staff was to "synthesize the parties' comments and file its Staff Report including Staff's procedural and substantive recommendations concerning the Stipulation and QPAP."[1] However, rather than filing a Staff Report on the stipulation, Staff suggests further review of uncontested issues.

Of the roughly 100 CLECs operating in Arizona having entered an interconnection agreement with Qwest, five indicated they were interested in the Stipulation or QPAP issues generally by electing to remain on the service list; none proposed additional issues in this proceeding when given the opportunity to do so. Staff's statement in the report that CLECs do not participate unless ordered is an unsupported assertion. Experience in these matters shows that CLECs participate when they are interested and when the issues concern them, as they did when they reached the agreement on the issues contained in the Stipulation. For instance, while Staff points out that the Loop Qual Audit is underway, there is no mention of the CLEC that is voluntarily participating in that exercise. The Loop Qual Audit is not yet ripe for inclusion. The audit has just begun and certainly not reached a place where conclusions can be drawn or recommendations made. Staff further suggests that it would be appropriate to subject Qwest to tracking and measurements related to two "new technologies" when the products associated with those technologies neither fall within the scope of Section 251 of the Telecommunications Act nor are the subject of interconnection agreements under Section 252.

Though directed to synthesize comments, Staff does not acknowledge that the Stipulating parties agree and that the three other parties that remained on the service list offered no objection

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[1] Procedural Order, Docket No. T-01051B-03-0859, page 2, lines 13-15.

or comments. Staff offers no substantive reason for further review of the items agreed upon in the Stipulation, but instead suggests more review is in order now. In addition to being a part of the discussions resulting in agreed-upon changes to the PID Management Process (that were posted in March 2006), Staff was made aware on several occasions of the ongoing PID Management Process discussions and the nature of the issues being addressed.[2]

Since the filing of the Stipulation in June 2007, interested parties in Arizona have had ample opportunity to raise issues and express concerns and have not done so. Qwest continues to state that it is still appropriate for the Commission to grant the Joint Motion, approve the proposed modifications to the QPAP, allow the PID to go into effect and consider the review complete.

II. Procedural Issues

As a self-executing remedy plan, the QPAP encourages Qwest, primarily through monetary mechanisms, to provide nondiscriminatory wholesale service comparable to its own retail services. QPAP Section 16.0 states that "Staff shall seek the mutual consent of the parties to any proposed changes." The proposed changes identified in the Stipulation and the PID and QPAP documentation were voluntarily negotiated and retain the essential nature of the QPAP. None of the changes presented in the 2007 Stipulation have been objected to or commented upon. Given that the Stipulation is part of the record and no party, including Staff, has chosen to provide proposals that contravene any of its provisions or voiced any opposition to the changes it contains, it is reasonable to conclude that mutual consent for the issues covered by the Stipulation is present. With mutual consent to those proposed changes in place, Qwest submits that further

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[2] In addition to a notice provided to state staff members in the 14 states, see e.g. June 30, 2006 Letter from Dave Zeigler to Ernest Johnson.

review is not necessary regarding the changes in the Stipulation and the Commission may act to approve those changes pursuant to Section 16 of the QPAP.

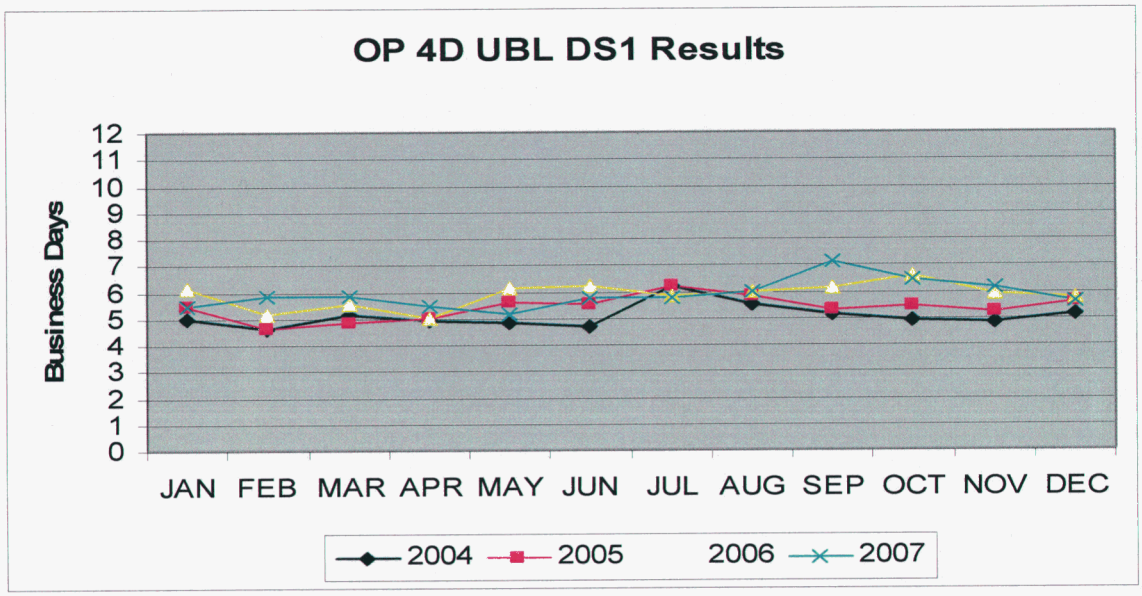
III. Qwest Analysis of Staff Report

A. The Staff's Suggestion that Further Modification of an Unspecified PID Might be Desirable Misinterprets Data, Fails to Identify a Problem and Should be Denied

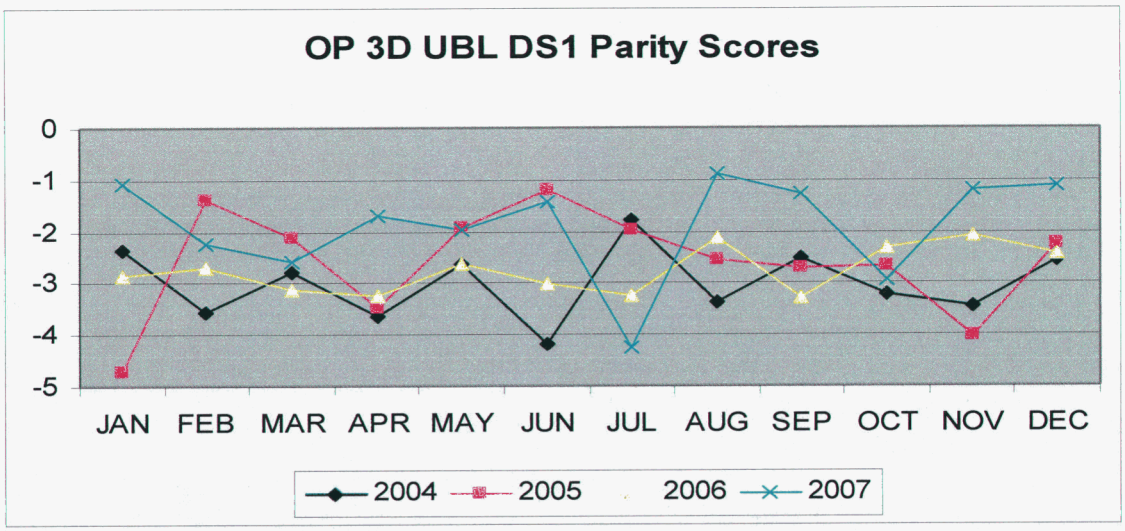
The Staff Report contends the chart on page 4 of OP-3, OP-4 and OP-5 payments "...shows wide swings in monthly PID performance by Qwest" that warrants examination in a Six Month Review and "...suggest some modification to one of these PIDs may be desirable." The data Staff presents are not performance data but rather monthly payment amounts aggregated at the highest level. Presentation of that data as the Staff has done, gives the appearance of erratic performance which in reality does not exist. Combining payment data to attempt to reflect performance provides a distorted and incomplete picture. Staff charted payments at the PID level and drew conclusions that are not actually supported by the data. They characterize the monthly variance in the payment to be a wide swing in performance but when the data is depicted where the standards are actually assessed – at the submeasure and product level – there is evidence that performance does not swing widely--but rather there are isolated instances where performance is outside the normal range. Performance based intelligence may not be derived from payment data; rather, it requires performance data. Staff offers no evidence or substantiation for any proposed change. While a Six Month Review is one appropriate forum to address modifications to PIDs contained in the QPAP, Staff has failed to define an issue that requires additional attention or to identify any performance measurements that should be modified.

In support of its position, Qwest offers the following two examples involving Unbundled DS1 Loops in both a benchmark and a parity measurement context. For Unbundled DS1 Loops,

aggregate performance information is charted for each calendar year from 2004-2007. Presented below is the Zone 1 disaggregation with a benchmark of 5.5 business days and as shown, the performance centers between 5 and 6 days. There are no wide swings in performance as suggested by the Staff.



Another view of Qwest's performance relative to the installation of Unbundled DS1 Loop is its performance under OP-3 – Installation Commitments met. OP-3 is also disaggregated by Zone but is a parity measure comparing on-time DS1 loop installations with on-time Retail DS1 installations. The charts below depict the calendar year performance as determined by the parity score each month. A parity score below zero indicates a met result that would trigger no payment in the QPAP. As shown the parity scores in Zone 1 have consistently been below zero.



Thus, when analyzed appropriately, the data actually reveals Qwest performance is consistently satisfactory and further review of performance measurements is not warranted at this time.

B. The Staff's Recommendation for Further Review of the PID Management Process Compared to the Failed LTPA Is Without Basis, and Should Be Denied

The 2007 Stipulation filed by Qwest and the Joint CLECs results from the successful application of the PID Management Process, substantially as that process existed when the Commission signed off on the last Six Month Review in 2005.[3] In the face of that success, Staff nevertheless seeks to launch an entirely new round of review, to determine whether the PID Management Process is satisfactory compared to the optional, non-binding predecessor process[4] that ended four years ago. The Staff apparently discounts the fact that the current process has achieved its purposes, as proven by the very existence of the Stipulation jointly filed by Qwest

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[3] Decision No. 68240, docketed October 25, 2005.
[4] That process was known as the Long Term PID Administration, or "LTPA."

and the Joint CLECs. Perhaps the reason is that the Staff appears to have confused different processes. Staff mistakenly states that an Eschelon complaint (the "Eschelon Expedites Complaint")[5] made against Qwest in 2006 arose out of the PID Management Process. In point of fact, the Eschelon Complaint involved requests for expedites for service, which arose out of a completely different process, the Change Management Process ("CMP"). CMP is separate and distinct from the PID Management Process, and does not modify either the PIDs or the QPAP. The Staff does not cite any instances of abuse, or complaint regarding the PID Management Process. Staff does not bring forward any examples of PID Management Process failures, or lack of transparency, or lack of openness, or lack of timeliness, or lack of overall effectiveness. The Staff's request for more review of PID Management Process has not been supported, and the request should not be adopted.

The Staff's Report mistakenly equates the PID Management Process with CMP, and erroneously states that the recent Eschelon Expedites Complaint against Qwest "involv[es] the very PID management process that Qwest has advocated as the alternative to the LTPA." As noted above, the Eschelon Expedites Complaint against Qwest involved the CMP.[6] The CMP does not involve PIDs; nor is the CMP an alternative to the failed LTPA.[7] The CMP documentation expressly provides that PID management is not the purpose of CMP.[8] The Staff's

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[5] *See, In the Matter of the Application of the Complaint of Eschelon Telecom of Arizona, Inc., Against Qwest Corporation*, Ariz. Corp. Comm'n. Docket Nos. T-03406A-06-0257, T-01051B-06-0257.

[6] Staff's Post Hearing Brief in the Eschelon Expedites Complaint describes the controversy in that proceeding as follows:

> This case involves a complaint by Eschelon . . . alleging that Qwest was denying it the ability to expedite Local Service Requests under its Interconnection Agreement . . unless it signed an Amendment it to its ICA . . . Qwest relies upon the Change Management Process ("CMP") to justify its actions." Staff's Post-Hearing Brief, Docket No. T-03406A-06-0257, page 1.

[7] CMP was approved by the Commission as part of Qwest's Section 271 application. Information concerning CMP may be found on Qwest's wholesale services website, at http://www.qwest.com/wholesale/cmp/.

[8] Qwest Wholesale Change Management Document, Section 2.6.

request that the Commission "review the Change Management Process to determine if its use is satisfactory," obviously is premised on an erroneous understanding, because the CMP does not apply to PID management.[9] Likely, Staff means to say that it recommends review of the PID Management Process; and if that is Staff's intention, the Staff's citation of the Eschelon Expedite Complaint as a basis for the request for review of the PID Management Process is wrong, because the Eschelon Expedite Complaint arose out of CMP, not out of the PID Management Process.

When the Commission decided in 2005 to permit Qwest to proceed with the PID Management Process, it was over the objections of the Staff, who favored the optional, non-binding LTPA, despite the fact that, as the Commission found, "Staff participation in the LTPA was limited," and despite the fact that, "the parties were able to negotiate PID modification in connection with the first Six Month Review without the LTPA process."[10] Nevertheless, the Commission noted the Staff's concerns about the then-new PID Management Process. Those concerns, which were only speculation because the PID Management Process had not been tried, focused on the "amount of control over the process" in the hands of Qwest, the "transparency and openness" of the process, and the lack of timeliness for the process." Further, Staff worried about whether the process would allow for a means "to involve commission staffs."[11] On the other hand, the Commission recognized that there were serious issues with the predecessor LTPA process, and that "on paper," and "in theory" Qwest's PID Management Process allowed for all interested CLECs to obtain information on pending PID modification requests with an

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[9] The initial confusion by Staff between the roles of CMP and PID Management first appeared in the Eschelon Expedites Complaint, in which the Staff made the following recommendation:

> Staff recommends that a performance measurement for expedites of Unbundled Loops be developed through CMP and that the rates for expedites be considered as part of the next cost docket.[9] Staff Comments, Docket Nos. T-03406A-06-0257, T-01051B-06-0257, p. 2, 4, March 9, 2007.

[10] Findings of Fact ¶36, Decision No. 68240.

[11] Id., ¶¶35, 37.

opportunity for any CLEC to participate.[12] Faced with these conflicting views, the Commission wisely decided that the best course of action was to try to see if the PID Management Process would work: "We can better evaluate the effectiveness of Qwest's process after the parties have had some experience with it."[13]

In Decision No. 68240, the Commission also asked the industry and Staff to discuss the concerns raised about the new PID Management Process. As a result of those ensuing discussions, the Process was changed to include management of PAPs as well, and to add timeframes for when Qwest should respond to submissions of requests to modify PIDs or PAPs. Another change resulting from those discussions was made to provide notice to state commissions' staffs during the process, after initial discussions complete.

Now, over two years have elapsed under the PID Management Process. Under that process, Qwest and its CLEC counterparts have been able to agree on modifications, which have been jointly proposed in this proceeding. By any standard, the bringing forth of that work product evidences that the industry can work within this process.

Staff's recommendation that the industry comment on the [successful] PID Management Process to determine whether its use is satisfactory compared to the [failed] LTPA is unnecessary in light of the comment cycle the Commission has just completed in this proceeding. As noted above, the Commission provided notice of this proceeding to every CLEC that has an interconnection agreement with Qwest in the State of Arizona (around one hundred CLECs), providing them the opportunity to comment "on the Stipulation, <u>as well as on any other issues concerning the QPAP and PIDs</u>."[14] Not a single CLEC commented on the Stipulation, on how it was formulated <u>or on the PID Management Process</u>.

The Commission stated in Decision No. 68240 that the parties should propose an

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[12] Id., ¶35.
[13] Id., ¶39.
[14] Procedural Order, September 19, 2007. (Emphasis added).

alternative procedure for PID management during the next Six Month Review if the parties' experience with Qwest's PID Management Process finds it to be unfair, inaccessible or ineffectual. In practice it has proven to be fair, accessible and effective, and the Staff has not presented a single example or comment by an industry participant to the contrary. The Staff's recommendation for further review of the PID Management Process should be denied.

C. Staff had Four Months to Review the Issues in the Stipulation and Failed to Comment Substantively, They Should Not be Granted More Time for Review

In this proceeding, the ALJ clearly ordered Staff to comment procedurally and substantively on the Stipulation and the QPAP in its Report but, in essence, Staff only recommends that more review, in the form of a Six Month Review, be conducted despite the fact that the Parties discussed, during the Procedural Conference, the submission of additional issues as a procedural avenue to address the Six Month Review. Qwest objects to another review of the issues embodied in the Stipulation. Staff has had many months to consider it, but offers no alternatives or objections. The Stipulating Parties have affirmatively stated that during the discussions they sought to ensure that the resolution (changes to the PID and QPAP proposed for adoption in the Stipulation) serve the public interest. Arizona strongly favors settlements and voluntary resolution of issues serves the public interest.[15] Mutual consent has already been reached and no objections have been noted; participating parties stipulated to certain defined issues. All of this has been accomplished under the PID Management Process, which was implemented after discussion with the industry and with the Staff, just as this Commission ordered. Further, there has been ample opportunity to offer additional issues in a substantive

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[15] *See e.g.* Miller v. Kelly, 212 Ariz. 283 (Ariz. Ct. App. 2006); In re Washington Public Power Supply System Sec. Litigation, 720 F. Supp. 1379 (D. Ariz. 1989)

fashion and parties have chosen not to do so. If issues arise later, Staff could request that a Six Month Review be opened at that time when the issue is ripe. The Staff's recommendation for further review of the Stipulation and the QPAP should be denied.

IV. Qwest Recommendation and Request

Thus, Qwest requests the Commission grant the Joint Motion, approve the proposed modifications to the QPAP, allow the PID to go into effect and consider that this review cycle complete, all of the purposes of a Six Month Review having been satisfied.

RESPECTFULLY SUBMITTED, this 30th day of January, 2008.

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