OPEN MEETING

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ORIGINAL

MEMORANDUM

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Arizona Corporation Commission
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AZ CORP COMMISSION
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TO: THE COMMISSION

FROM: Utilities Division

DATE: August 21, 2008

RE: IN THE MATTER OF THE APPLICATION OF THE ARIZONA DEPARTMENT OF ECONOMIC SECURITY FOR WAIVER FROM THE FUNDS DISTRIBUTION REQUIREMENT OF DECISION NO. 68498 - PURSUANT TO A.R.S. § 40-252 (DOCKET NOS. T-01051B-03-0454 AND T-00000D-00-0672)

On March 23, 2006, the Arizona Corporation Commission ("Commission" or "ACC") issued Decision No. 68604. In Decision No. 68604, the Commission among other things increased the funding for the Telephone Assistance Plan for the Medically Needy ("TAP"), which was established by the Commission in Decision No. 57462 (July 15, 1991), from a total of $1.0 Million annually to $2.0 Million annually, exclusive of any federal funding received. The decision requires that a separate funding of $100,000 annually be deducted from the $2.0 Million fund to offset the reasonable administrative costs incurred by community agencies in enrolling qualified applicants in the TAP program. The decision requires the Arizona Department of Economic Security ("DES"), on a quarterly basis, to determine and invoice Qwest for each community agency's pro-rata share of the $100,000 annual funding based upon the number of TAP applications each agency has processed in a quarter. The decision further requires that Qwest consult with DES and submit a plan to the Commission which determines how each agency's pro-rata share is to be determined.

On July 23, 2008, DES filed an Application to Amend Decision No. 68604. In the Application, DES specifically seeks a waiver of the distribution requirements in Decision No. 68604. According to DES, "this requirement is problematic, as the quarterly payment recommendation does not lend itself easily to the DES procurement requirements. As written, the Order will require DES to project a potential contract ceiling award for each of the 10 CAAs, and then complete mid-year amendments to adjust contract awards consistent with the actual pro-rata shares. This places increased administrative burden on both CAAs and on DES to execute effectively. DES has no other mechanism to reimburse community action agencies for their administrative costs." As an alternative to the distribution requirement of Decision No. 68604, DES recommended two options. Option 1 is the distribution of the $100,000 annual funding based upon the DES Community Action Programs and Services ("CAPS") funding formula. The CAPS funding formula allocates funds based on census of the number of persons at or below 125% of poverty within a geographic service area. Option 1 is DES' preferred distribution methodology. Option 2 is the distribution of the $100,000 annual funding based upon the number of TAP applications each agency has processed in the previous State Fiscal Year ("SFY"). According to DES, Option 2 is "not the preferred method" but it "will work

effectively with its procurement process." Since the issuance of Decision No.68604, DES has not distributed any of the $300,000 accumulated. According to DES representatives, the $300,000 will be distributed retroactively. DES in its Application had stated that Staff had rejected both of the Options presented by DES on earlier occasions. Staff would note that its earlier rejection of the two options was not based upon any substantive disagreement with them, but rather was based solely upon the fact that neither option complied with the Commission's Decision and the Settlement Agreement.

On August 13, 2008, the Commissioners decided to reopen the matter pursuant to A.R.S. § 40-252, to allow an opportunity to be heard on DES's Motion to Amend Decision No. 68604.

This matter is set for deliberation by the Commissioners at the August 26, 2008 Open Meeting and provides for an opportunity to be heard on the matter prior to the Commissioners taking any action.

Based on its analysis, Staff concludes that DES' request for a waiver of the distribution requirement in Decision No. 68604 is reasonable. Therefore, Staff recommends that the Commission issue an Order requiring the distribution of the $100,000 annual funding, to the community agencies, be based on DES Community Action Programs Service Funding Formula.

for Ernest G. Johnson
Director
Utilities Division

EGJ:BNC:tdp

Originator: Blessing Chukwu

BEFORE THE ARIZONA CORPORATION COMMISSION

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

IN THE MATTER OF QWEST CORPORATION'S FILING OF RENEWED PRICE REGULATION PLAN	DOCKET NOS. T-01051B-03-0454 T-00000D-00-0672 DECISION NO. _____
IN THE MATTER OF THE INVESTIGATION OF THE COST OF TELECOMMUNICATIONS ACCESS	**ORDER**

Open Meeting
August 26 and 27, 2008
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

A. Introduction

1. On July 23, 2008, the Arizona Department of Economic Security ("DES") submitted an Application for Waiver from the Funds Distribution Requirement of Decision No. 68604. DES requested that the Arizona Corporation Commission ("Commission") grant a waiver from the provision in its Order requiring DES to determine on a quarterly basis, each Community Action Agency's pro-rata share of the $100,000 annual set-aside based upon the number of Telephone Assistance Plan for the Medically Needy ("TAP") applications each agency has processed in the quarter.

2. Staff recommends approval of DES' application for waiver pursuant to A.R.S. § 40-252.

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B. Background

3. Commission Decision No. 68604 approved a Settlement Agreement between Qwest Corporation ("Qwest"), the Commission's Utilities Division Staff, the Department of Defense and All Other Federal Executive Agencies ("DOD"), MCI, Inc., Time Warner Telecom of Arizona, LLC ("Time Warner"), Cox Arizona Telcom, L.L.C. ("Cox"), the Arizona Utility Investors Association ("AUIA"), and XO Communications Services, Inc. ("XO") with regard to Qwest's application for approval of Renewed Price Regulation Plan.[1]

4. The Settlement Agreement approved in Decision No. 68604 provided for an increase in funding for the TAP. In Paragraph 13(c) of the Settlement Agreement, Qwest agreed to increase its funding of that program to $2.0 Million annually, exclusive of any federal funding received. In addition, the Agreement provided for an annual set-aside of $100,000 of the $2.0 Million to cover the reasonable administrative costs incurred by community agencies that assist DES in enrolling qualified applicants in the TAP.

5. Paragraph 13(c) went on to provide that "On a quarterly basis, DES shall determine, and invoice Qwest for, each community agency's pro-rata share of the $100,000 annual funding based upon the number of TAP applications each agency has processed in the quarter." Finally, the Settlement Agreement provided that "Qwest shall consult with DES and submit a plan to the Commission which determines how each community agency's pro-rata share is to be determined."

6. DES indicated in its Petition that Qwest has historically partnered with DES and the Arizona Community Action Agencies ("CAAs") to administer the TAP program. DES stated that it provides both administrative and direct services by conducting training, customer-service, data-entry, and outreach activities. DES also stated that the CAAs provide case management services to low-income customers and coordinate application intake systems, conduct client interviews and determine client eligibility. Decision No. 68604 provided for the set-aside to be distributed to CAAs to offset administrative costs incurred while completing these administrative tasks in conjunction with processing TAP applications.

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[1] *In the Matter of Qwest corporation's Filing of Renewed Price Regulation Plan et al,* Docket No. T-01051B-03-0454 et al. Docket No. T-00000D-03-0454 et al.

7. At a Commissioner-Staff Open Meeting held on August 13, 2008, the Commission voted to rehear Decision No. 68604 for the narrow purpose of deciding whether to grant DES's waiver of the quarterly administrative distribution requirement based upon the number of TAP applications each agency has processed in the quarter.

8. On August 19, 2008, the Commission provided notice to all parties in Docket No. T-01051B-03-0454 and interested members of the public, that it would be considering this matter at its Open Meeting on August 26 and 27, 2008.

C. DES' Application

9. DES states in Application that the existing requirement in the Settlement Agreement approved by Decision No. 68604 for DES to determine and invoice Qwest for each CAA's pro-rata share based upon the number of TAP applications processed in a given quarter is problematic because the process does not lend itself easily to the DES procurement requirements. DES states that the Order requires DES to project a potential contract ceiling award for each of the 10 CAAs, and then complete mid-year amendments to adjust contract awards consistent with actual pro-rata shares. This, according to DES, places increased administrative burden on both the CAAs and on DES.

10. DES presented two options for Commission consideration in its Application to solve this problem. The first option would allow for distribution of the $100,000 in annual funding based upon the DES Community Action Programs and Services ("CAPS") Funding Formula. DES states that the CAPS funding formula allocates funds primarily based upon the number of persons at or below 125% of poverty within a geographic service area, and is currently used to distribute over $23 million in federal and local dollars to community action agencies. DES states that "the formula method is widely accepted by the community action network as the preferred approach to funds allocation, has been approved by federal funding agencies, and is considered the most equitable mechanism to distribute funds for the provision of services to low-income populations." DES also notes that under Option 1, funds are directed toward the intended service population, rather than the administrative ability of an agency to provide service. As a result, the method ensures services are made available in all areas of the state, not just areas where capacity already exits.

11. The second option presented by DES would be for distribution of the $100,000 set-aside based upon the number of TAP applications each agency has processed in the previous State

Fiscal Year. DES states that this strategy will enable DES to identify contract ceilings based upon the previous year's pro-rata shares, and then reimburse community agencies on a monthly basis (as is the present practice with other fund sources) without the need to make contract adjustments via mid-year amendments.

12. DES states that it prefers Option 1 to allocate the set-aside in the future. DES further states that DES, Qwest and the Community Action Network agree that the funds set aside for administrative costs should be distributed according to Option 1.

D. Staff Analysis and Recommendations

13. Given the increased administrative burdens to both DES and the CAAs as a result of the current distribution methodology, Staff believes that the Commission should grant DES' Application for Waiver.

14. Staff supports the adoption of Option 1 by the Commission since this is DES' preferred approach.

15. Staff notes that DES in its Application had stated that Staff had rejected both of the Options presented by DES on earlier occasions. Staff would note that its earlier rejection of the two options was not based upon any substantive disagreement with either option, but rather was based solely upon the fact that neither option complied with the Commission's Decision and the Settlement Agreement.

16. DES has indicated to Staff that it has not yet distributed the set-aside monies associated with earlier years of the Price Cap Plan, but rather Qwest has held the monies in escrow pending a resolution of this issue.

17. It is Staff's understanding, that upon approval of one of the two options presented by DES, DES will use the new methodology to distribute the funds from prior years now being held in escrow by Qwest.

18. Staff recommends that the Commission grant DES' Application for Waiver and modify Decision No. 68604 by approving Option 1 as the new distribution methodology for allocating the annual $100,000 set-aside to CAAs in the future.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over Qwest and the subject matter of this proceeding.

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2. Notice of DES's Application and the Commission's rehearing of Decision No. 68604 for the narrow purpose of considering DES' Application was provided in the manner prescribed by law.

3. The modification discussed above to Decision No. 68604 and the Settlement Agreement approved therein, is just and reasonable and in the public interest and should be approved.

ORDER

IT IS THEREFORE ORDERED that DES's Application for Waiver of the provision in Decision No. 68604 requiring DES to determine on a quarterly basis, each Community Action Agency's pro-rata share of the $100,000 annual set-aside based upon the number of TAP applications processed in the quarter, is granted.

IT IS FURTHER ORDERED that DES shall distribute the $100,000 in annual funding based upon the DES Community Action Programs and Services Funding Formula in the future (Option 1).

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IT IS FURTHER ORDERED that DES shall distribute prior years' set-asides now being held in escrow by Qwest, according to the new methodology adopted herein.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN COMMISSIONER

COMMISSIONER COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this _____day of _____, 2008.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT: _____

DISSENT: _____

EGJ:BNC:tdp\MAS

SERVICE LIST FOR: Qwest Corporation
DOCKET NOS. T-01051B-03-0454 and T-00000D-00-0672

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