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BEFORE THE ARIZONA CORPORATION COMMISSION

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

Arizona Corporation Commission

DOCKETED

SEP - 3 2008

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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. 70489

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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1 **B. Background**

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

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

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

19 6. DES indicated in its Petition that Qwest has historically partnered with DES and the
20 Arizona Community Action Agencies ("CAAs") to administer the TAP program. DES stated that
21 it provides both administrative and direct services by conducting training, customer-service, data-
22 entry, and outreach activities. DES also stated that the CAAs provide case management services
23 to low-income customers and coordinate application intake systems, conduct client interviews and
24 determine client eligibility. Decision No. 68604 provided for the set-aside to be distributed to
25 CAAs to offset administrative costs incurred while completing these administrative tasks in
26 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.

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

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

7 **C. DES' Application**

8 9. DES states in Application that the existing requirement in the Settlement
9 Agreement approved by Decision No. 68604 for DES to determine and invoice Qwest for each
10 CAA's pro-rata share based upon the number of TAP applications processed in a given quarter is
11 problematic because the process does not lend itself easily to the DES procurement requirements.
12 DES states that the Order requires DES to project a potential contract ceiling award for each of the
13 10 CAAs, and then complete mid-year amendments to adjust contract awards consistent with
14 actual pro-rata shares. This, according to DES, places increased administrative burden on both the
15 CAAs and on DES.

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

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

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

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

8 **D. Staff Analysis and Recommendations**

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

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

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

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

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

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

28 **CONCLUSIONS OF LAW**

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

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

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

ORDER

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

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

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

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

4 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

5
6 *Lawell S. Gleason*
7 CHAIRMAN

William A. Mundell
COMMISSIONER

8
9 *Gregory H. Hatch-Miller*
10 COMMISSIONER

[Signature]
COMMISSIONER

Gary L. Stein
COMMISSIONER

11 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
12 Director of the Arizona Corporation Commission, have
13 hereunto, set my hand and caused the official seal of this
14 Commission to be affixed at the Capitol, in the City of
15 Phoenix, this 3rd day of September, 2008.

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17 *[Signature]*
18 BRIAN C. McNEIL
EXECUTIVE DIRECTOR

19 DISSENT: _____

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21 DISSENT: _____

22 EGJ:BNC:tdp\MAS
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1 SERVICE LIST FOR: Qwest Corporation
DOCKET NOS. T-01051B-03-0454 and T-00000D-00-0672

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