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BEFORE THE ARIZONA CORPORATION COMMISSION

KRISTIN K. MAYES
Chairman
GARY PIERCE
Commissioner
PAUL NEWMAN
Commissioner
SANDRA D. KENNEDY
Commissioner
BOB STUMP
Commissioner

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Arizona Corporation Commission
DOCKETED

OCT 21 2009

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IN THE MATTER OF QWEST CORPORATION'S PERFORMANCE ASSURANCE PLAN

DOCKET NO. T-01051B-03-0859
MOTION FOR RECONSIDERATION OF PROCEDURAL ORDER

Qwest Corporation ("Qwest") moves for modification of the Procedural Order entered on October 5, 2009 (the "Procedural Order") to include Arizona-specific workshops, followed by hearings, as may appear necessary or useful. Further, the portion of the Procedural Order asking parties to comment on the substantive recommendations of the Liberty Report on October 30 may be premature. Qwest respectfully submits that statements about Qwest's acquiescence to the Liberty Report are inaccurate, and under the circumstances, a different process is more appropriate.

The Commission Staff ("Staff") states in section IV of its memorandum, that it has "no reason to believe that any parties are opposed" to implementing the Liberty Report's recommendations. This assumption is incorrect. Qwest holds serious disagreement with the recommendations, and in fact did not agree that the multi-state review was appropriate.

On August 15, 2008, by a letter written by Qwest Senior Vice President Steve Davis to the Chair of the Regional Oversight Committee ("ROC"), Qwest publicly declined to participate in the ROC multi-state QPAP review. A copy of that letter is attached, as Attachment A. It

1 cannot be said that Qwest was a party to the process.

2 Accordingly, Qwest made no substantive recommendations, positions statements, or
3 policy inputs in the ROC process. Qwest's only involvement was to submit information to
4 Liberty Consulting, in response to requests for data. *The submission of information in response*
5 *to requests for data does not create an inference that Qwest agrees with the Liberty Report*
6 *conclusions and recommendations.*

7 Nor is there any basis to conclude that Qwest is not opposed to the immediate
8 implementation of the recommendations in the Liberty Report, on the grounds that Qwest knew
9 about the preparation of the Report and did not express opposition to the Staff. As established by
10 the Qwest's August 15, 2008 letter, the ROC was clearly on notice that Qwest did not agree to be
11 part of the ROC process. Further, neither the ROC nor the Arizona Commission has sought
12 Qwest's substantive input, before now.

13 Qwest disagrees with the recommendations of the Liberty Report. In six other states
14 which have opened procedures for receiving comments,¹ Qwest has responded in opposition to
15 the Liberty Report. There is simply no basis for Staff's assumption that "Staff has no reason to
16 believe that [Qwest] is opposed."

17 Qwest contests the conclusions and recommendations of the Liberty Report in several
18 key aspects, as Qwest will detail in the future. More urgently, however, Qwest objects to the
19 process that is suggested by the Staff Report and the Procedural Order. *The process does not*
20 *comply with the Commission's requirements for modifications to the PAP.*

21 The Arizona PAP, which was amended by the Commission and adopted in Decision No.
22 64888, sets out a process for reviews of the PAP every six (6) months. ("Six Month Reviews").
23 The Arizona PAP provides the standard that shall be applied in determining whether
24 measurements should be added, deleted, or modified. Section 16.0 provides, "Criteria for review

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26 ¹ Colorado Docket No. 02M-259T, Idaho Docket No. QWE-T-0804, Montana Docket No.
N2009.7.92, Nebraska Application No. C-3943/PI-137, New Mexico Case No. 09-00093-UT,
and North Dakota Case No. PU-08-920.

1 of the performance measurements . . . shall be whether there exists an *omission or failure to*
2 *capture intended performance*, and whether there is duplication of another measurement.”
3 There is not any analysis in the Liberty Report that it considered the QPAP under those criteria
4 (although the Liberty Report does recite that its purpose, as related to Arizona, is that it would
5 form the basis of a Six Month Review).² Any decisions regarding modifications to the Arizona
6 PAP must be based squarely on those review criteria—whether there exists an omission or
7 failure to capture *intended performance*. The Liberty Report, on the other hand, is based on
8 other criteria—such as the “*evolving needs*” of the competitive marketplace³—that are different
9 from the performance of the PAP that was intended by the Commission seven years ago.

10 Section 16.0 of the Arizona PAP also provides, per the Commission’s order in Decision
11 No. 64888, that the Commission reserved the right to modify the PAP, “*after notice and*
12 *hearing*.” The Procedural Order does not expressly provide for the possibility of a hearing.
13 Rather it asks that all “interested parties shall file statements of their acceptance of the
14 recommendations, *and / or any specific recommended modifications or comments concerning*
15 *the Liberty report* by October 30, 2009.” The Procedural Order additionally orders the
16 Commission Staff to “incorporate any comments received, and Staff’s recommendation *for*
17 *Commission action*, by December 4, 2009.” A hearing might be one such recommendation;
18 however, since Qwest opposes the implementation of the recommendations, Qwest respectfully
19 submits that the process must allow for hearings, if the differences between the participants
20 cannot be bridged.

21 Whether hearings are necessary or desirable cannot yet be ascertained. Qwest
22 respectfully suggests that an Arizona specific workshop approach is a better alternative. That is
23 the approach currently underway in Colorado and Idaho. Qwest respectfully submits that the
24

25 ² “The Arizona PAP does not specify the need for any longer-term PAP reviews, but requires
26 regular six-month reviews. [fn omitted]. Liberty understands from the Arizona Staff that the
current analysis is meant for use in such a six-month review.” Liberty Report, p. 16.

³ Liberty Report, p. 85.

1 requirement for parties to file position statements immediately, although possible, will do little to
2 focus areas of disagreement and sharpen the analysis that is required.

3 Therefore, Qwest asks that the Procedural Order be modified, and instead of the
4 immediate filing of statements of position on the Liberty Report recommendations, that Qwest be
5 ordered to participate in workshops with such other parties that desire to participate, moderated
6 by the Staff.

7 RESPECTFULLY SUBMITTED, this 21st day of October, 2009.

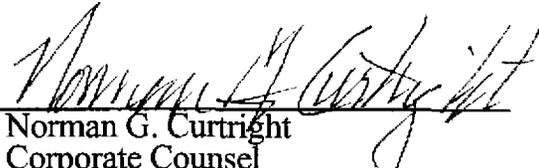
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QWEST CORPORATION

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17 ORIGINAL and 13 copies hand-delivered for
18 filing this 21st day of October, 2009 to:

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Docket Control
ARIZONA CORPORATION COMMISSION
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Phoenix, AZ 85007

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COPY of the foregoing emailed/mailed
this 21st day of October, 2009 to:

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ATTACHMENT A



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R. Steven Davis
Senior Vice President
Public Policy

August 15, 2008

Commissioner Philip B. Jones
Washington Utilities and Transportation Commission
Regional Oversight Committee Chair
1300 S. Evergreen Park Dr., S.W.
P.O. Box 47250
Olympia, Washington 98504-7250

Re: Letter of July 31, 2008 regarding the Qwest Performance Assurance Plan (QPAP) and Request for Response by August 15, 2008

Dear Commissioner Jones:

Thank you for your letter sent on behalf of the Regional Oversight Committee (ROC) Executive Committee requesting Qwest's participation in a QPAP Analysis Collaborative. Qwest respectfully declines to participate in this process, as currently structured.

Qwest participated in a prior "collaborative effort" upon establishment of the QPAPs. That effort was not successful in reducing time, resources or in reaching consensus on critical issues. Because some interested parties did not participate in that process and because neither commissions nor their staffs were in any way bound by the findings and conclusions reached, those findings and conclusions were of little or no value in the subsequent legal proceedings brought in all 14 participating states.

We believe that the currently proposed collaborative process is destined to follow the same path. We have major concerns about the process, the scope of the collaborative, and what can realistically be achieved by use of a collaborative.

The purpose of the QPAP sunset review is to examine "whether the QPAP's continuation is necessary?" This type of sunset review is separate and distinct from six-month or annual reviews and from audits that are also set forth in the QPAP. This is not a review of measurement or payment definitions or accuracy, as is done in six-month reviews or audits. Rather, it is a consideration from a policy and legal perspective as to what extent, if at all, Qwest is or should be required to continue to volunteer the QPAP as part of interconnection agreements. Moreover, this issue must be examined in light of the FCC's determination that Qwest is no longer required to manage its business through the use of a separate 272 affiliate.

The QPAPs do not call for a multi-state collaborative review to determine their continued usefulness. To the contrary, the QPAPs in effect in eight Qwest states explicitly call for this review to be undertaken by "the Commission and Qwest." Therefore, Qwest does not see benefits in its participation in a collaborative review that is not likely to add value to the fundamental question identified above, and which is not likely to reduce the time and cost of necessary state-by-state proceedings on this matter.

Commissioner Philip B. Jones
Washington Utilities and Transportation Commission
Regional Oversight Committee Chair
August 15, 2008
Page 2

As noted above, past experience has shown that a collaborative review is neither cost effective nor efficient. Specifically, toward the end of the 271 OSS Test, the parties (including commission staffs) attempted to collaborate in developing the QPAP (in an effort called the Post-entry Enforcement Plan, or "PEPP"). That process was unsuccessful. Later, a similar review was attempted for "long-term PID administration." After many months without meaningful results, Qwest opted for a business-to-business approach to PID administration. This approach yielded a successful stipulation, containing agreement on numerous changes to PIDs and PAP payments, all within the existing foundational structure of the QPAP.

We respectfully encourage the ROC Executive Committee to consider the points outlined herein and support completion of the required sunset reviews of the QPAP in each state. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "SD" followed by a large, stylized flourish that extends to the right.

Steve Davis
Senior Vice President
Public Policy

Cc: Regional Oversight Committee Executive Committee
Commissioner Ray Baum, Oregon Public Utilities Commission
Chairman Ted Boyer, Utah Public Service Commission
Commissioner Anne Boyle, Nebraska Public Service Commission
Chairman Greg Jergeson, Montana Public Service Commission