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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF U S WEST
COMMUNICATIONS, INC.'S
COMPLIANCE WITH SECTION 271 OF
THE TELECOMMUNICATIONS ACT
OF 1996.

Docket No. T-0000A-97-0238

**STAFF'S RECOMMENDATION TO
REJECT PORTIONS OF QWEST'S REVISED PAP**

I. Introduction

On June 5, 2002, the Arizona Corporation Commission ("Commission") issued its decision approving Qwest's Performance Assurance Plan ("PAP") (Decision No. 64888). Decision No. 64888 required Qwest to make modifications to its PAP and to submit its revised PAP by June 7, 2002. On June 10, 2002, Qwest requested additional time to submit its revised Plan. This request was granted on June 10, 2002. On June 12, 2002, Qwest filed its revised PAP. On June 18, 2002, Qwest filed a Notice of Errata to its PAP.

CLECs and other interested parties were given seven days following Qwest's filing of its revised PAP to file written comments concerning the proposed PAP language. On June 19, 2002, WorldCom submitted comments on Qwest's revised PAP, and expressed concern that Qwest's proposed language did not comply with Decision No. 64888 in many instances. Staff was also Ordered to review the revised PAP within fourteen days of the date that Qwest filed its revised PAP.¹ Staff was Ordered to submit its recommendation to adopt or reject the proposed PAP, with a procedural recommendation for resolving any remaining disputes.

Staff has reviewed the revised PAP and recommends that it be rejected in its current form. Staff believes that Qwest has not fully complied with Decision No. 64888. Staff recommends that the Hearing Division allow the parties 14 days to resolve their remaining disagreements and to try

¹ Staff requested an extension of one week to complete its review of the PAP and WorldCom's comments.

1 to come to agreement on consensus language. If the parties are unable to agree on revised language,
2 Staff recommends that the Hearing Division make the ultimate determination as to the language
3 Qwest is to include.

4 Following is Staff's recommendation with respect to each of Qwest's proposed language
5 changes.

6 **II. Discussion**

7 **A. Disputed Issue 1: Additional PIDs**

8 Qwest submitted a revised PAP that fully addressed the Order on Disputed Issue No. 1. Staff
9 recommends that the Commission approve the revised PAP language addressing this aspect of the
10 Order.

11 **B. Disputed Issue 2: Change Management**

12 Qwest was ordered to add PO-19 to its PAP, and Qwest has added it. However, the Order
13 did not specify the classification for PO-19. Qwest added PO-19 as a Tier II measurement with a
14 low classification. PO-19 was ordered to be included in the PAP with GA-7 and PO-16 in Paragraph
15 37 of the Decision. Both GA-7 and PO-16 were classified as Tier II measurements with a high
16 classification. Staff recommends that Qwest include PO-19 as a Tier II measurement with a high
17 classification.

18 **C. Disputed Issue 3: Root Cause Analysis**

19 Qwest was ordered to do root cause analysis at any time that the Commission deems it
20 necessary. Qwest did not include this in its PAP submitted on June 12, 2002. Qwest should add the
21 following sentence to Section 15.5 of its PAP:

22 The Commission may order root cause analysis at any time it deems
23 necessary.

24 Also, Qwest was ordered to include its proposed method for disseminating these root cause
25 analysis results to the Commission and all CLECs. Qwest stated that it would submit this
26 information to the Commission and all CLECs, but Qwest did not include its proposed method for
27 doing so in its PAP.² Qwest did include its method for storing performance data, but this is different

1 from its method for disseminating root cause analysis results. Qwest must insert its method for
2 disseminating root cause analysis results.

3 **D. Disputed Issue 4: K-Table**

4 Qwest submitted a revised PAP that fully addressed the Order on Disputed Issue No. 4. Staff
5 recommends approval of the revised PAP language addressing this aspect of the Order.

6 **E. Disputed Issue 5: Penalty Cap**

7 Qwest was ordered to change its PAP language regarding the penalty cap. Qwest did
8 modify the language, as ordered, in its revised PAP, but must delete the following sentence from
9 Section 12.1:

10 The cap shall be recalculated each year based upon the prior year's
11 Arizona ARMIS results, adjusted to reflect the most current
12 depreciation rates approved by the Arizona Corporation
Commission.³

13 **F. Disputed Issue 6: Minimum Per Occurrence Penalty**

14 Qwest submitted a revised PAP that fully addressed the Order on Disputed Issue No. 6. Staff
15 recommends approval of the revised PAP language addressing this aspect of the Order.

16 **G. Disputed Issue 7: Duration Factors**

17 Qwest submitted a revised PAP that fully addressed the Order on Disputed Issue No. 7. Staff
18 recommends approval of the revised PAP language addressing this aspect of the Order.

19 **H. Disputed Issue 8: Bill Credits Versus Cash Payments**

20 Qwest was ordered to remit excess penalties by check when a payment owed to a CLEC
21 exceeds the amount owed to Qwest. Qwest must eliminate the phrase "or wire transfer" in the
22 second sentence of Section 11.2 of the PAP.

23 Qwest was also ordered to revise its PAP to state that a comprehensive statement will be sent
24 to CLECs detailing how penalties are calculated. Qwest did not add this language to its PAP. Qwest
25 must add the following language to Section 11.2 of the PAP:

26 Qwest will provide to CLECs a comprehensive statement detailing
27 how penalties are calculated when Qwest makes a payment to
CLECs.

28 _____
3 Page 12 of clean version of PAP, June 12, 2002

1 **I. Disputed Issue 9: Penalty Classification**

2 Qwest submitted a revised PAP that fully addressed the Order on Disputed Issue No. 9. Staff
3 recommends approval of the revised PAP language addressing this aspect of the Order.

4 **J. Disputed Issue 10: Severity Factors**

5 Qwest submitted a revised PAP that fully addressed the Order on Disputed Issue No. 10.
6 Staff recommends approval of the revised PAP language addressing this aspect of the Order.

7 **K. Disputed Issue 11: Audits**

8 Staff agrees with the comments provided by WorldCom on this issue. Qwest must delete the
9 word "Alternatively" in Section 15.1 of the fourth sentence. Qwest must insert the word
10 "Additionally" in lieu of "Alternatively" in this sentence.

11 WorldCom also comments that Qwest did not comply with the Order in Section 14.4. Qwest
12 was ordered to explicitly state in the PAP that it cannot change the PIDs and reporting system unless
13 it is approved by the Commission. Qwest must modify Section 14.4 to read:

14 Qwest may not make changes to the Performance Indicator
15 Definitions ("PIDs) contained in the PAP, in the statistical and
16 mathematical methodology for calculating the PID results, or the
17 content of reports unless it first obtains approval from the
18 Commission.

18 **L. Disputed Issue 12: Tier II Payments**

19 Qwest states in Section 7.5 of its PAP that Tier II payments "will be made to the State in
20 accordance with any lawful Order of the Commission." Qwest must delete part of the first sentence
21 of Section 7.5 that reads "in accordance with any lawful Order of the Commission." Section 7.5
22 should be revised to read as follows:

23 Qwest Tier-2 payments will be used to: 1) cover the Commission's
24 additional costs of auditing performance under the PAP; 2) hire
25 consultants to monitor post-entry compliance; and 3) cover
26 Commission costs arising from dispute resolution and to encourage
27 improvements in Qwest's wholesale service quality tariff in both
28 federal and state proceedings. If Tier II payments exceed what is
 necessary to cover the above costs, Qwest shall deposit the balance
 to the Arizona State Government's general fund. Qwest and Staff
 shall work cooperatively to develop an auditing/accounting
 mechanism to ensure the proper use of these Tier II payments.

1 Further, since the Order does not specify that payments are to be made directly to the
2 State, but for the uses specified in Section 7.5, additional conforming changes may be necessary
3 throughout the PAP to reflect the exact language of the Order. The Order merely states at para.
4 97 that Qwest and Staff shall work cooperatively to develop an auditing/accounting mechanism
5 to ensure the proper use of these Tier II payments.

6 Thus, for example, Section 7.0 should be entitled "Tier-2 Payments". In addition, the
7 last sentence of Section 7.4 should be changed to read as follows: "For these measures, Qwest
8 will make a Tier-2 payment based upon monthly performance results according to Table 4-Tier 2
9 Per Measure Payments."

10 Staff would further recommend that the title of Table 4 be changed to read as follows:
11 "TABLE 4: TIER-2 PER MEASURE PAYMENTS."

12 Staff recommends that 9.0 be changed to read as follows: Step by Step Calculation of
13 Tier-2 Parity Measurement Payments. Staff also recommends that the last sentence of Section
14 9.0 be modified to read as follows: All Tier-2 payments will be used as set forth in Section 7.5.

15 Consistent with these changes, Staff recommends changes to the third sentence of Section
16 2.1 to read as follows:

17 "In addition, the PAP provides Qwest with additional incentives to satisfy parity and
18 benchmark standards by requiring Qwest to make Tier-2 payments – payments to be utilized as
19 specified in Section 7.5."

20 Additionally, Staff recommends that the first sentence of Section 11.1 be changed to read
21 as follows:

22 "Payments to CLECs or payments made under Tier II shall be made one month following
23 the due date of the performance measurement report for the month for which payment is
24 being made."

25 Finally, Staff recommends that the last sentence of 11.2 be changed to read as follows:

26 "Payment under Tier II will be made via check or wire transfer."

27 There may also be conforming changes to other sections of the PAP that are necessary to
28 reflect the exact wording of the Order on Tier II payments.

1 **M. Disputed Issue 13: Sticky Duration**

2 Qwest submitted a revised PAP that fully addressed the Order on Disputed Issue No. 13.
3 Staff recommends approval of the revised PAP language addressing this aspect of the Order.

4 **N. Disputed Issue 14: Plan Limitations**

5 Section 13.3 of Qwest's revised PAP contains language regarding *force majeure* events. Staff
6 agrees in part with WorldCom's comments on this section. Qwest must restate the language to
7 reflect the *force majeure* language contained in the SGAT. Further, Qwest must delete the phrase
8 "equipment failure" from its list of *force majeure* events in Section 13.3.

9 In addition, Qwest was ordered to revise its PAP to state that *force majeure* events should
10 not excuse parity failures. Qwest did not revise its PAP to include this language. Qwest must insert
11 the word "benchmark" into the first line of the first sentence of Section 13.3 so that the line reads:

12 Qwest shall not be obligated to make Tier-1 or Tier-2 payments for
13 any benchmark measurement if...

14 Qwest must also include the following sentence after the first sentence in Section 13.3:
15 "Force majeure events do not excuse parity failures."

16 Further, Qwest was ordered to modify Section 13.6 (Section 13.5 in revised PAP). Qwest
17 did not fully modify Section 13.5 of its revised PAP according to the Order. Qwest must insert the
18 following sentence as the last sentence of Section 13.5:

19 Qwest shall have the burden of proof of demonstrating that it is
20 paying twice for the same performance miss, and may use the dispute
21 resolution procedure in Section 5.18 of the SGAT to address such an
22 issue.

23 Next, Qwest must delete Section 13.6.1 of its revised PAP. This section is similar to what
24 was ordered be changed in Section 13.6 regarding double compensation for performance misses.

25 Finally, Section 16.1 of the PAP does not reflect the changes made in paragraph 148 of the
26 Commission's Order. Staff recommends addition of the following sentence after the fourth sentence
27 of that paragraph:

28 "Notwithstanding, at each six month review the Commission shall have the ability to
 review and modify all the terms of the PAP, including but not limited to performance
 measurements, penalty amounts, escalation factors, audit procedures and re-evaluation
 of confidence levels, as it sees fit."

1 Further, Staff recommends that the following sentence in 16.1 also be deleted since it does
2 not reflect the discussion contained in paragraph 148 of the Commission's Order: "Any changes to
3 existing performance measures and this remedy plan shall be by mutual agreement of the parties."
4 In its place, the following sentence should be added: Staff shall seek the mutual consent of the
5 parties to any proposed changes, notwithstanding the Commission may modify the PAP as it sees
6 fit after notice and opportunity for a hearing.

7
8 **O. Disputed Issue 15: Data Timeliness**

9 Qwest submitted a revised PAP that fully addressed the Order on Disputed Issue No. 15.
10 Staff recommends approval of the revised PAP language addressing this aspect of the Order.

11 **P. Disputed Issue 16: A.R.S. §40-424**

12 Ordering paragraph 161 recognizes that Qwest's compliance with Section 271 is conditioned
13 upon Qwest's implementation of and compliance with the PAP. Qwest's revised PAP does not
14 contain any provisions that are contrary to the Order on this issue.

15 **Q. Additional Staff Recommendations**

16 Staff recommends that Section 17.1 be modified as follows: After the first sentence, Staff
17 recommends that the following sentence be added:

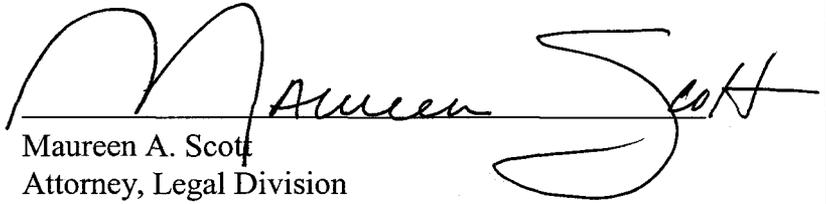
18 "Notwithstanding, Qwest acknowledges the Commission reserves the right to modify
19 the PAP at any time it deems necessary and that the PAP will remain in full force and
20 effect until further Order of the Commission."

21 Qwest did comply with the other provisions in the Order on Staff's additional
22 recommendations.

23 **III. Conclusion**

24 Qwest's revised PAP should be rejected since it does not comply in all cases with
25 Commission Decision No. 64888. Staff recommends that the Hearing Division allow the parties
26 14 days to resolve their remaining disagreements and to try to come to agreement on consensus
27 language. If the parties are unable to agree on revised language, Staff recommends that the
28 Hearing Division make the ultimate determination as to the language Qwest is to include.

1 RESPECTFULLY SUBMITTED this 3rd day of July, 2002.

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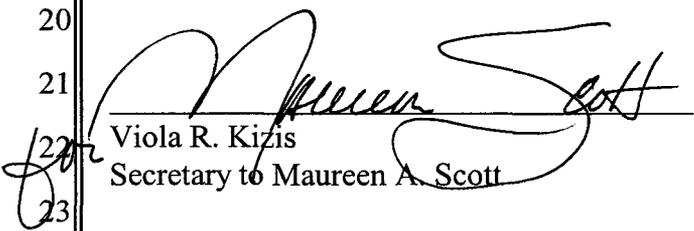
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