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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

<p>In Re WITHDRAWAL of QWEST COPORATION'S STATEMENT OF GENERALLY AVAILABLE TERMS AND CONDITIONS</p>	<p>Case No. QWE-T-08-04</p> <p>QWEST CORPORATION'S RESPONSE TO STAFF MOTION TO EXTEND COMMENT PERIOD</p>
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Qwest Corporation ("Qwest"), by and through its attorneys of record, provides the following *Response* to the *Commission Staff Motion to Extend Comment Period* filed herein on July 7, 2008.

BACKGROUND

On July 7, 2008 the Staff of the Idaho Public Utilities Commission ("Staff") filed its response to the *Notice of Petition and Notice of Modified Procedure* issued by the Commission in the above-referenced case. The pleading titled *Comments of the*

Qwest Response to Staff Motion
To Extend Comment Period

Commission Staff (“Comments”) form the basis for Staff’s Motion to *Extend Comment Period*. Staff’s comments focus almost entirely on Qwest’s voluntary Performance Assurance Plan (“PAP”) and the related Performance Indicator Definitions (“PIDs”), although Qwest’s petition to withdraw its Statement of Generally Available Terms (“SGAT”) is also before the Commission.

With regard to the PAP, Staff correctly states that paragraph 16.3 of the voluntary plan provides that Qwest will maintain the plan until such time as it eliminates its Section 272 affiliate, which occurred on February 20, 2007¹. Thereafter, as Staff notes, the PAP provides, “the Commission and Qwest shall review the appropriateness of the PAP and whether its continuation is necessary.”

Although Staff does not explain its reasoning in any detail, Staff recommends that the Commission, “not grant Qwest’s request for withdrawal of its SGAT, but instead extend the comment period in this case until a review of the Performance Measurements can be completed and an analysis presented to the Commission for its final review and decision.” The “review” to which the Staff refers in this recommendation is a project conceived by state commission staff members of the informal Regional Oversight Committee (ROC)² that will “evaluate all performance measurements and provide a comprehensive analysis on which measurements should be eliminated, enhanced, or remain in effect”³ using a third party consultant, Liberty Consulting. This ROC review is envisioned as a “multi-state collaborative review”⁴ that will “afford those CLECs that have limited resources the opportunity to participate in all of Qwest’s 14 state regions.”⁵

Staff’s comments provide few details concerning its proposed process, but a single page “Scoping Document” prepared by ROC Staff members and containing six bulleted paragraphs comprises Staff’s Attachment 1. This document iterates ROC Staff’s perspective on the need for a review (essentially that there are PAPs in fourteen Qwest states that have various differing provisions and timelines for state commission review), recommends that Liberty Consulting be contracted to conduct the review, and

¹ Qwest Petition, ¶ 35.

² The ROC is an informal group of regulators that has no independent regulatory authority and no jurisdiction to compel Qwest or any other party to take action. Since the ROC was originally created its focus has changed from issues exclusive to Qwest to an industry focus.

³ Comments at 3.

⁴ *Id.*, Attachment 1.

⁵ *Id.* at 3.

that the consultant, “also provide draft recommendations as to the current effectiveness, value and usefulness of the performance plan and PIDS in relation to their intended purpose and function as well as the usefulness of some or the entire plan and PIDS continuing including possible modifications to such.”⁶ The Scoping Document goes on to suggest that the consultant’s “baseline document” could be used by various commissions in appropriate dockets or “for collaborative discussions between the various Commission Staffs, Qwest and the CLECs”⁷ If these discussions occur ROC Staff recommends that Liberty Consulting “facilitate and document the results of such discussions clearly delineating areas of agreement and issues of dispute along with supporting positions.”⁸

Staff’s recommendation is that the Commission suspend these proceedings for an indefinite period awaiting either Liberty Consulting’s “baseline document” or its subsequent documentation of the hypothetical multi-state, multi-party “collaborative discussion[s].” Staff provides no explanation of why Qwest’s request to withdraw its SGAT, as opposed to its PAP, should be tied to the proposed ROC multi-state collaborative which does not address the SGAT, nor does it explain exactly how the ROC proposal will serve this Commission in responding to specific issues raised by Qwest’s petition with regard to the PAP in Idaho.

DISCUSSION

Staff does not dispute that Qwest has eliminated its 272 affiliate, nor does it dispute that the language of the PAP in section 16.3 governs how the Commission should approach the issue of elimination of the PAP. However Staff’s recommendation as to how the “review” contemplated in section 16.3 should be conducted seeks to embroil this Commission in a lengthy, expensive “multi-state collaborative” process whose outcome will, in all likelihood, have limited relevance to the issues presented by Qwest’s petition in this case. Qwest submits that an Idaho-specific legal and policy review of the PAP is called for in this docket.

⁶ *Id.*, Attachment 1

⁷ *Id.*

⁸ *Id.*

1. Qwest Will Not Participate in the Process Outlined in the Scoping Document.

The Scoping Document apparently conceives two possible phases to the “multi-state collaborative review”. As Staff’s Comments phrase it, the first is “to evaluate all performance measurements” and provide a “comprehensive analysis” of which measurements should be retained, eliminated, or changed. Then, once the consultant has pulled its recommendations together into a “baseline document” there is the possibility for a second phase of “collaborative discussions” between Qwest, the participating state commission staff members and CLECs, which is anticipated to yield a report of the consultant documenting areas of agreement and delineating issues of dispute “along with supporting positions.”

In effect, through the Scoping Document ROC Staff seeks to recreate the process similar to that adopted by Qwest and seven state commissions to work through the myriad of section 271 issues eight or more years ago.⁹ While that collaborative process worked reasonably well to get through what would have been an otherwise insurmountable volume of regulatory work in simultaneous state commission proceedings across the region, the process described in the Scoping Document is not appropriate for “review” of the Idaho PAP. Not only would such a process be inordinately expensive and time consuming, but it is a very poor alternative for the review provided under PAP section 16.3, which is required here.

Since Qwest will not participate in the process outlined in the ROC Scoping Document, there is no possibility that the “collaborative discussions” phase of the ROC multi-state proposal will yield any meaningful agreement regarding Qwest’s PAP in Idaho. Therefore Staff’s recommendation amounts to nothing more than a suggestion that the Commission delay indefinitely the meaningful legal and policy review requested by Qwest in its petition while Staff participates in a lengthy and expensive analysis of each performance measure. There is nothing in PAP paragraph 16.3 that suggests that review of the performance measures themselves is contemplated or that a collaborative process is required. And, while the CLECs that chose to file comments in this docket have expressed their preference that the PAP remains in effect, none suggested that a

⁹ See Qwest’s Petition, ¶ 9.

detailed review of individual performance measures is desired. Qwest respectfully requests that Staff's motion be denied and that the Commission turn its attention to an Idaho-specific review of the PAP under section 16.3.

2. This Commission Should Look to PAP Section 16.3 for Guidance as to the Kind of Review Required.

Section 16.3 requires that Qwest and the Commission participate in a review of the "appropriateness" of the PAP and whether "its continuation is necessary" before the PAP is rescinded. As noted above, the mismatch between a section 16.3 review and the process recommended by Staff is obvious. Section 16.3 makes no mention of a comprehensive analysis of each individual performance measure. Even more obviously section 16.3 does not contemplate that this Commission will receive the views of up to thirteen other state staffs, or of CLECs who did not choose to intervene in Idaho.

Qwest's Petition outlines in detail the origin of the PAP in Idaho. As stated there it came about as Qwest and the Federal Communications Commission (FCC) cast about looking for the blueprint that could be adopted by Bell Operating Companies (BOCs) for their filings to obtain approval to enter the interstate long distance market under section 271 of the Federal Act¹⁰. At the time that the PAP was offered in Idaho, Qwest made it clear that it was offering the PAP voluntarily and for a limited time. It is Qwest's position that it is not now legally required to continue to offer the PAP.

Staff does not comment on this key Qwest position. Instead it simply recommends that the Commission indefinitely delay Qwest's request for meaningful review pending its participation in the proposed ROC multi-state process. For that process to be even marginally relevant to this case, however, it must be *assumed* that the PAP (at least in some form) is legally required¹¹ and, further that it is best to obtain an outside consultant's opinion on what details it should include. On the other hand if the

¹⁰ See *Id.*, ¶¶ 4, 7, 29-31

¹¹ The other possible assumption that could have supported Staff's recommendation, i.e., that Qwest would voluntarily agree to the multi-state negotiation session described in the Scoping Document involving state commission staff members and CLEC customers is not viable in light of Qwest's decision not to participate in the process outlined in the Scoping Document.

Commission were to conclude, as Qwest has done, that Qwest is not required to continue to offer the PAP, the consultant's conclusions about the effectiveness of individual performance measures are neither relevant nor useful.

Qwest submits that this Commission should engage in an Idaho-specific review of the Idaho PAP as contemplated under section 16.3 looking first at the question whether there is a legal requirement that Qwest continue to offer the PAP. Assuming that it concludes that Qwest is not required to offer the PAP, the Commission could then turn its attention to any policy issues that underlie this discussion. For example, to the extent that the comments of the CLECs in this docket raise issues about their remedies should Qwest fail to continue to provide the level of service to wholesale customers that is required by law, the Commission's role in reviewing legislative policy and managing competing policy objectives could be called in to play. Qwest urges the Commission to reject the notion created by the CLECs that the only possible means of assuring Qwest continues to comply with its obligations is to subject Qwest to the burden of hundreds of individual performance measures and the liquidated damages provisions that make up the PAP.

3. Qwest's Procedural Recommendations

Qwest recommends that the Commission deny Staff's motion in so far as it contemplates delaying this docket while it participates in the proposed multi-state process described in the ROC Staff Scoping document. Consistent with Qwest's concurrent *Motion for Permission to File Responsive Comments* Qwest asks that the Commission grant it an opportunity to respond to the comments filed by the intervenors in this docket concerning the Idaho SGAT and PAP. However, to the extent the issues raised in intervenor comments go beyond the legal and policy review requested by Qwest, they should be held for future consideration pending the outcome of the legal and policy review. Accordingly, Qwest proposes to file said responsive comments forty-two days from the date hereof.

Thereafter, Qwest recommends that the Commission entertain oral argument on the legal issues presented by Qwest's petition. Finally, to the extent issues remain that

require briefing or further input for the Commission's consideration, Qwest recommends that the Commission then schedule a prehearing conference to develop a procedural schedule suitable for addressing those issues.

Dated this 4th day of August, 2008.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing **Response to Staff Motion to Extend Comment Period** was served on the 4th day of August, 2008 on the following individuals:

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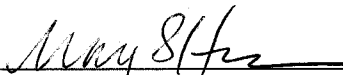
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