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January 23, 2009

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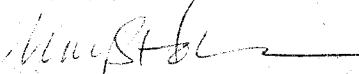
Jean D. Jewell, Secretary
Idaho Public Utilities Commission
472 West Washington
Boise, ID 83702-5983

RE: Docket No. QWE-T-08-04

Dear Ms. Jewell:

Enclosed for filing with this Commission are an original and seven (7) copies of the **Motion of Qwest Corporation to Bifurcate SGAT and PAP Issues and for Procedural Order**. If you have any questions, please contact me. Thank you for your cooperation in this matter.

Very truly yours,


Mary S. Hobson

Enclosures
cc Service List

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Attorneys for Qwest Corporation

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

<p>In Re WITHDRAWAL of QWEST CORPORATION'S STATEMENT OF GENERALLY AVAILABLE TERMS AND CONDITIONS</p>	<p>Case No. QWE-T-08- 04</p> <p>Motion of Qwest Corporation to Bifurcate SGAT and PAP Issues And for Procedural Order</p>
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Qwest Corporation (Qwest), by and through its attorneys of record, moves the Commission to bifurcate the issues in Qwest's *Petition* relating to the withdrawal of its Statement of Generally Available Terms (SGAT) from those issues relating to removal of the Performance Assurance Plan (PAP) and the Performance Definition Indicators (PIDs). Qwest further requests that the Commission enter an order granting Qwest authority to withdraw the SGAT, based on the existing record herein.

Finally, Qwest requests that the Commission enter a procedural order for resolution of the remaining PAP issues, which will accommodate the due process rights

**Motion of Qwest Corporation to
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And for Procedural Order**

of the parties to fully review and respond to any evidence that is hereinafter submitted for the Commission's consideration in connection with Qwest's PAP.

PROCEDURAL BACKGROUND

Qwest filed its *Petition* in this docket on May 2, 2008, which clearly delineated two separate requests of the Commission: the authority to withdraw the SGAT and, separately, permission to withdraw the PAP and accompanying PIDs. Throughout the record that was subsequently developed in this case, the parties have commented separately on the SGAT and PAP.

On May 23, 2008, the Commission issued a *Notice of Petition and Notice of Modified Procedure* establishing a comment deadline of July 7, 2008. 360networks (USA) inc. (360networks) petitioned to intervene on June 27, 2008. Integra Telecom of Idaho, Inc., Electric Lightwave, LLC dba Integra Telecom, and Eschelon Telecom dba Integra (collectively referred to as "Integra") petitioned to intervene on July 7, 2008. Both intervention petitions were granted on August 5, 2008.

On July 7, 2008, 360networks and Level 3 Communications, LLC (a non-intervenor) jointly filed comments in response to the Commission's notice ("the 360networks comments"). And, on July 9, 2008, Integra and McLeodUSA Telecommunications, Inc. dba PATEC (also a non-intervenor) filed an additional set of comments ("the Integra comments"). The 360networks comments deal almost exclusively with the SGAT. The first eleven pages of the Integra comments discuss the SGAT issues, while the remaining five pages speak to the PAP issues.

Staff also filed comments on July 7, 2008. However Staff did not address the merits of Qwest's *Petition* in so far as it sought to withdraw the SGAT, but instead focused on the PAP and "Performance Measurements." Staff's comments concluded with the recommendation that the Commission delay its decision on Qwest's *Petition* until "a review of the Performance Measurements can be completed and an analysis presented to the Commission for its final review and decision."¹ Attached to Staff comments was a

¹ *Comments of the Commission Staff* at 3 (July 7, 2008).

single page document entitled “ROC Staff Scoping Document: Collaborative Review Qwest Performance Assurance Plans (QPAP).” The document initiated the discussion of what Qwest will refer to as the “ROC Review” process. While the ROC Review process has been the subject of considerable controversy, there is no dispute that it deals exclusively with the PAP and PIDs and is not intended to address the SGAT.

Accompanying Staff’s comments was a *Motion to Extend Comment Period*, in which Staff sought the Commission’s approval to participate in the “multi-state review process by Liberty Consulting” i.e., the ROC Review, and requested that Commission the delay consideration of the merits of Qwest’s *Petition* “until such time as the [ROC] review is complete and a final report can be filed with the Commission.”² Staff’s failure to address the SGAT and PAP issues separately, as the Intervenors had done and as set out in Qwest’s *Petition*, appears to be based on the following concern contained in the Staff motion:

Qwest’s SGAT includes a comprehensive performance assurance plan (PAP), as well as a comprehensive list of performance measures known as performance indicator definitions (PID) to provide specific data about Qwest’s interconnection services to competitors using the Company’s facilities and network. *Withdrawal of the SGAT would also remove the performance assurance plan and indicator definitions that are part of the SGAT.*³

This Staff concern is addressed below.

On August 4, 2008 Qwest filed an answer to Staff’s motion setting out its objections to the ROC Review as described in the scoping document and stating Qwest’s position that it would not voluntarily participate in the “collaborative review” contemplated by the ROC Staff. On the same day Qwest filed a *Motion for Permission to File Responsive Comments*, requesting permission to respond on or before September 15, 2008 to the issues raised by the parties’ comments filed on July 7 and 9.

On September 4, 2008, the Commission served its *Notice of Procedural Schedule and Notice of Hearing for Oral Argument* approving Qwest’s filing of comments or a written brief by September 15 and granting Staff and Intervenors the opportunity to file

² *Commission Staff Motion to Extend Comment Period* at 2 (July 7, 2008).

³ *Id.* at 1 (emphasis added).

their own comments or briefs by October 31, 2008. That Commission *Notice* set oral argument for December 9, 2008, and made no mention of Staff's motion of July 7 requesting delay of the proceedings until the completion of the ROC Review or of Staff's request to participate in the ROC process.⁴

As agreed, Qwest filed extensive written comments on September 15, 2008. The first twelve pages of these comments respond to the issues raised by the Intervenors in connection with the SGAT, while the remaining comments addressed the PAP. After these comments were filed, Qwest's representatives and Staff began discussing whether there could be alternatives to Qwest's proposal to completely withdraw the PAP.⁵ At the request of the parties the Commission entered Order Nos. 30662 and 30693 to accommodate review and discussion of Qwest's PAP alternative. Order No. 30693 vacated the remaining dates on the procedural schedule and stated, "the Commission will approve a new procedural schedule after Qwest files its alternative proposal."

At a telephone conference held December 3, 2008, Intervenors expressed no support for Qwest's alternative PAP proposal and declined to offer suggestions for its improvement. Consequently Qwest has determined that it will not offer the PAP alternative at this time.

SGAT MOTION

Qwest's *Petition* seeks the Commission's approval for two distinct forms of relief: withdrawal of the SGAT and, separately, removal of the PAP and PIDs. Qwest asks the Commission to bifurcate the issues raised by its *Petition* and take up the SGAT at this time.

⁴ The Commission granted Staff's request to participate in the ROC Review at a decision meeting on September 29, 2008. However no order has been entered in the current docket reflecting that decision.

⁵ The *Commission Staff Motion to Extend Deadline for Comments and Vacate Hearing Date* submitted on October 23, 2008, is in error when it states on page one that, "Qwest has indicated to Staff that it may consider presenting an alternative to its Statement of Generally Available Terms and Conditions." All discussions with Staff and Intervenors concerning Qwest presenting an alternative were limited to the PAP and PIDs.

The procedural history of this case, in so far as it pertains to the SGAT, is simple. Qwest filed its *Petition* dealing with the reasons for withdrawing the SGAT on May 2, 2008. Intervenors filed written comments pursuant to the Commission's *Notice of Petition and Notice of Modified Procedure* in early July, 2008. Finally, Qwest, the moving party, responded to those comments on September 15, 2008. In sum, the SGAT portion of this case has completed its course of comment and reply. In addition, Qwest notes that during the eight months this case has been pending, as during the four years prior to its filing, Qwest has not offered or updated the SGAT; nor has it negotiated an ICA using the SGAT as its basis.

As noted, Staff's primary objection to *Petition* in so far as it relates to the SGAT appears to be that "[w]ithdrawal of the SGAT would also remove the performance assurance plan and indicator definitions that are part of the SGAT."⁶ This is not an issue. If the Commission grants Qwest's request to withdraw the SGAT, Qwest will continue to make the PAP (presently designated as SGAT Exhibit K) and the PIDs (Exhibit B) available to CLECs on the same terms they are available today until Qwest is given authority to withdraw, amend or substitute an alternative(s) for said PAP and PIDs.

Qwest respectfully requests, therefore, that the Commission separate the SGAT from the issues surrounding the PAP and PIDs. Qwest further requests the Commission grant Qwest permission to withdraw its Idaho SGAT based on the written record compiled in this docket.

PAP PROCEDURE

Since filing its comments in July 2008, Staff has advocated that the Commission delay this docket until the ROC Review is completed and a "final report can be filed with this Commission."⁷ Since the ROC Review deals only with PAP and PIDs issues, Staff's position does not conflict with the present motion to bifurcate and resolve the SGAT issues. However, assuming that the Commission grants this motion as it pertains to the SGAT, the procedure for the PAP portion of this docket remains unresolved. The Commission's last statement concerning the procedure for this case was predicated on the

⁶ See footnote 3.

⁷ *Commission Staff Motion to Extend Comment Period* at 2.

understanding that Qwest would be offering an alternative proposal. Since that is not the case, it is appropriate to consider how the Commission should address the PAP.

It is clear that Staff, and perhaps some Intervenors, wish to delay substantive work on the PAP issues until the ROC Review is complete. Although Qwest has continuing due process concerns about the use of a report coming out of the ROC Review process in this docket, those concerns are not ripe. Qwest therefore asks that the Commission bifurcate the PAP issues in this docket and hold them in abeyance until April 15, 2009—a date by which, Qwest understands, the ROC Review is scheduled to be completed. In the event the ROC Review is completed earlier, Qwest asks that the Commission move expeditiously to reactivate the docket. Finally, Qwest requests that when the docket is reactivated, the Commission schedule a prehearing conference for the purpose of establishing a procedural schedule suitable for resolving any issues relating to use of the ROC Review report or other evidence, if any, and for otherwise completing the record on the PAP issues, so that they can be brought before the Commission for decision.

Respectfully submitted this 23rd day of January, 2009.



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Attorneys for Qwest Corporation

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing **Motion of Qwest Corporation to Bifurcate SGAT and PAP Issues and for Procedural Order** was served on the 23rd day of January, 2009 on the following individuals:

Jean D. Jewell	<u> X </u>	Hand Delivery
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Idaho Public Utilities Commission	_____	Overnight Delivery
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P.O. Box 83720	_____	Email
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Douglas K. Denney	_____	Hand Delivery
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