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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF QWEST CORPORATION REQUESTING AUTHORIZATION TO WITHDRAW ITS STATEMENT OF GENERALLY AVAILABLE TERMS AND CONDITIONS	)))))	**CASE NO. QWE-T-08-04** **STAFF'S BRIEF IN RESPONSE TO QWEST CORPORATION'S RESPONSIVE COMMENTS**

INTRODUCTION

The Commission opened this docket to consider Qwest's request to allow it to withdraw its Statement of Generally Available Terms and Conditions (SGAT) that had been available to proffer terms for other telecommunications companies to connect with and use Qwest's local facilities. Qwest later clarified in a Motion that its Petition in fact "delineated two separate requests of the Commission: the authority to withdraw the SGAT and, separately, permission to withdraw the PAP [Performance Assurance Plan] and accompanying PIDs [Performance Indicator Definitions]." Qwest Motion to Bifurcate Issues, p. 2. The PAP or Performance Plan with its performance standards are in place to assure that Qwest has incentive to maintain high interconnection standards so that the local service market remains open to competitors. The purposes of the SGAT and the Performance Plan are widely divergent, and even Qwest noted in earlier comments that "the SGAT on the one hand, and the PIDs and PAP, on the other, have different origins and purposes." Qwest Responsive Comments, p. 2 (September 15, 2008).

The difference in the origins and purpose of the SGAT and the Performance Plan creates a different legal standing for them. The Commission allowed Qwest to withdraw the SGAT, finding "no legal requirement in this state that an SGAT remain in effect." Order No. 30750, p. 8. The purpose and legal significance of the Performance Plan, however, make Qwest's attempts to unilaterally withdraw it inappropriate. The Commission should issue an Order requiring the Performance Plan to remain in effect until such time as the Federal Communications Commission (FCC) allows Qwest to remove it.

The Performance Plan is a Legal Requirement for Qwest to Maintain Its Long-Distance Authority

The Commission in Order No. 30750 discussed the statutory origins of an SGAT. Staff will not repeat that discussion here, but it is necessary to review the very different legal framework for the Performance Plan. The SGAT and Performance Plan both result from provisions of the Telecommunications Act of 1996 (Act), and both are related to Qwest's successful effort to obtain FCC authorization to enter the long-distance market. Section 271 of the Act describes the review process and requirements Qwest as a Bell Operating Company (BOC) was obligated to meet to achieve long-distance authority. The Commission summarized the role of an SGAT in a Section 271 proceeding: "A BOC requesting Section 271 authority must either be a party to at least one effective interconnection agreement (Track A), or have an SGAT in place (Track B). 47 U.S.C. § 271(c)(1) and (2)." When Qwest sought long-distance authority, "[t]he FCC determined, as did this Commission, that Qwest met the Track A standards through existing interconnection agreements and so gave little attention to the Track B (SGAT) standards. The SGAT accordingly had little significance in the FCC's approval of Qwest's Section 271 application." Order No. 30750, p. 4.

Although Qwest's SGAT was not significant in its application for long-distance authority, the Performance Plan was critical. A BOC will not be granted long-distance authority merely by meeting the complex interconnection obligations of Sections 251 and 252 of the Act. Section 271 also includes a "competitive checklist" of 14 interconnection requirements, some of them incorporating the Section 251 and 252 obligations, a BOC must satisfy. In addition, the FCC must find a BOC's Section 271 approval to be "consistent with the public interest, convenience and necessity." 47 U.S.C. § 271(d)(3)(C). It is the public interest standard in

Section 271 that gave rise to the FCC's requirement of a Performance Plan for approval of a Section 271 application.

The FCC set forth its public interest analysis in an order denying Ameritech Michigan's Section 271 application. *See Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, FCC Order 97-298 adopted August 19, 1997. The FCC concluded that Ameritech had not fully implemented the competitive checklist in Section 271, and thus stated it was not necessary to "reach the further question of whether the requested authorization is consistent with the public interest, convenience and necessity, as required by section 271(d)(3)(C)." *Ameritech Order* ¶ 381, p. 193. The FCC nonetheless determined, to expedite future Section 271 proceedings, "to identify certain issues and make certain inquiries for the benefit of future applicants and commenting parties, including the relevant state commission and the Department of Justice, relating to the meaning and scope of the public interest inquiry mandated by Congress." *Id.* The FCC discussed different standards that could apply for its public interest analysis, focusing on a primary goal to ensure the local telecommunications markets remain open so that "a BOC cannot use its control over bottleneck local exchange facilities" to stifle competition:

> Although the competitive checklist prescribes certain, minimum access and interconnection requirements necessary to open the local exchange to competition, we believe that compliance with the checklist will not necessarily assure that all barriers to entry to local telecommunications market have been eliminated, or that a BOC will continue to cooperate with new entrants after receiving in-region, interLATA authority. While BOC entry into the long distance market could have procompetitive effects, whether such benefits are sustainable will depend on whether the BOC's local telecommunications market remains open after BOC interLATA entry. Consequently, we believe that we must consider whether conditions are such that the local market will remain open as part of our public interest analysis.

Ameritech Order ¶¶ 388, 390, p. 198. The FCC went on to describe what later became known as Performance Assurance Plans:

> In addition, evidence that a BOC has agreed to performance monitoring (including performance standards and reporting requirements) in its interconnection agreements with new entrants would be probative evidence that a BOC will continue to cooperate with new entrants, even after it is authorized to provide in-region, interLATA services.

. . .

> We would be particularly interested in whether such performance monitoring includes appropriate, self-executing enforcement mechanisms that are sufficient to ensure compliance with the established performance standards. That is, as part of our public interest inquiry, we would want to inquire whether the BOC has agreed to private and self-executing enforcement mechanisms that are automatically triggered by noncompliance with the applicable performance standard without resort to lengthy regulatory or judicial intervention. The absence of such enforcement mechanisms could significantly delay the development of local exchange competition by forcing new entrants to engage in protracted and contentious legal proceedings to enforce their contractual and statutory rights to obtain necessary inputs from the incumbent.

Ameritech Order ¶¶ 393, 394, p. 200.

Following the FCC's denial of Ameritech's application, and by the time Qwest was preparing its Section 271 application, the FCC approved other BOC applications. In particular, the FCC approved Southwestern Bell Telephone's application for long-distance authority in Texas, and Southwestern's Performance Plan became the template for Qwest's own Performance Assurance Plan. *See Application of SBC Communications Inc., Southwestern Bell Tel. Co. and Southwestern Bell Communication Services, Inc., d/b/a Southwestern Bell Long Distance pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas,* CC Docket No. 00-65, Memorandum Opinion and Order, 15 F.C.C. Rcd. 18354 (2000).

The FCC Determined the Performance Plan is Necessary to Ensure Qwest Maintains Its Ongoing Interconnection Requirements

Section 271specifies that the FCC before making a determination on a BOC's Section 271 application must consult with the state commission to verify the BOC's compliance with the 14-item competitive checklist. Because Qwest planned to request long-distance authority in several states at once, the state proceeding was a lengthy, complicated multi-state process, culminating in Commission decisions issued in March and April 2002.[1] As the FCC noted in its Qwest Section 271 Order, the various state commissions, including the IPUC, "each devoted a

[1] Commission Decision on Qwest's Performance Assurance Plan, issued March 7, 2002; Commission Decision on Qwest Corporation's Compliance with Section 271 Public Interest and Track A Requirements and Section 272 Standards, issued April 1, 2002; Case No. USW-T-00-3.

significant portion of their resources to this process over a number of years." *Qwest Nine State Order*, WC Docket No. 02-314, FCC Order 02-332.

Development of Qwest's Performance Assurance Plan was only a part of the Section 271 proceeding. A summary of the Performance Plan process is provided in the Commission's March 7, 2002 decision.[2]

> The development and review of Qwest's Plan (QPAP) began in earnest in August 2000 in a collaborative process created by the Regional Oversight Committee (ROC). The ROC is comprised of representatives of the state commissions that oversee Qwest's local exchange service. The ROC collaborative process included five workshops, numerous conference calls and exchanges of proposals, supporting data, and other information designed to seek the creation of a consensus PAP. The ROC process terminated in May 2001, with many significant issues resolved by consensus, but also with many issues remaining unresolved.
>
> Qwest thereafter on July 16, 2001, filed its Plan with this Commission, stating it "is voluntarily submitted for the purpose of demonstrating to the [FCC] that Qwest will have compelling economic incentive to continue meeting the requirements of Section 271 after it obtains approval to offer long distance services in the state." Qwest's Filing of QPAP, p. 1. Thus, despite disagreement over some of the Plan's terms by other telecommunications companies and Qwest competitors, Qwest was apparently satisfied its Plan would pass muster with the FCC. Rather than let the Plan stand as filed, however, the Commission determined, "along with the other states in the Section 271 proceeding, to include evaluation of the QPAP in the Section 271 process." Order No. 28788, issued July 23, 2001. The Commission asked the Facilitator coordinating the multi-state Section 271 case to receive evidence and conduct hearings on the Plan, and provide a written report to the state commissions. In this way, evaluating the QPAP "as part of the Section 271 requirement will provide a record for the FCC to determine whether Qwest has satisfied the public interest requirements for Section 271 approval." Order No. 28788, p. 3.
>
> Pursuant to the schedule adopted by the Commission, the Facilitator conducted hearings, received written comments and briefs, and filed his QPAP report in October 2001. After written comments on the report were filed, the Commission on November 9, 2001, issued a notice that the QPAP report and comments had been filed. On January 3, 2002, the Commission issued a Notice of Hearing on Oral Argument for the QPAP, which convened on January 24, 2002.

[2] The Commission determined it was appropriate to issue Decisions rather than Orders in the Section 271 proceeding.

Commission QPAP Decision, pp. 1-2.

In its Decision on Qwest's Performance Plan, the Commission discussed the five components of the FCC's "zone of reasonableness" standard it uses to review performance assurance plans: (1) meaningful and significant incentive to comply with designated performance standards, (2) clearly articulated and predetermined measures and standards encompassing a range of carrier-to-carrier performance, (3) reasonable structure designed to detect and sanction poor performance when and if it occurs, (4) self-executing mechanism that does not open the door unreasonably to litigation and appeal, and (5) reasonable assurance that the reported data are accurate. Commission QPAP Decision, p. 3. The Commission noted that the Performance Plan "began with a Plan already approved by the FCC, was tested and revised through a lengthy collaborative process, then was submitted for dispute resolution to the [collaborative] Facilitator, and finally was revised through comments and decision of this Commission." *Id.*, p. 9. The Commission concluded, on that record, that the "QPAP [Performance Plan] is well on its way to meeting the FCC's zone of reasonableness standard." *Id.*

After concluding the state Section 271 proceeding, Qwest filed its application for long-distance authority with the FCC on September 30, 2002. The FCC issued a Memorandum Opinion and Order on December 20, 2002, approving Qwest's Application.[3] The FCC Order is 280 pages long, contains more than 1,800 footnotes and 270 pages of attachments.

It is clear that the FCC placed great importance on the Performance Plan and the related performance measures in approving Qwest's application. For example, the FCC noted the "extraordinary dedication and creativity displayed by the [nine state public utilities commissions]," in particular the efforts by the Regional Oversight Committee (ROC) and the multi-state collaborative process to address Qwest's regional operation support systems and other Section 271 issues. *Qwest Nine State Order* ¶¶ 2, 3. The FCC commended Qwest for its extensive work in opening its local exchange markets and bringing its Section 271 application to fruition, and stated that "approval of this application would not have been possible without these undertakings by Qwest in cooperation with state regulators." *Qwest Nine State Order* ¶ 4. It was these efforts, of course, that resulted in the Performance Assurance Plan and the PIDs.

[3] The FCC is required to rule on a Section 271 application within 90 days of filing. 47 U.S.C. § 271(d)(3).

The FCC discussed the purpose of Performance Plans in the Section 271 process: "In prior orders, the Commission has explained that one factor it may consider as part of its public interest analysis is whether a BOC would have adequate incentives to continue to satisfy the requirements of section 271 after entering the long distance market. Although it is not a requirement for section 271 authority that a BOC be subject to such performance assurance mechanisms, the Commission previously has stated that the existence of a satisfactory performance monitoring and enforcement mechanism would be probative evidence that the BOC will continue to meet its section 271 obligations after a grant of such authority." *Qwest Nine State Order* ¶ 440, pp. 242-243. The FCC thus was particularly interested in the purpose of the Performance Plan, that is, to ensure Qwest's continued compliance with interconnection obligations once it receives authority to enter the long-distance market. The FCC found that "the performance assurance plans (PAP) that will be in place in the nine states provide assurance that the local market will remain open after Qwest receives section 271 authorization in the nine application states." *Id.* ¶ 440.

The FCC also noted the ongoing oversight of the Performance Plans by state commissions to ensure Qwest will continue to meet its Section 271 obligations: "The nine state PAPs, in combination with the respective commission's active oversight of its PAP, and these commissions' stated intent to undertake comprehensive reviews to determine whether modifications are necessary, provide additional assurance the local market in the [nine] application states will remain open." *Id.* The FCC even noted particular terms of the Performance Plans that it considered and regarded as important. The FCC described "several key elements in the performance remedy plan: total liability at risk in the plan; performance measurement and standards definitions; structure of the plan; self-executing nature of remedies in the plan; date of validation and audit procedures in the plan; and accounting requirements." *Id.* ¶ 442. The FCC acknowledged it "has a responsibility not only to ensure that Qwest is in compliance with section 271 today, but also that it remains in compliance in the future." *Id.* ¶ 497.

Qwest's Application to Withdraw the Performance Assurance Plan is Inappropriate

With this Section 271 background in mind, it is perhaps disingenuous for Qwest to assert that "Based on a snapshot of the industry as BOCs completed their 271 process, Qwest ***voluntarily*** offered the PAP," and that the Performance Plan was merely "an expedient that

advanced its 271 application with the FCC." Qwest Petition, p. 9 (emphasis in original); Qwest Comments (August 14, 2009), p. 2. It was not a "snapshot of the industry" that compelled development of the Performance Plan, it was the state of the law. Qwest knew before it "voluntarily" made a significant investment in time and money to develop the Performance Plan that the FCC would not approve its Section 271 application without it.

Qwest asserts in its Application that the Performance Plan was not intended to exist forever, noting a Plan term that calls for the Commission and Qwest to "review the appropriateness of the PAP and whether its continuation is necessary" after Qwest begins providing long-distance service directly rather than through a long-distance affiliate. Qwest Application, p. 10. Qwest did not propose any review process, however, and instead simply argues that the Performance Plan no longer is necessary because "Qwest has consistently provided good service to CLECs" and "Qwest remains committed to providing good service to CLEC customers." Qwest Application, p. 11. Qwest accordingly requests an order from the Commission "finding the PAP and PIDs are no longer necessary and may be withdrawn," and that the Commission's finding constitute a change of law *requiring* the Performance Plan and PIDs to "be removed from existing [interconnection] agreements and not be included in future agreements." Qwest Application, pp. 12-13.

Only the FCC Can Authorize Removal of Qwest's Performance Plan

Section 271 specifically grants enforcement of that Section's requirements to the FCC rather than to state commissions. Section 271(d)(6) states that if the FCC "*at any time* after approval of an [Section 271] application, . . . determines that a Bell Operating Company *has ceased to meet any of the conditions required for such approval*," the FCC may issue an order to the company to correct the deficiency, impose a penalty on the company, or suspend or revoke its Section 271 authority. 47 U.S.C. § 271(d)(6) (italics added). The FCC in its order approving Qwest's Section 271 application acknowledged that state commissions will continue to review and monitor Qwest's interconnection commitments under the Performance Plan, but the ultimate enforcement authority lies with the FCC.

The Performance Plan itself contains review provisions, including the one cited by Qwest requiring the Commission to review the appropriateness of the Plan. Another section of the Performance Plan makes clear that the purpose of state commission reviews of the Plan "would serve to assist commissions in determining existing conditions and *reporting to the FCC*

on the continuing adequacy of the PAP to serve its intended functions." Qwest Idaho SGAT Third Revised, Section 16.2, Sixth Amended Exhibit K, June 26, 2007 (italics added). Both the specific enforcement responsibility in Section 271, and the language contained in the Performance Plan, make clear it is the FCC that must determine whether the Plan no longer is required as a condition of long-distance authority for Qwest. This Commission has a monitoring responsibility, and should periodically review whether adjustments should be made to the Performance Plan and PIDs, but the question of removal of the Plan is for the FCC.

Curiously, Qwest recognizes in its recent comments that "state commissions do not possess power to determine or enforce section 271 requirements," and that "it is the FCC, and not the state commissions, that is empowered to decide if the BOC has 'ceased to meet' any of the requirements for section 271 approval." Qwest Comments (August 14, 2009), p. 14. Qwest does not state the expected conclusion from this argument, however, that the proper forum for its request to withdraw the Plan is the FCC. Instead, with bewildering logic, Qwest contends that "so long as Qwest remained willing to provide its PAP, the issue of the Commission's enforcement authority under section 271 was not raised," and concludes only that subsequent legal authorities "make clear the Commission lacks regulatory authority to require Qwest to continue to offer the PAP." Qwest Comments (August 14, 2009), pp. 14-15.

The Act contains an explicit provision for BOCs to request permission from the FCC for relief from specific Section 271 requirements. Section 10 of the Act states that the FCC "shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications service" when the standard for forbearance is met. 47 U.S.C. § 160(a). Qwest has availed itself of this provision of the Act several times, including in a case culminating in an FCC order released July 25, 2008. *See In the Matter of Petitions of Qwest Corporation for Forbearance Pursuant 47 U.S.C. Section 160(c) in the Denver, Minneapolis, St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, WC Docket No. 07-97, FCC Order 08-174, July 25, 2008 (*Qwest Forbearance Order*). Qwest's recent experiences with applications filed with the FCC may explain its reluctance to file another application with that agency.

In the Qwest Forbearance case, Qwest asked forbearance from loop and transport unbundling obligations required by Sections 251(c) and 271(c)(2)(B)(ii) and other dominate carrier requirements arising under different provisions of the Act. For example, Qwest requested

relief from checklist item 2 in Section 271, requiring a BOC to provide nondiscriminatory access to network elements according to the requirements of Sections 251(c)(3) and 252(d)(1). The FCC noted that "[a]fter a BOC obtains section 271 authority to offer in-region, interLATA services, these threshold requirements become ongoing requirements." *Qwest Forbearance Order*, p. 3, footnote 11.

The Qwest Forbearance case is relevant here for the standard the FCC applies to a BOC's request for relief from its Section 271 obligations. The FCC's standard for reviewing a forbearance request is a determination that "(1) enforcement of the regulation is not necessary to ensure that the telecommunications carrier's charges, practices, classifications, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory; (2) enforcement of the regulation is not necessary to protect consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest." *Qwest Forbearance Order*, p. 9; 47 U.S.C. § 160(a). In addition, the FCC must consider "whether forbearance from enforcing the provision or regulation will promote competitive market conditions." *Id.* In that case, Qwest claimed that competition from other local exchange companies in Denver, Minneapolis-St. Paul, Phoenix and Seattle entitled it to relief from specific dominant carrier obligations in those service areas.

The FCC applied the review standard and the precedents from its earlier decisions to Qwest's evidence, and concluded "that forbearance from the application to Qwest of the Section 251(c)(3) obligations to provide unbundled access to loops, sub-loops, and transport to competitors in the four MSAs [metropolitan statistical areas] does not meet the standards set forth in Section 10(a). Specifically, the record evidence in this proceeding demonstrates that Qwest is not subject to a sufficient level of facilities-based competition in the four MSAs to grant relief under the Commission's precedence." *Qwest Forbearance Order*, p. 26. Clearly the FCC's evaluation of the presence of competitors differed from Qwest's. The FCC stated: "Although Qwest cites a significant amount of retail enterprise competition relying upon Qwest's special access services and UNEs [unbundled network elements], we found above that the levels of facilities-based competition do not justify forbearance and the evidence of additional competition that relies on Qwest's wholesale services is insufficient to warrant forbearance." *Qwest Forbearance Order* ¶ 37, pp. 28-29. The FCC concluded its public interest review of the unbundling element part of the application by stating, "having found above that UNEs remain

necessary for the protection of consumers and to ensure just and reasonable and not unjustly and unreasonably discriminatory prices, terms and conditions in these MSAs, we conclude that forbearing from UNE obligations is not in the public interest." *Qwest Forbearance Order* ¶ 43, p. 31.

The *Qwest Forbearance Order* demonstrates that the FCC carefully reviews a BOC's request for forbearance from its Section 271 obligations. The standard the FCC uses, as established in Section 10(a) of the Act and as clarified in FCC forbearance decisions, is not an easy one. Even though Qwest presented evidence of a competitive presence in the four MSAs, the FCC concluded that the difficult standard for forbearance from Section 271 obligations was not met. The decision also demonstrates that Qwest's view of the status of active competitors in its service areas, and its correspondent Section 271 obligations, may be different than that of a reviewing agency. The FCC denied Qwest's application on all issues.

Like the unbundling obligations and other specific requirements challenged by Qwest in the Qwest Forbearance case, the requirement of a Performance Plan arises under a provision of Section 271. The FCC concluded that BOCs will need a carefully defined monitoring program in place to satisfy the public interest requirement in Section 271(d)(3)(C). The usual forbearance process outlined in the Act applies to Qwest's desire to withdraw the Performance Plan.

Review of the Effectiveness of the PAP requires more than Qwest's Assurances, and must begin with the Liberty Report

The question of elimination of the Performance Plan is for the FCC, but this Commission does have authority to review the Plan for effectiveness and make changes to it. It was significant to the FCC in approving Qwest's Section 271 application that state commissions intended "to undertake comprehensive reviews to determine whether modifications are necessary," because such reviews "provide additional assurance the local market in the [nine] application states will remain open." *Qwest Nine State Order*, ¶ 440, p. 243. Paragraph 16.3 of the PAP, cited by Qwest for authority to withdraw it, calls for the Commission "to review the appropriateness of the PAP and whether its continuation is necessary." Qwest does not propose any review process or standard to determine whether the PAP remains necessary to serve its intended functions.

Qwest's claim that the Performance Plan is no longer useful must be measured by evidence and a meaningful review standard. It may be that the comprehensive measures and the

extensive monitoring of the current Plan may be scaled back, but it is not possible to know that without some kind of meaningful review. The purpose, of course, is to ascertain whether Qwest has "adequate incentives to continue to satisfy the requirements of section 271 after entering the long distance market." *Qwest Nine State Order*, ¶ 440, p. 242.

Qwest asserts in its recent comments "that the evidence shows that Qwest already has sufficient incentives without the PAPs to comply with the Act, that Qwest has complied with the Act and that it is committed to continuing to do so not only because it is the law, but because providing a good service to its CLEC customers aligns with Qwest's financial incentives." Qwest Comments (August 14, 2009), p. 28. The only relevant evidence in the record to date is the Liberty Report, and that report concludes that the Performance Plan must remain in place to ensure Qwest continues to meet its interconnection obligations.

Qwest also offers "a new transitional approach for performance assurance in the form of QPAP-2, and proposes that the Commission and parties recognize this as a replacement for the current Idaho PAP and as an appropriate method for transitioning away from that plan." Qwest Comments (August 14, 2009), p. 28. Staff welcomes a discussion and hearing on a modified Performance Plan, consistent with the Commission's authority to monitor, review and revise the existing Plan. The starting point for that review should be the Liberty Report. Qwest has expressed reservations with particular findings in the report, and should be given an opportunity to explore those concerns in a hearing. That process can include review by the Commission and parties of Qwest's proposed "QPAP-2."

CONCLUSION

The FCC determined that the Performance Plan is a legal requirement under Section 271 of the Act. Qwest agrees that the FCC has the ultimate enforcement authority of Section 271 requirements. Thus, the Commission should issue an Order requiring the Performance Plan to remain in effect until such time as the FCC determines it no longer is required.

Consistent with the Commission's authority to monitor, review and revise the existing Plan, the Commission should use the Liberty Report as the basis for the review called for by the terms of the Performance Plan.

Respectfully submitted this 11th day of September 2009.

Weldon B. Stutzman
Deputy Attorney General

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 11th DAY OF SEPTEMBER 2009, SERVED THE FOREGOING **STAFF'S BRIEF IN RESPONSE TO QWEST CORPORATION'S RESPONSIVE COMMENTS,** IN CASE NO. QWE-T-08-4, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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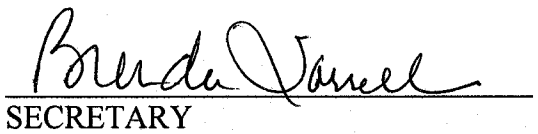

SECRETARY