Exhibit
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BEFORE THE
PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

IN THE MATTER OF THE INVESTIGATION INTO QWEST CORPORATION'S COMPLIANCE WITH SECTION 271 (C) OF THE TELECOMMUNICATIONS ACT OF 1996	))))	DOCKET TC 01-

QWEST CORPORATION'S

AFFIDAVIT

OF

MARK S. REYNOLDS

PERFORMANCE ASSURANCE PLAN

OCTOBER 24, 2001

EXHIBIT
Qwest
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AFFIDAVIT

OF

MARK REYNOLDS

Performance Assurance Plan

Mark Reynolds declares as follows:

My name is Mark Reynolds. My business address is 1600 7th Avenue, Room [illegible], Seattle, Washington 98191. I am Senior Director – Financial Advocacy for Qwest Corporation ("Qwest"). As Senior Director – Financial Advocacy for Qwest. I am responsible for the Qwest Performance Assurance Plan. I am also responsible for a variety of financial matters that come before the state commissions that regulate Qwest.

Education and Professional Experience

My formal education consists of a Bachelor of Arts from Oregon State University (1977) and a Masters of Business Administration (1979) from the University of Montana.

My professional experience in the telecommunications industry spans 20 years working for Qwest and its predecessors, U S WEST Communications (U S WEST) and Pacific Northwest Bell. I have held various director positions in costs, economic analyses, pricing, planning and interconnection for U S WEST in the marketing and regulatory areas. I was responsible for ensuring economic pricing relationships between and among U S WEST's product lines, including telephone exchange service, long distance, and switched/special access services. I represented U S WEST, both as a professional pricing policy witness, and as the lead company representative, in a number of state regulatory and industry pricing and service unbundling workshops.

that I managed an organization responsible for the economic analyses and cost studies that supported U S WEST's tariffed product and service prices and costs before state and federal regulators.

In the recent past, I managed U S WEST's interconnection pricing and product strategy and the interconnection negotiation teams that were responsible for negotiating interconnection and resale contracts with new local service providers. Also, I managed U S WEST's cost advocacy and witness group which was responsible for providing economic cost representation at telecommunications forums, workshops and regulatory proceedings. Finally, prior to my recent appointment in the Finance organization, I was responsible for a number of 271 related regulatory projects including checklist item performance, data verification, and wholesale product pricing support.

I. EXECUTIVE SUMMARY

As part of the FCC's consideration of Qwest's section 271 application, the FCC will "assess whether the requested authorization would be consistent with the public interest, convenience and necessity."[1] As a part of its analysis, the FCC will consider

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1 Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, Memorandum Opinion and Order, CC Docket No. 99-295, FCC 99-404, 15 FCC Rcd 3953, ¶ 422 (rel. Dec. 22, 1999), *aff'd*, 220 F.3d 607 (D.C. Cir. 2000) ("Bell Atlantic New York Order"); Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance; Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Regions, InterLATA Services in Texas, Memorandum Opinion and Order, CC Docket No. 00-65, FCC 00-238, 15 FCC Rcd 18354, ¶ 416 (rel. June 30, 2000), *appeal voluntarily dismissed*, AT&T v. FCC, No. 00-1295 (D.C. Cir. Mar. 1, 2001) ("SBC Texas Order").

two factors: (1) whether Qwest has opened its markets to competition, and (2) whether Qwest has provided sufficient assurance that the markets will remain open after the application is granted.[4] The first question is addressed by Qwest's demonstration to the South Dakota Commission that it meets the section 271 checklist. The second question is answered by the presence of a performance assurance plan.

The primary purpose of my Declaration is to demonstrate that Qwest will be subject to a comprehensive self-executing performance measurement and enforcement mechanism, namely Qwest's Performance Assurance Plan (QPAP) and that the QPAP meets the FCC's expectations. The QPAP is voluntarily submitted as Exhibit K of the Qwest Statement of Generally Available Terms and Conditions ("SGAT") for the purpose of demonstrating to this Commission and the FCC that Qwest will have compelling economic incentives to continue meeting the requirements of section 271. By its voluntary terms, Qwest's liability under the PAP will commence once section 271 authorization from the FCC for the state of South Dakota is effective. The plan, based on the FCC-approved SBC-Texas performance assurance plan, was further refined through an extensive collaboration with the ROC representatives, including representatives from the South Dakota Public Utilities Commission, and the CLECs. The QPAP includes a comprehensive set of performance measures and an associated set of liquidated damages payments to the CLECs, as well as payments to either a state fund administered by the Commission or the South Dakota State Treasury, in the event

[4] See Bell Atlantic New York Order, ¶ 422-23; SBC Texas Order, ¶¶ 416-17.

Qwest's performance falls below specified levels. The QPAP is provided as Exhibit MSR-QPAP-1 to my testimony.

My Affidavit will also address the extensive background associated with the development of the QPAP. As a sign of Qwest's commitment to offer a rigorous performance assurance plan, Qwest initially adopted the key structural aspects of the FCC-approved Southwestern Bell Telephone Company ("SBC") performance assurance plan for the State of Texas[5]. Qwest then engaged in months of workshop sessions with state staff members and CLECs under the auspices of the Regional Oversight Committee ("ROC")[6]. Through this collaborative process, Qwest demonstrated a willingness to compromise its proposed PAP to take into consideration reasonable proposals from CLECs. The sessions resulted in substantial consensus with many participating CLECs over the three major structural aspects of the QPAP: the performance measurements to be included in the QPAP, the statistical methodology which determines whether the performance meets the standard, and the basis for the

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[5] Nearly identical plans were approved by the FCC for SBC's Kansas and Oklahoma applications. *See* Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, Memorandum Opinion and Order, CC Docket No. 00-217, FCC 01-29, 16 FCC Rcd 6237 (rel. Jan. 22, 2001), *pet. for review filed sub nom.*, Sprint v. FCC, No. 01-10761 (D.C. Cir. filed Feb. 16, 2001) ("SBC Kansas Oklahoma Order").

[6] The Regional Oversight Committee ("ROC") is comprised of the 14 state public utility commissions servicing the states in Qwest's in-region operating territory. The ROC has been played a key role in the evaluation of various aspects of Qwest's 271 evidence including the '3rd Party Test' of Qwest's operational support systems ("OSS"), performance measure development and auditing, and performance assurance plans.

payment amounts to be applied to non-conforming performance results. With its genesis in the FCC-approved SBC-Texas provisions and the revisions resulting from the ROC workshops, the QPAP is a robust performance assurance plan that satisfies the necessary criteria for the Commission to recommend that Qwest's section 271 filing is in the public interest and will provide protection against performance backsliding after Qwest obtains long distance entry.

B. REVIEW STANDARD

The Telecommunications Act of 1996 requires Qwest to provide CLECs with ongoing nondiscriminatory access to the items specified in the 14 point checklist, including access to Operations Suppo t Systems ("OSS"). In connection with the FCC determination of whether section 271 pproval is consistent with the public interest, it has considered whether the applic t can demonstrate that the local exchange market will remain open to competition fter approval has been granted.

Unlike checklist items that are included in the SGAT, the QPAP represents an undertaking that is not required under sections 251, 252 or 271 of the Telecommunications Act. The FCC has never required Bell Operating Company ("BOC") applicants to demonstrate that they are subject to performance monitoring and enforcement mechanisms as a condition of section 271 approval. However, where a BOC has voluntarily provided a performance assurance plan, the FCC has stated that these mechanisms would constitute "probative evidence" that the BOC will continue to met its section 271 obligations and that its entry would be consistent with the public interest.[5]

In evaluating the QPAP, the Federal Communications Commission's ("FCC") will examine whether the mechanism "fall[s] within a zone of reasonableness" and is "likely to provide incentives that are sufficient to foster post-entry checklist compliance."[6] To guide this analysis, the FCC has identified five key characteristics of an acceptable performance assurance plan: (1) potential liability that provides a meaningful and significant incentive to comply with the designated performance standards; (2) clearly articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance; (3) a reasonable structure that is designed to detect and sanction poor performance when it occurs; (4) a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and (5) reasonable assurances that the reported data are accurate.[7] After reviewing the QPAP, this Commission can determine that the QPAP embodies the

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5 See, e.g., Memorandum Opinion and Order, *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd 3953, 4161 ¶ 422 (1999), *aff'd*, 220 F.3d 607 (D.C. Cir. 2000) ("*BA-NY*") and Memorandum Opinion and Order, *Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications 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*, 15 FCC Rcd 18354, 18559-60 ¶ 420 (2000), *appeal voluntarily dismissed*, AT&T v. FCC, No. 00-1295 (D.C. Cir. Mar. 1, 2001) ("*SWBT-Texas*").

6 Bell Atlantic New York Order, ¶ 433.

7 See Bell Atlantic New York Order, ¶ 433.

criteria articulated by the FCC and provide a recommendation that Qwest's application is in the public interest.

II. BACKGROUND

In August 2000, the state regulatory commissions from 11 of Qwest's 14 in-region states invited interested parties to participate with them and Qwest in collaborative workshops to develop a post-271 entry performance assurance plan.[8] This collaborative, which became known as the ROC Post Entry Performance Plan ("PEPP") collaborative, held a series of conference calls and five multi-day workshops between October 2000 and May 2001. Staff members from the 11 states as well as AT&T, WorldCom, New Edge, Z-Tel, Covad, McLeod, Eschelon, XO, Southwestern Bell and other CLECs participated in the workshop process.

In the beginning, the collaborative reviewed Qwest's proposed performance assurance plan, in addition to a number of CLEC proposed plans that had vastly different statistical procedures, payment structures, and administrative provisions. With oversight and guidance provided by the project manager, Maxim Telecom Group ("MTG"), the collaborative engaged in exhaustive presentations and debate of the different elements of the proposed plans. In the end, the CLECs agreed to set their proposed plans aside and focus on the Qwest proposed Performance Assurance Plan.

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8 Participating states included Idaho, Iowa, Nebraska, New Mexico, North Dakota, Montana, Oregon, South Dakota, Utah, Washington, and Wyoming. Arizona and Minnesota declined the invitation to participate. Colorado opened Docket 01I-041T on January 24, 2001 to separately consider a Performance Assurance Plan. In a similar parallel process, Arizona has been reviewing a Performance Assurance Plan since June 30, 2000.

Substantial closure was achieved on many essential parameters of a plan. Exhibit MSR-QPAP-2, to this Affidavit is MTG's final report, which lists the agreements reached and the areas in which the parties were unable to reach agreement.[9]

Subsequent to the PEPP collaborative, Qwest engaged in a nine-state review of the QPAP conducted by Mr. John Antonuk, as Facilitator. Qwest has incorporated the concessions it made in that process into the QPAP provided as Exhibit MSR-QPAP-1. The remaining unresolved issues raised in the ROC PEPP collaborative are either appropriately left out of the QPAP or addressed in a way that is consistent with the FCC's expectations. Accordingly, this Commission should accept Qwest's proposed plan, in its entirety, and recommend that the QPAP is in the public interest.

IV. QWEST'S PERFORMANCE ASSURANCE PLAN SATISFIES THE FCC'S REQUIREMENTS

As I demonstrate below, the QPAP satisfies the five key characteristics the FCC has identified for an acceptable performance assurance plan: (1) potential liability that provides a meaningful and significant incentive to comply with the designated performance standards; (2) clearly articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance; (3) a reasonable structure that is designed to detect and sanction poor performance when it occurs; (4) a self-executing mechanism that does not leave the door open

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9 Appendix C of the MTG report, which contained an earlier version of the Qwest PAP, is omitted, as Qwest has provided its plan in the form of SGAT language

unreasonably to litigation and appeal; and (5) reasonable assurances that the reported data are accurate.[10]

A. Qwest's potential liability under the QPAP provides a meaningful and significant incentive to comply with the designated performance standards.

The QPAP exposes Qwest to substantial financial liability. The FCC approved Bell Atlantic's application for New York and Southwestern Bell Telephone Company's applications for Texas, Oklahoma, and Kansas with those companies placing at risk 36% of net return as calculated from ARMIS data.[11] ARMIS data "represents total operating revenue less operating expenses and operating taxes" and is provided to the FCC on an annual basis.[12] The FCC found that a calculation of "net return" based upon this data was a "reasonable approximation of total profits derived from local exchange service."[13] The FCC considered 36% of net return sufficient incentive for the BOC to

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and it reflects changes made to disputed sections made after the PEPP workshops.

[10] See Bell Atlantic New York Order, ¶ 433.

[11] See Bell Atlantic New York Order, ¶ 435 n.1332; SBC Texas Order, ¶ 424 n.1235; SBC Kansas Oklahoma Order, ¶ 274 n.837. In New York, this amount was subsequently increased due to concerns arising after section 271 approval. See Order Adopting the Amended Performance Assurance Plan and Amended Change Control Plan, Case Nos. 97-C-0271, 99-C-0949 NY PSC (Nov. 3, 1999), available at http://www.dps.state.ny.us/fileroom/doc6721.pdf ("NY PSC Order").

[12] Bell Atlantic New York Order, ¶ 436; SBC Texas Order, ¶ 424.

[13] Id.

"maintain a high level of performance."[14] Qwest's PAP places $15 million annually at risk, an amount that represents 36% of Qwest's 1999 South Dakota net return. Attachment 3 of the QPAP shows the calculation of the $15 million.

CLECs have variously proposed that the cap on payments in the QPAP be raised above 36% of net return and that any "cap" be merely a "trigger" for investigation by the state commission. Those proposals are contrary to the FCC's acceptance of a 36% cap for other BOCs. There is no basis for asking Qwest to offer more. The purpose of the QPAP is to create significant financial incentive to Qwest to ensure against backsliding on service performance once section 271 approval is given to enter long distance markets. Financial risk does not have to be unlimited in order to be significant. The 36% net return standard has already been determined by the FCC to meet the significant financial incentive test.

It must be remembered that CLECs receive Tier 1 payments without a requirement to make a showing of economic harm. The absence of such a requirement is a significant benefit to CLECs that would not otherwise exist. There is no economic justification for CLECs to be given unlimited self-executing payments without the requirement to demonstrate economic harm.

B. The QPAP contains clearly articulated and pre-determined measures and standards that encompass a range of carrier-to-carrier performance.

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14 Bell Atlantic New York Order, ¶ 435; SBC Texas Order, ¶ 424.

Payments under the QPAP are tied to effective enforcement measurements, which are well defined and comprehensive. The performance measurements defined by the Performance Indicator Definitions ("PIDs") form the foundation of the QPAP. These performance measurements were developed through months of collaboration with CLECs and state staff members in the ROC Operational Support System ("OSS") collaborative and cover Qwest's wholesale performance from preorder through provisioning and billing. Early in the ROC PEPP collaborative process, the parties agreed to take advantage of the ROC developed PIDs, rather than attempt to develop new or different performance measurements. It is appropriate to use these performance measurements given the significant participation, effort and consensus reached in the ROC OSS collaborative. Furthermore, the PIDs represent the very standard against which Qwest will be judged in determining whether it should receive section 271 approval, the precursor tc any "backsliding" plan.

The PIDs are used to measu e Qwest's wholesale performance in accordance with two types of standards. Wher , there is a retail analog to a wholesale product or service, Qwest compares the uality of its retail service to the service it provides CLECs. This standard is referred to as "parity" of service. Where comparable retail products, services, or functions do not exist, the wholesale measures are based on benchmarks, or fixed standards, to which the service provided to CLECs is compared.

At the beginning of the ROC PEPP collaborative there was substantial disagreement over which of the PIDs should be included in the QPAP. While the CLECs proposed that almost every measurement be included, Qwest objected because many of the measurements would have result in duplicative payments. In the end, through "give and take" and use of a "family-of-performance-measures" approach, the parties closed on a list of performance measurements. Some performance measurements share a payment opportunity, the so-called family approach, such that only the "family member" that generates the highest payment is paid. Under this approach, the incentive for maintaining conforming performance for all family members is created while reasonably keeping Qwest from paying multiple times for the same performance deficiency.[15] The ROC performance measurements will be finalized shortly after completion of the performance measurement audit in the ROC OSS Test Collaborative States and will be provided as Attachment B to the SGAT.

The QPAP also contains a built-in review mechanism to ensure that the performance measurements continue to be effective measurements of Qwest's wholesale performance. Every six months, the QPAP requires a review of the performance measurements, at which time the Commission and Qwest and participating CLECs may consider changes, additions and deletions to the measurements. This six-month review provision is described in section 16 of the QPAP.[16]

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15 Certain measurements were left out by agreement. Those measurements are ones which are "parity-by-design, are diagnostic, or which overlap other measurements included in the QPAP.

16 In implementing the SGAT language, Qwest has modified the QPAP language from the ROC PEPP version to indicate that PAP revisions can be made only with Qwest's consent.

Notwithstanding the parties' agreement to work from the already developed ROC performance measurements, Qwest subsequently agreed to include additional measurements in the QPAP for change management and local number portability.

All of the wholesale services and functions relied upon for different market entry strategies are measured by the performance measurements included in the QPAP. Resold services are separately measured in many of the pre-order/order, provisioning and repair performance measurements and compared to the services Qwest provides to its own retail customers. Resellers may also use pre-assembled combinations of unbundled network elements (the UNE-Platform or UNE-P), which are also separately measured in pre-order/order, provisioning, and repair measurements.

Some CLECs rely predominantly on their own loop and switching facilities, but require interconnection with Qwest. Interconnection services include LIS trunks and E911 trunks which are separately measured in the pre-order/order, provisioning, and repair measurements. Other interconnection-related functional areas, including collocation, trunk blocking, local number portability, and NXX code activation, are measured by individual performance measurements.

For CLECs that rely upon unbundled network elements, various performance standards apply depending on the functional areas of service provisioning. For example, all types of unbundled loops (analog, 2-wire non-loaded, 4-wire non-loaded, ISDN capable, ADSL capable, DS1 and DS3 and higher bit rates) are separately measured in the provisioning and repair performance measurements. Unbundled transport at the DS1 and DS3 levels also carry separate measurements.

In addition to the service-specific metrics addressed above, functional measurements are included in the QPAP for OSS electronic gateway access, access to Qwest's interconnection service centers, access to Qwest's repair centers, and for billing functions.

Overall, the performance measurements included in the QPAP are categorized in the following functional areas:

1) Electronic Gateway Availability
2) Pre-Order/Orders
3) Ordering and Provisioning
4) Maintenance and Repair
5) Billing
6) Network Performance
7) Collocation

Performance measurements in each of the above functional areas may include multiple sub-measurements cove ing different sub-processes, different wholesale services as discussed above, an several geographic disaggregations (i.e., dispatches within an MSA vs. dispatches outside an MSA; urban zone '1' vs. rural zone '2').

Most performance measurements are CLEC and state specific and would be applied at the individual CLEC level and just for the CLEC's South Dakota operations. A limited number of performance measurements are on a region-wide basis because the Qwest operations are regional in nature and state results cannot be separately identified.

The performance measurements that are included in the QPAP are listed on Attachment 1 and in section 7.4 of the QPAP. Mike Williams describes each of the PIDs in greater detail in his Affidavit.

C. The QPAP provides a reasonable structure that is designed to detect and sanction poor performance when and if it occurs.

(1) Payment criteria and structure

Qwest initially adopted the payment structure of the SBC-Texas performance assurance plan, which had been determined both by the Texas Commission and the FCC to be a reasonable structure that was effective in sanctioning poor performance. In the ROC PEPP workshops, Qwest made substantial improvements to the SBC-Texas payment structure that should leave little doubt that the QPAP is an acceptable performance assurance plan.

Like the SBC-Texas plan, the QPAP operates at two levels: Tier 1 operates at the individual CLEC level and provides for self-executing compensatory payments to CLECs and Tier 2 operates at the aggregate CLEC level and provides additional financial incentive payments to the state. Both Tier 1 and Tier 2 payments are based on designated performance measurements, with defined rules for determining whether Qwest meets or fails performance standards, and with clearly delineated steps for calculating payments.

<u>Tier 1</u>: Tier 1 provides payments to CLECs when Qwest fails to meet performance standards. Such a regime of measurements and payments in which an

ILEC, such as Qwest, makes self-executing payments to CLECs is justified only when the payments are a form of compensation. The QPAP is such a regime with an integrated structure of measurements and payments in which payment levels escalate depending upon the degree to which Qwest misses performance standards and the number of consecutive months of such misses.[17]

Each CLEC's South Dakota operating results will be measured and reported monthly against the performance standards defined in the performance measurements listed in Attachment 1 of the QPAP as Tier 1.[18] The performance measurements included in the QPAP are designated as Tier 1, Tier 2, or both, and carry one of three weightings (high, medium, or low).[19] As discussed above, the performance measurements have either "parity" or "benchmark" standards. For parity measurements, the determination of whether Qwest meets the parity standard is made with the aid of statistical tools that determine whether the performance results for the CLEC is statistically different than the performance results for Qwest's retail operations. This statistical evaluation will be performed in accordance with the methods described in sections 4.0 and 5.0 of the QPAP and as discussed further in the next section of this affidavit. Sections 4.0 and 5.0 have been agreed to by most CLECs who participated in

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[17] The Tier 1 Payment levels are identified in Table 2 of the QPAP.

[18] The QPAP operates at the lowest level of disaggregation when the performance measurement results are reported by service type and geographic region.

[19] Certain Tier 2 measurements are region-wide measurements which do not carry weightings (i.e., high, medium, or low) and for which reporting of specific CLEC results is not possible.

the ROC PEPP collaborative. For benchmark measurements, the determination of whether Qwest meets a benchmark standard is a straightforward comparison of CLEC results to the benchmark.

When Qwest fails to meet a performance standard, the percentage difference between the actual service level and the performance standard is calculated and that percentage is multiplied by the number of CLEC service units measured. The resulting number of units is then multiplied by the appropriate dollar amount specified in Table 2 of section 6.0 of the QPAP to determine the payment to the CLEC for that performance measure. This results in compensatory payments to CLECs for the CLEC's service units that fall short of meeting performance standards.

The payment amounts specified in Table 2 of section 6.0 of the QPAP vary depending upon the high, medium, or low weighting assigned to each performance measurements and the number of consecutive months Qwest may have failed to meet the performance standard for the specific CLEC. The payment amounts increase in value moving from low to high weightings and as the number of consecutive months of failing to meet the performance standard increases.

As a result of the ROC PEPP collaborative, Qwest agreed to incorporate the following Tier 1-related changes that make the QPAP more amenable to CLECs than the SBC-Texas PAP.

The QPAP contains a "step down" function which requires the payment amounts listed in Table 2 of the QPAP to stay at escalated levels rather than to return immediately to their beginning levels. The result is that escalation of payments for consecutive months of non-conforming service will be matched month-for-month with de-escalation of payments, instead of reverting to base levels after one month of conforming service. Thus, payments that had been escalated due to consecutive months of non-conforming service would step down, one month at a time, for every consecutive month of conforming service. This addition has the agreement of all but one CLEC who participated in the ROC PEPP collaborative.

All Tier 1 provisioning ("OP") and repair ("MR") measurements have been given the highest importance weighting. This change was made in response to CLEC claims that Tier 1 payment levels were insufficient.

Qwest agreed to eliminate caps on payments to CLECs for specific performance measurements. Payments to CLECs for failing to meet standards for certain performance measurements were initially capped at specified levels, similar to the SBC-Texas PAP. At the request of CLECs, Qwest considered and removed all caps, except those associated with the billing measurements.

Finally, during the collaborative, CLEC's requested that the ROC collocation performance measurements be used for the business rule definitions and requirements, but that payments would be calculated in accordance with a set schedule of 'per late day' escalating payments. Qwest adopted the proposed CLEC's proposed late-day structure and the corresponding payment. The per day payment schedule is as follows:

Table 1: Proposed Collocation Payment Amounts

Days Late	Completion Date	Feasibility Study
1 to 10 days	$150/day	$45/day
11 to 20 days	$300/day	$90/day

21 to 30 days	$450/day	$135/day
31 to 40 days	$600/day	$180/day
More than 40 days	$1,000/day	$300/day

The per day payment schedule would be applied to all collocation jobs in which the feasibility study or the completion of the job was later than the scheduled date. The calculation of the payment amount is performed by applying the per day payment amount progressively. Thus, for days 1 through 10, the payment is $150 per day. For days 11 through 20, the payment is $300 per day. For days 21 through 30, the payment is $450 per day. For days 31 through 40, the payment is $600. For days beyond 40, the payment is $1,000 per day.

For a collocation job that was 40 days late, the Tier 1 payment to CLECs would be $15,000, which almost exceeds the value of many collocation jobs. Thus, the CLEC proposed payment table from the ROC PEPP collaborative relates very well with the value of collocation jobs.

Tier 2. Tier 2 is similar in many regards to Tier 1, but serves a different purpose. Tier 2 acts as an additional layer of payments that are strictly incentive in nature.[20] As such, Tier 2 payments are made to either a state fund administered by the Commission or to the South Dakota Treasury, not to the CLECs. The Tier 2 payment structure is also a more limited regime of measurements and payments than Tier 1 and is based upon aggregated rather than individual CLEC performance results.

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20 Tier 1 payments, while compensatory to CLECs, also act as an incentive for Qwest to meet performance standards.

There are two different kinds of Tier 2 measurements. Because Tier 2 payments are made to the State, Tier 2 measurements include those with CLEC results that are aggregated into a state result, such as the provisioning and repair measurements, and those that are reported only a region-wide basis, such as the gateway measurements. Tier 2 measurements are paid on either a per occurrence or a per measurement basis. Tier 2 per occurrence performance measurements are listed on Attachment 1 of the QPAP and carry one of three weightings (high, medium, or low). Tier 2 region-wide measurements have separate provisions which are described in section 7.4 of the QPAP.

As a result of the ROC PEPP collaborative, Qwest changed several aspects of the Tier 2 payment structure for the region-wide performance measurements. CLECs requested a graduated payment structure in which payment levels are pre-specified and increase with the degree that Qwest misses performance standards. Also, in accordance with another CLEC request, Qwest agreed to eliminate the three consecutive month miss requirement for the region-wide measurements. Table 4 in the QPAP reflects these requests.

(2) Statistical methodology and benchmark standards

For performance measurements that have parity standards, the QPAP uses statistical tools to determine whether the service levels Qwest provides to CLECs is statistically different from the service levels Qwest provides to its retail operations. The primary statistical test is the modified z-test, which is the standard statistical test for comparing the difference between two means. The modified z-test is used when the

CLEC business volume for the performance measurement being evaluated is greater than 30. When the CLEC business volume is 30 or less, Qwest uses a permutation test. The statistical methodologies are specified in section 4.0 of the QPAP.

Qwest will be judged to have met a performance standard when the monthly performance results are such that the calculated z-test statistics are less than the critical z-values listed in Table 1, section 5.0 of the QPAP.

For performance measurements that have benchmark standards, Qwest will be judged to have met the standard when the monthly performance results equal or exceed the benchmark. If the benchmark is 95% or better, Qwest performance results must be at least 95% to meet standard.

While the statistical methodology, or even whether statistics should be used to determine whether Qwest meets parity performance standards, was vigorously contested in the ROC PEPP collaborative, most of the parties[21] were ultimately able to reach agreement. Participants were concerned with whether the methodology could adequately detect non-conforming performance when CLEC business volumes were small and whether it could be calibrated to differentiate between false failures (Type I errors) and false passes (Type II errors). The participants agreed to a statistical methodology that balances concerns about sample sizes, Type I and Type II errors, and statistical significance. Qwest eliminated the "K table" employed in the SBC-Texas PAP

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21 Only WorldCom and Z-Tel declined to participate in the ROC PEPP statistical agreement.

to account for random variation and agreed to use the critical values specified in Table 1 of the QPAP.

The agreed upon statistical methodology is straightforward. It uses a standard z-test, but adopts a different critical value for certain services. For certain services, the critical value is smaller, thereby making the test most stringent when CLEC volumes are less than 11. The result is a statistical methodology that is acceptable to Qwest and to large and small CLECs. A full description of the statistical methodology is provided in Sections 4.0 and 5.0 of the QPAP.

The determination of whether Qwest meets the parity standard for Tier 2 measurements is made with the aid of statistical tools similar to those used for Tier 1 measurements except that a 1.645 critical value is used rather than the critical values listed in Table 1 of Section 5.0 The determination of whether Qwest meets a benchmark standard is the same as for Tier 1 measurements. The calculation of Tier 2 payments is performed in the same manner as for Tier 1 measurements except that Tier 2 payment amounts are separately specified in Table 3 of the QPAP and Tier 2 payments are due only after missing performance standards three consecutive months.[26] A step-by-step description of calculating Tier 2 per occurrence payments is provided in section 9.0 of the QPAP.

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[26] The region-wide measurements listed in section 7.4 of the QPAP are subject to their specific rules specified in section 7.4 of the QPAP.

(3) Quantification of the QPAP

Qwest believes that the QPAP payment structure, once operational, will produce results that are adequate sanctions for nonconforming performance. The QPAP tables[3] of payment amounts are directly from the SBC-Texas PAP. The Tier 1 payment amounts that range upward to $800, $600, and $400 (for high, medium, and low designations at the six-month level, respectively) applied to each CLEC service unit that fails to meet performance standards should be more than fully compensatory to CLECs for Qwest missing performance measurement standards. Furthermore, the additional $500, $300, and $200 Tier 2 payments, in combination with Tier 1 payments, should provide a powerful financial incentive to Qwest to meet performance standards both at the individual CLEC level and at the overall CLEC aggregate level.

The application of actual CLEC performance results to the QPAP payment structure demonstrates that the QPAP, once operational, will sufficiently sanction nonconforming performance. Thus, the Table in MSR-QPAP-3C shows the estimated South Dakota Tier 1 and Tier 2 payments Qwest would have paid for the three month period, May to July 2001, assuming 271 relief had been previously granted.

It should first be noted that Qwest met 93% of all performance measurement standards in South Dakota during May, June, and July 2001. That level of performance is exemplary.

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3 Tables 2 and 3 of the QPAP.

The "number of measurements" for each month represents the number of times Qwest wholesale service performance is measured against a performance standard and, thus Qwest is at risk to make a Tier 1 payment to a CLEC or a Tier 2 payment to either a fund administered by the Commission or the South Dakota Treasury.

The "number of missed measurements" is the number of times Qwest missed the performance standard for the applicable performance measurement. In other words, the number of missed measurements is the number of times Qwest provided non-conforming wholesale service and would make a Tier 1 or Tier 2 payment.

The "percent meets" is calculated from the total number of measurements and the number of measurements missed.

"Tier 1 and Tier 2 payment" is the estimated payment that Qwest would have made if the QPAP had been in effect. For the three-month period, the amount identified in MSR-QPAP-3C-A would have bee n the approximate Tier 1 payments to individual CLECs. "Payment per missed meas rements" is the average Tier 1 and Tier 2 payment divided by the number of missed measurements.

At the average paym ent shown on MSR-QPAP-3C-B for every time a performance standard is missed, it is clear that the QPAP payment structure will be substantial financial incentive for Qwest to meet performance standards, even when overall service performance is already high, as evidenced by the overall percent meets of 93%. The primary reason is because the underlying wholesale services to which the missed performance standards relate generate far less revenues for Qwest than the payments it would be making. A simple comparison of QPAP payments with the associated wholesale service revenues will signal to Qwest management that it stands to lose money each time it fails to meet performance standards in processing CLEC service requests.[24]

For example, out of 3,107 completed South Dakota orders in May, June, and July, Qwest met the commitment due date 97.3% of the time. Only 5 of the missed commitments were not in conformance with the appropriate parity or benchmark performance standard for the relevant OP-3 measurement.[25] Nevertheless, the QPAP Tier 1 payments for the three provisioning performance measurements (OP-3, Installation Commitments Met; OP-4, Installation Interval; and OP-6, Delayed Days) would total the amount identified in MSR-QPAP-3C-C. Such a significant payment in relation to the few missed due dates indicates the adequacy of the QPAP payment structure.

Of 3,622 Firm Order Confirmation (FOC) notices sent to CLECs, only 76 were not issued on time. The Tier 1 payments to CLECs would have been the amount reflected on MSR-QPAP-3C-D or approximately the amount reflected on MSR-QPAP-3C per late FOC. Many times the FOC relates to a service for which the CLEC pays Qwest $30 per month or less.

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24 The clear majority of wholesale services covered purchased by CLECs in South Dakota are resale services and unbundled loops that generally generate approximately $30 or less per month of local revenues.

25 The significance of the high percentage of time Qwest meets commitment due dates is that CLECs cannot logically claim economic harm since their retail customers' expectations for timely service were met.

D. The QPAP contains a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal.

The QPAP provides for Tier 1 and Tier 2 payments that are self-executing whenever Qwest fails to meet performance standards.[26] CLECs will receive bill credits without any need to prove economic harm or to provide a quantification of such harm. Tier 2 payments will be made automatically to either a state fund administered by the Commission or the South Dakota Treasury via check or wire transfer. Step-by-step descriptions of the calculation of the payments are contained sections 8.0 and 9.0 of the QPAP. Section 14 specifies the timeline by which Qwest will produce and report performance results. Section 11 specifies the monthly due date for payment to the CLECs and the State.

The QPAP provides for limited situations in which Qwest is excused from making payments under the QPAP. Qwest h as the burden of demonstrating its right to those exceptions. The relevant provisions are provided in sections 13 and 14 of the QPAP and are based upon the similar pro visions of the SBC-Texas plan.[27]

The CLECs' request tha' Qwest be required to make cash payments to CLECs instead of issuing bill credits is inconsistent with the plans that were adopted as part of the section 271 approval processes in Kansas, Massachusetts, New York, Oklahoma, and Texas.[28] None of the performance plans in those states requires cash payments

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26 Bell Atlantic New York Order, ¶ 441; SBC Texas Order, ¶427.

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28 See, e. g., Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance

instead of bill credits. While the CLECs claim that cash is easier to administer than bill credits, they have neither explained nor demonstrated why that is allegedly the case. The financial management at a modern corporation is performed through its accounting system, not through its cash box. Whether paid in cash or by bill credit, CLECs must still enter the payment into its accounting system. Such systems disregard whether the payment originated as a bill credit or as cash. CLECs claim that cash would have a greater impact on Qwest than bill credits. This assertion is simply wrong and is based upon the mistaken view that the modern corporation still relies upon senior management hand-signing all checks. Whether by bill credits or cash, the visibility to Qwest senior management of payments to CLECs under this PAP will be through the monthly profit and loss statement that summarizes Qwest results.

Qwest also believes that bill credits are necessary as a matter of equity between Qwest and CLECs. This is because CLECs are routinely delinquent in paying their bills for local wholesale services rendered by Qwest. It would be inequitable and unfair that Qwest be required to pay CLECs for the installation of services for which Qwest is not receiving timely payments.

Company (d/b/a Verizon Enterprise Solutions), and Verizon Global Networks, Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts, Memorandum Opinion and Order, CC Docket No. 01-9, FCC 01-130, 16 FCC Rcd 8988, ¶ 238 (rel. April 16, 2001) ("Verizon Massachusetts Order"); Bell Atlantic New York Order, ¶ 432.

Specifically, Qwest is currently pursuing payment from two CLECs for completed collocation installations. The CLECs have declined to pay the final 50% of charges[29] because they have since altered their business plans and no longer desire the collocations. Under the penalty requirements of the QPAP, Qwest would be required to make payments to the two delinquent CLECs, had the collocation installation been completed late. If Qwest had been required to make cash payments rather than bill credits, the two CLECs would have pocketed the cash, creating the highly inequitable situation of the CLECs receiving cash from Qwest while refusing to pay Qwest for the collocation installations. Payment by bill credit would avoid this type of inequity.

To further support its position on the use of bill credits, Qwest would note that, on average, CLEC charges that are more than 30 days past due are 96% of current month billings.[30] By comparison, long distance carrier charges that are more than 30 days past due are 26% of current month billings. Qwest should not be required to fund CLECs' operations. Bill credits would avoid inequity and provide incentive to CLECs to pay their bills on time by reducing the amount of the bill.

The CLECs have expressed concern about their ability to account for and track penalty payments coming to them in the form of bill credits. At least a portion of the opposition to bill credits as the vehicle for QPAP payment stems from the CLECs' concern that QPAP payments will simply be lumped in with operational bill credits. In

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29 Collocation installations require CLECs to pay a 50% down payment at the time the CLECs accepts the quote.

30 Only about one-third of CLEC charges more than 30 days past due are being disputed by CLECs.

order to allay that concern. Qwest agreed in the ROC workshop to supply detailed statements showing exact QPAP payment calculations. Qwest agreed to provide the CLECs with sample statements showing the level of detail for penalty calculations that will accompany bill credits sent to the CLECs and to accept input from the CLECs relating to the design and lay-out of these statements. At the last ROC workshop, CLECs indicated that this information might eliminate their opposition to bill credits. Qwest provided the sample bill credit through an email sent to CLECs participating in the PEPP collaborative, however, no CLEC has since provided comment to Qwest about the sample bill format.

E. The QPAP provides reasonable assurances that the reported data are accurate.

The QPAP provides for extensive data validation and auditing.[31] Qwest has agreed to allow an independent party to perform a risk based audit of the performance measurements. Such an audit would focus on performance measurements that are at high risk for inaccuracies and which result in material payments. The audit would also focus on measurements that substantially change from manual to mechanized measurement. Qwest has added the risk based audit provisions to section 15.1 of the QPAP. Also, by the time that the QPAP becomes effective in South Dakota, the performance measurements that form the basis of the QPAP will have undergone not one, but two comprehensive audits of its data collection, calculation, and reporting

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31 See Bell Atlantic New York Order, ¶ 442; SBC Texas Order, ¶ 428; *see also* SBC Kansas Oklahoma Order, ¶ 278; Verizon Massachusetts Order, ¶ 247.

functions by two different independent auditors.[32] The CLEC audit provisions are patterned after the SBC-Texas plan and are provided in section 15 of the QPAP. Moreover, Qwest has included in its plan an adaptation of the root cause provisions that Texas agreed to incorporate after FCC approval. In Section 15.5 of the QPAP, Qwest has agreed to investigate any second consecutive Tier 2 miss and consecutive aggregate Tier 1 misses to determine the cause of the miss and to identify the action needed to meet the standard. The Qwest provision contemplates an investigation based upon aggregate, rather than individual, CLEC misses, as in the SBC-Texas provision. In Qwest's region, CLEC volumes are small and subject to wider variation. When volumes of orders are that low, a small number of missed orders could lead to a miss of the performance measurement. Requiring root cause analysis for consecutive months of small volume misses would be wasteful. To correct for this small volume, the QPAP root cause analysis provision relies on aggregate data.

The QPAP also provides for audits of the financial system that produces the payments, to be paid for by Qwest. The first audit begins 12 months after the effective date of the QPAP and a second audit 18 months after the first audit is completed. The necessity of any further audits may be considered during the six-month review. Furthermore, the Commission has the option of conducting these audits itself instead. Given these rigorous audit and root cause analysis provisions there is no basis for demanding that Qwest conduct comprehensive annual audits or submit to any

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32 The performance measures included in the QPAP were audited both by Liberty Consulting Group in the ROC OSS collaborative and by Cap Gemini Ernst &

additional audit process. On a related point, while Qwest does not believe that late reporting causes harm to CLECs, it has nevertheless agreed to pay a total of $500 to the State for each business day Qwest misses the reporting deadline.[33] This amount is sufficient in light of the fact that Qwest produces reports for the hundreds of individual CLECs and aggregate reports for each State at the same time. If the need to restate the data or a computer glitch causes late reports, it is likely that reports for all the States will be late. Accordingly, Qwest would be subject to this payment in each of its fourteen states.

V. SUMMARY AND CONCLUSION

For purposes of considering Qwest's South Dakota application, there is ample evidence from which the Commission may conclude that the QPAP is a robust and sufficient performance assurance plan. As its foundation, the QPAP adopted the key statistical methodologies, payment structure, and payment tables from the FCC approved SBC-Texas PAP. The QPAP was further enhanced through a collaborative process with the ROC, and CLECs operating in Qwest's region (including South Dakota). Quantification based upon actual South Dakota performance results

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Young in the Arizona collaborative.

33 The $500 represents the total payment for missing any deadline, rather than a payment per report.

demonstrate that the QPAP will provide substantial financial incentives and will meet the FCC's expectations for a post 271 performance assurance plan.

Being first duly sworn upon oath, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on this 19th day of October, 2001.

Mark S. Reynolds

Mark S. Reynolds

LORI L. WHITE NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES

STATE OF WASHINGTON)
) ss.
KING COUNTY)

Subscribed and sworn to before me this 19th day of October 2001.

Lori L. White

Notary Public

My Commission Expires 7/10/03

BEFORE THE
PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

IN THE MATTER OF THE INVESTIGATION INTO QWEST CORPORATION'S COMPLIANCE WITH SECTION 271 (C) OF THE TELECOMMUNICATIONS ACT OF 1996	))))	DOCKET TC 01-

QWEST CORPORATION'S

EXHIBITS TO THE AFFIDAVIT

OF

MARK S. REYNOLDS

PERFORMANCE ASSURANCE PLAN

OCTOBER 24, 2001

INDEX TO EXHIBITS

Exhibit K
PERFORMANCE ASSURANCE PLAN

1.0 Introduction

1.1 As set forth in this Agreement, Qwest and CLEC voluntarily agree to the terms of the following Performance Assurance Plan ("PAP"), prepared in conjunction with Qwest's application for approval under Section 271 of the Telecommunications Act of 1996 (the "Act") to offer in-region long distance service.

2.0 Plan Structure

2.1 The PAP is a two-tiered, self-executing remedy plan. CLEC shall be provided with Tier 1 payments if, as applicable, Qwest does not provide parity between the service it provides to CLEC and that which it provides to its own retail customers, or Qwest fails to meet applicable benchmarks.

2.1.1 As specified in section 7.0, if Qwest fails to meet parity and benchmark standards on an aggregate CLEC basis, Qwest shall make Tier 2 payments to a Fund established by the state regulatory commission or, if required by existing law, to the state general fund.

2.2 As specified in sections 6.0 and 7.0 and Attachments 1 and 2, payment is generally on a per occurrence basis, (i.e., a set dollar payment times the number of non-conforming service events). For the performance measurements which do not lend themselves to per occurrence payment, payment is on a per measurement basis, (i.e., a set dollar payment). The level of payment also depends upon the number of consecutive months of non-conforming performance, (i.e., an escalating payment the longer the duration of non-conforming performance).

2.3 Qwest shall be in conformance with the parity standard when service Qwest provides to CLEC is equivalent to that which it provides to its retail customers. The PAP relies upon statistical scoring to determine whether any difference between CLEC and Qwest performance results is significant, that is, not attributable to simple random variation. Statistical parity shall exist when performance results for CLEC and for Qwest retail analogue result in a z-value that is no greater than the critical z-values listed in the Critical Z-Statistical Table in section 5.0

2.4 For performance measurements that have no Qwest retail analogue, agreed upon benchmarks shall be used. Benchmarks shall be evaluated using a "stare and compare" method. For example, if the benchmark is for a particular performance measurement is 95% or better, Qwest performance results must be at least 95% to meet the benchmark. Percentage benchmarks will be adjusted to round the allowable number of misses up or down to the closest integer, except when the sample size is 5 or less in which case the rounding will be up to the nearest integer. For example, for a 90% benchmark, the number of allowable misses is 10% times the sample size, rounded to the nearest integer. If the sample size is eight observations, (10% multiplied by 8 = 0.8) is rounded to 1, one miss would be permitted, and the effective benchmark would be 88% (1 minus 1/8).

3.0 Performance Measurements

3.1 The performance measurements included in the PAP are set forth on Attachment 1. Each performance measurement identified is defined in the Performance Indicator Definitions ("PIDs") developed in the ROC Operational Support System ("OSS") collaborative, and which are included in the SGAT at Exhibit B. The measurements have been designated as Tier 1, Tier 2, or both Tier 1 and Tier 2 and given a High, Medium, or Low designation.

4.0 Statistical Measurement

4.1 Qwest uses a statistical test, namely the modified "z-test," for evaluating the difference between two means (i.e., Qwest and CLEC service or repair intervals) or two percentages (e.g., Qwest and CLEC proportions), to determine whether a parity condition exists between the results for Qwest and the CLEC(s). The modified z-tests shall be applicable if the number of data points are greater than 30 for a given measurement. For testing measurements for which the number of data points are 30 or less, Qwest will use a permutation test to determine the statistical significance of the difference between Qwest and CLEC.

4.2 Qwest shall be in conformance when the monthly performance results for parity measurements (whether in the form of means, percents, or proportions and at the equivalent level of disaggregation) are such that the calculated z-test statistics are not greater than the critical z-values as listed in Table 1, section 5.0.

4.3 Qwest shall be in conformance with benchmark measurements when the monthly performance result equals or exceeds the benchmark, if a higher value means better performance, and when the monthly performance result equals or is less than the benchmark if a lower value means better performance.

The formula for determining parity using the z-test is:

$$z = DIFF / \sigma_{DIFF}$$

Where:

$DIFF = M_{Qwest} - M_{CLEC}$

M_{QWEST} = Qwest average or proportion

M_{CLEC} = CLEC average or proportion

σ_{DIFF} = square root [σ^2Qwest (1/ n $_{CLEC}$ + 1/ n $_{Qwest}$)]

σ^2_{Qwest} = calculated variance for Qwest

n_{Qwest} = number of observations or samples used in Qwest measurement

n_{CLEC} = number of observations or samples used in CLEC measurement

The z-tests will be applied to reported parity measurements that contain more than 30 data points.

In calculating the difference between Qwest and CLEC performance, the above formula applies when a larger Qwest value indicates a better level of performance. In cases where a smaller Qwest value indicates a higher level of performance, the order is reversed, i.e., M_{CLEC} - M_{QWEST}.

4.3.1 For parity measurements where the number of data points is 30 or less, Qwest will apply a permutation test to test for statistical significance. Permutation analysis will be applied to calculate the z-statistic using the following logic:

Calculate the z-statistic for the actual arrangement of the data
Pool and mix the CLEC and Qwest data sets
Perform the following 1000 times:
Randomly subdivide the pooled data sets into two pools, one the same size as the original CLEC data set (n_{CLEC}) and one reflecting the remaining data points, and one reflecting the remaining data points, (which is equal to the size of the original Qwest data set or n_{QWEST}).
Compute and store the z-test score (Z_S) for this sample
Count the number of times the z-statistic for a permutation of the data is greater than the actual z- statistic
Compute the fraction of permutations for which the statistic for the rearranged data is greater than the statistic for the actual samples

If the fraction is greater than α, the significance level of the test, the hypothesis of no difference is not rejected, and the test is passed.

5.0 Critical Z-Value

5.1 The following table shall be used to determine the critical z-value that is referred to in section 6.0. It is based on the monthly business volume of the CLEC for the particular performance measurements for which statistic testing is being performed.

TABLE 1: CRITICAL Z-VALUE

CLEC volume (Sample size)	LIS Trunks, UDITs, Resale, UBL-DS1 and DS-3	All Other
1-10	1.04*	1.645
11-150	1.645	1.645
151-300	2.0	2.0
301-600	2.7	2.7
601-3000	3.7	3.7
3001 and above	4.3	4.3

* The 1.04 applies for individual month testing for performance measurements involving LIS trunks and DS-1 and DS-3 that are UDITs, Resale, or Unbundled Loops. The performance measurements are OP-3d/e, OP-4d/e, OP-5, OP-6-4/5, MR-5a/b, MR-7d/e, and MR-8. For purposes of determining consecutive month misses, 1.645 shall be used. Where performance measurements disaggregate to zone 1 and zone 2, the zones shall be combined for purposes of statistical testing.

6.0 Tier 1 Payments to CLEC

6.1 Tier 1 payments to CLEC shall be made solely for the performance measurements designated as Tier 1 on Attachment 1. The payment amount for non-conforming service varies depending upon the designation of performance measurements as High, Medium, and Low and the duration of the non-conforming service condition as described below. Non-conforming service is defined in section 4.0.

6.1.1 Determination of Non-Conforming Measurements: The number of performance measurements that are determined to be non-conforming and, therefore, eligible for Tier 1 payments, are limited according to the critical z-value shown in Table 1, section 5.0. The critical z-values are the statistical standard that determines for each CLEC performance measurement whether Qwest has met parity. The critical z-value is selected from Table 1 according to the monthly CLEC volume for the performance measurement. For instance, if the CLEC sample size for that month is 100, the critical z-value is 1.645 for the statistical testing of that parity performance measurement.

6.2 Determination of the Amount of Payment: Tier 1 payments to CLEC, except as provided for in sections 6.3 and 10.0, are calculated and paid monthly based on the number of performance measurements exceeding the critical z-value. Payments will be made on either a per occurrence or per measurement basis, depending upon the performance measurement, using the dollar amounts specified in Table 2 below. The dollar amounts vary depending upon whether the performance measurement is designated High, Medium, or Low and escalate depending upon the number of consecutive months for which Qwest has not met the standard for the particular measurement.

6.2.1 The escalation of payments for consecutive months of non-conforming service will be matched month for month with de-escalation of payments for every month of conforming service. For example, if Qwest has four consecutive monthly "misses" it will make payments that escalate from month 1 to month 4 as shown in Table 2. If, in the next month, service meets the standard, Qwest makes no payment. A payment "indicator" de-escalates down from month 4 to month 3. If Qwest misses the following month, it will make payment at the month 3 level of Table 2 because that is where the payment "indicator" presently sits. If Qwest misses again the following month, it will make payments that escalate back to the month 4 level. The payment level will de-escalate back to the original month 1 level only upon conforming service sufficient to move the payment "indicator" back to the month 1 level.

6.2.2 For those performance measurements listed on Attachment 2 as "Performance Measurements Subject to Per Measurement Caps," payment to a CLEC in a single month shall not exceed the amount listed in Table 2 below for the "Per Measurement" category. For those performance measurements listed on Attachment 2 as "Performance Measurements Subject to Per Measurement Paymen ," payment to a CLEC will be the amount set forth in Table 2 below under the section labe d "per measurement."

TABLE 2 TIER-1 PAYMENTS TO CLEC

Per Occurrence						
Measurement Group	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6 and each following month
High	$150	$250	$500	$600	$700	$800
Medium	$ 75	$150	$300	$400	$500	$600
Low	$ 25	$ 50	$100	$200	$300	$400

Per Measurement Cap						
Measurement Group	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6 and each following month

High	$25,000	$50,000	$75,000	$100,000	$125,000	$150,000
Medium	$10,000	$20,000	$30,000	$ 40,000	$ 50,000	$ 60,000
Low	$ 5,000	$10,000	$15,000	$ 20,000	$ 25,000	$ 30,000

6.3 For collocation, CP-2 and CP-4 performance measurements shall be relied upon for delineation of collocation business rules. For purposes of calculating Tier 1 payment, collocation jobs and collocation feasibility studies that are later than the due date will have a per day payment applied according to Table 3. The per day payment will be applied to any collocation job in which the feasibility study is provided or the collocation installation is completed later than the scheduled date. The calculation of the payment amount will be performed by applying the per day payment amounts as specified in Table 3.

TABLE 3: TIER-1 COLLOCATION PAYMENTS TO CLECS

Days Late	Completion Date	Feasibility Study
1 to 10 days	$150/day	$45/day
11 to 20 days	$300/day	$90/day
21 to 30 days	$450/day	$135/day
31 to 40 days	$600/day	$180/day
More than 40 days	$1,000/day	$300/day

7.0 Tier 2 Payments to the State

7.1 Payments to the State shall be limited to the performance measurements designated in section 7.4 for Tier 2 per measurement payments and in Attachment 1 for per occurrence payments and which have at least 10 data points each month for the period payments are being calculated. Similar to the Tier 1 structure, Tier 2 measurements are categorized as High, Medium, and Low and the amount of payments for non-conformance varies according to this categorization.

7.2 Determination of Non-Conforming Measurements: The determination of non-conformance will be based upon the aggregate of all CLEC data for each Tier 2 performance measurement. Non-conforming service is defined in section 4.2 (for parity measurements) and 4.3 (for benchmark measurements), except that a 1.645 critical z-value shall be used for parity measurements. The critical z-value is the statistical standard that determines for each performance measurement whether Qwest has met parity.

7.3 Determination of the Amount of Payment: Except as provided in section 7.4, Tier 2 payments are calculated and paid monthly based on the number of performance measurements exceeding the critical z-value for three consecutive months. Payment will be made on either a per occurrence or per measurement basis, whichever is applicable to the performance measurement, using the dollar amounts specified in Table 4 or Table 5 below. Except as provided in section 7.4, the dollar amounts vary depending upon whether the performance measurement is designated High, Medium, or Low.

7.3.1 For those Tier 2 measurements listed on Attachment 2 as "Performance Measurements Subject to Per Measurement Caps," payment to the State in a single month shall not exceed the amount listed in Table 4 for the "Per Measurement" category.

TABLE 4: TIER-2 PAYMENTS TO STATE FUNDS

Per Occurrence

Measurement Group	
High	$500
Medium	$300
Low	$200

Per Measurement/Cap

Measurement Group	
High	$75,000
Medium	$30,000
Low	$20,000

7.4 Performance Measurements Subject to Per Measurement Payment: The following Tier 2 performance measurements shall have their performance results measured on a region-wide (14 state) basis. Failure to meet the performance standard, therefore, will result in a per measurement payment in each of the Qwest in-region 14 states adopting this PAP. The performance measurements are:

GA-1: Gateway Availability IMA-GUI
GA-2: Gateway Availability - IMA-EDI
GA-3: Gateway Availability – EB-TA
GA-4: System Availability – EXACT
GA-6: Gateway Availability – GUI-Repair
PO-1: Pre-Order/Order Response Times
OP-2: Call Answered within Twenty Seconds – Interconnect Provisioning Center
MR-2: Calls Answered within Twenty Seconds – Interconnect Repair Center

GA-1 has three sub-measurements: GA-1A, GA-1B, and GA-1C. PO-1 shall have two sub-measurements: PO-1A and PO-1B. PO-1A and PO-1B shall have their transaction types aggregated together.

For these measurements, Qwest will make a Tier 2 payment based upon monthly performance results according to Table 5: Tier 2 Per Measurement Payments to State Funds.

TABLE 5: TIER-2 PER MEASUREMENT PAYMENTS TO STATE FUNDS

Measurement	Performance	State Payment	14 State Payment
GA-1,2,3,4,6	1% or lower	$1,000	$14,000
	>1% to 3%	$10,000	$140,000
	>3% to 5%	$20,000	$280,000
	>5%	$30,000	$420,000
PO-1	2 sec. or less	$1,000	$14,000
	>2 sec. to 5 sec.	$5,000	$70,000
	>5 sec. to 10 sec.	$10,000	$140,000
	>10 sec.	$15,000	$210,000
OP-2/MR-2	1% or lower	$1,000	$14,000
	>1% to 3%	$5,000	$70,000
	>3% to 5%	$10,000	$140,000
	>5%	$15,000	$210,000

7.5 Payment of Tier 2 Funds: Payments to a state fund shall be used for any purpose that relates to the Qwest service territory that may be determined by the State Commission. If the Commission is not permitted by existing law to receive or administer the payments under a state fund, payments shall be made to the state general fund.

8.0 Step by Step Calculation of Monthly Tier 1 Payments to CLEC

8.1 Application of the Critical Z-Values: Qwest shall identify the Tier 1 parity performance measurements that measure the service provided to CLEC by Qwest for the month in question and the critical z-value from Table 1 in section 5.0 that shall be used for purposes of statistical testing for each particular performance measurement. The statistical testing procedures described in section 4.0 shall be applied. For the purpose of determining the critical z-values, each disaggregated category of a performance measurement is treated as a separate sub-measurement. The critical z-value to be applied is determined by the CLEC volume at each level of disaggregation or sub-measurement.

8.2 Performance Measurements for which Tier 1 Payment is Per Occurrence:

8.2.1 Performance Measurements that are Averages or Means:

8.2.1.1 Step 1: For each performance measurement, the average or the mean that would yield the critical z-value shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

8.2.1.2 Step 2: The percentage differences between the actual averages and the calculated averages shall be calculated. The calculation is % diff = (CLEC result – Calculated Value)/Calculated Value. The percent difference shall be capped at a maximum of 100%. In all calculations of percent differences in sections 8.0 and 9.0, the calculated percent differences is capped at 100%.

8.2.1.2 Step 3: For each performance measurement, the total number of data points shall be multiplied by the percentage calculated in the previous step and the per occurrence dollar amounts from the Tier 1 Payment Table shall determine the payment to the CLEC for each non-conforming performance measurement.

8.2.2 Performance Measurements that are Percentages:

8.2.2.1 Step 1: For each performance measurement, the percentage that would yield the critical z-value shall be calculated. The same denominator as the one used in calculating the z- statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

8.2.2.2 Step 2: The difference between the actual percentages for the CLEC and the calculated percentages shall be determined.

8.2.2.3 Step 3: For each performance measurement, the total number of data points shall be multiplied by the difference in percentage calculated in the previous step, and the per occurrence dollar amount taken from the Tier 1 Payment Table, to determine the payment to the CLEC for each non-conforming performance measurement.

8.2.3 Performance Measurements that are Ratios or Proportions:

8.2.3.1 Step 1: For each performance measurement the ratio that would yield the critical z-value shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

8.2.3.2 Step 2: The absolute difference between the actual rate for the CLEC and the calculated rate shall be determined.

8.2.3.3 Step 3: For each performance measurement, the total number of data points shall be multiplied by the difference calculated in the previous step, and the per occurrence dollar amount taken from the Tier 1 Payment Table, to determine the payment to the CLEC for each non-conforming performance measurement.

8.3 Performance Measurements for which Tier 1 Payment is Per Measure:

8.3.1 For each performance measurement where Qwest fails to meet the standard, the payment to the CLEC shall be the dollar amount shown on the "per measure" portion of Table 2: Tier 1 Payments to CLEC.

9.0 Step by Step Calculation of Monthly Tier 2 Payments to State Funds

9.1.1 Application of the Critical Z-Value: Qwest shall identify the Tier 2 parity performance measurements that measure the service provided by Qwest to all CLECs for the month in question. The statistical testing procedures described in section 4.0 shall be applied, except that a 1.645 critical z-value shall be used.

9.1.2 For each performance measurement that is identified as non-conforming, it shall be determined whether the non-conformance has continued for three consecutive months and whether there are at least 10 data points for each month. If the non-conformance meets these conditions, a Tier 2 payment will be calculated and paid as described below and will continue in each succeeding month until Qwest's performance meets the applicable standard.

9.2 Performance Measurements for which Tier 2 Payment is Per Occurrence:

9.2.1 Performance Measurements that are Averages or Means:

9.2.1.1 Step 1: The monthly average or the mean for each performance measurement that would yield the critical z-value for each month shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

9.2.2.2 Step 2: The percentage difference between the actual averages and the calculated averages for each month shall be calculated . The calculation for parity measurements is % diff = (actual average – calculated average)/calculated average. The percent difference shall be capped at a maximum of 100%. In all calculations of percent differences in section 8.0 and section 9.0, the calculated percent difference is capped at 100%.

9.2.2.3 Step 3: For each performance measurement, the total number of data points each month shall be multiplied by the percentage calculated in the previous step. The average for three months (rounded to the nearest integer) shall be calculated and multiplied by the result of the per occurrence dollar amount taken from the Tier 2 Payment Table to determine the payment to the State for each non-conforming performance measurement.

9.3 Performance Measurements that are Percentages:

9.3.1 Step 1: For each performance measurement, the monthly percentage that would yield the critical z-value for each month shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

9.3.1.2 Step 2: The difference between the actual percentages and the calculated percentages for each of the three non-conforming months shall be calculated. The calculation for parity measurement is diff = (CLEC result – calculated percentage). This formula shall be applicable where a high value is indicative of poor performance. The formula shall be reversed where high performance is indicative of good performance.

9.3.1.3 Step 3: For each performance measurement, the total number of data points for each month shall be multiplied by the difference in percentage calculated in the previous step. The average for three months shall be calculated (rounded to the nearest integer) and multiplied by the result of the per occurrence dollar amounts taken from the Tier 2 Payment Table to determine the payment to the State.

9.4 Performance Measurements that are Ratios or Proportions:

9.4.1 Step 1: For each performance measurement, the ratio that would yield the critical z-value for each month shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

9.4.1.1 Step 2: The difference between the actual rate for the CLEC and the calculated rate for each month of the non-conforming three-month period shall be calculated. The calculation is: diff = (CLEC rate – calculated rate). This formula shall apply where a high value is indicative of poor performance. The formula shall be reversed where high performance is indicative of good performance.

9.4.1.2 Step 3: For each performance measurement, the total number of data points shall be multiplied by the difference calculated in the previous step for each month. The average for three months shall be calculated (rounded to the nearest integer) and multiplied by the result of the per occurrence dollar amounts taken from the Tier 2 Payment Table to determine the payment to the State.

9.5 Performance Measurements for which Tier 2 Payment is Per Measure:

9.5.1 For each performance measurement where Qwest fails to meet the standard, the payment to the State Fund shall be the dollar amount shown on the "per measure" portion of the Tier 2 Payment Table.

10.0 Low Volume, Developing Markets

10.1 For certain qualifying performance standards, if the aggregate monthly volumes of CLECs participating in the PAP are more than 10, but less than 100, Qwest will make Tier 1 payments to CLECs for failure to meet the parity or benchmark standard for the qualifying performance sub-measurements. The qualifying sub-measurements are the UNE-P (POTS), megabit resale, and ADSL qualified loop product disaggregation of OP-3, OP-4, OP-5, MR-3, MR-5, MR-7, and MR-8. If the aggregate monthly CLEC volume is greater than 100, the provisions of this section shall not apply to the qualifying performance sub-measurement.

10.2 The determination of whether Qwest has met the parity or benchmark standards will be made using aggregate volumes of CLECs participating in the PAP. In the event Qwest does not meet the applicable performance standards, a total payment to affected CLECs will be determined in accordance with the high, medium, low designation for each performance measurement (see Attachment 1) and as described in section 8.0, except that CLEC aggregate volumes will be used. In the event the calculated total payment amount to CLECs is less than $5,000, a minimum payment of $5,000 shall be made. The resulting total payment amount to CLECs will be apportioned to the affected CLECs based upon each CLEC's relative share of the number of total service misses.

10.3 At the six (6)-month reviews, Qwest will consider adding to the above list of qualifying performance sub-measurements, new products disaggregation representing new modes of CLEC entry into developing markets.

11.0 Payment

11.1 Payments to CLEC or the State shall be made one month following the due date of the performance measurement report for the month for which payment is being made. Qwest will pay interest on any late payment and underpayments at the one year Treasury rate. On any overpayments, Qwest is allowed to offset future payments by the amount of the overpayment plus interest at the one year Treasury rate.

11.2 Payment to CLEC shall be made via bill credits. To the extent that a monthly payment owed to CLEC under this PAP exceeds the amount owed to Qwest by CLEC on a monthly bill, Qwest will issue a check or wire transfer to CLEC in the amount of the overage. Payment to the State shall be made via check or wire transfer.

12.0 Cap on Tier 1 and Tier 2 Payments

12.1 There shall be a cap on the total payments made by Qwest for a calendar year for the State. The cap amounts by state are shown in Attachment 3. CLEC agrees that this amount constitutes a maximum annual cap that shall apply to the aggregate total of Tier 1 liquidated damages, including any such damages paid pursuant to this Agreement, any other interconnection agreement, or any other payments made for the same or analogous performance under any other contract, order or rule) and Tier 2 assessments or payments made by Qwest for the same or analogous performance under another contract, order or rule.

12.2 The monthly cap will be determined by dividing the amount of the annual cap by twelve. The monthly cap shall be calculated by applying all payments or credits made by Qwest under this PAP as well as all payments made or credits applied for wholesale service performance pursuant to interconnection agreements, state rules or orders. To the extent in any given month the monthly cap (i.e., the annual cap divided by 12) is not reached, the subsequent month's cap will be increased by an amount equal to the unpaid portion of the previous month's cap.

12.3 In the event the annual cap is reached within a calendar year and Qwest continues to deliver non-conforming performance during the same year to any CLEC or to all CLECs, the Commission may recommend to the FCC that Qwest should cease offering in-region interLATA services to new customers.

13.0 Limitations

13.1 The PAP shall not become available in the State unless and until Qwest receives effective section 271 authority from the FCC for that State.

13.2 Qwest will not be liable for Tier 1 payments to CLEC in an FCC approved state until the Commission has approved an interconnection agreement between CLEC and Qwest which adopts the provisions of this PAP.

13.3 Qwest shall not be obligated to make Tier 1 or Tier 2 payments for any measurement if and to the extent that non-conformance for that measurement was the result of any of the following: 1) a Force Majeure event, including but not limited to acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers; 2) an act or omission by a CLEC that is contrary to any of its obligations under its interconnection agreement with Qwest or under federal or state law; an act or omission by CLEC that is in bad faith. Examples of bad faith conduct include, but are not limited to: unreasonably holding service orders and/or applications, "dumping" orders or applications in unreasonably large batches, "dumping" orders or applications at or near the close of a business day, on a Friday evening or prior to a holiday, and failing to provide timely forecasts to Qwest for services or facilities when such forecasts are required under the SGAT or state rules; or 3) problems associated with third-party systems or equipment, which could not have been avoided by Qwest in the exercise of reasonable diligence, *provided, however*, that this third party exclusion will not be raised in the State more than three times within a calendar year.

13.3.1 Qwest will not be excused from Tier 1 or Tier 2 payments for any reason except as described in Section 13.0. Qwest will have the burden of demonstrating that its non-conformance with the performance measurement was excused on one of the grounds described in this PAP.

13.4 Qwest's agreement to implement these enforcement terms, and specifically its agreement to pay any "liquidated damages" or "assessments" hereunder, will not be considered as an admission against interest or an admission of liability in any legal, regulatory, or other proceeding relating in whole or in part to the same performance.

13.4.1 CLEC may not use: 1) the existence of this enforcement plan; or 2) Qwest's payment of Tier -1 "liquidated damages" or Tier 2 "assessments" as evidence that Qwest has discriminated in the provision of any facilities or services under Sections 251 or 252, or has violated any state or federal law or regulation. Qwest's conduct underlying its performance measures, however are not made inadmissible by its terms.

13.4.2 By accepting this performance remedy plan, CLEC agrees that Qwest's performance with respect to this remedy plan may not be used as an admission of liability or culpability for a violation of any state or federal law or regulation. (Nothing herein is intended to preclude Qwest from introducing evidence of any Tier 1 "liquidated damages" under these provisions for the purpose of offsetting the payment against any other damages or payments a CLEC might recover.) The terms of this paragraph do not apply to any proceeding before the Commission or the FCC to determine whether Qwest has met or continues to meet the requirements of section 271 of the Act.

13.5 By incorporating these liquidated damages terms into the PAP, Qwest and CLEC accepting this PAP agree that proof of damages from any non-conforming performance measurement would be difficult to ascertain and, therefore, liquidated damages are a reasonable approximation of any contractual damages that may result from a non-conforming performance measurement. Qwest and CLEC further agree that Tier 1 payments made pursuant to this PAP are not intended to be a penalty. The application of the assessments and damages provided for herein is not intended to foreclose other noncontractual legal and non-contractual regulatory claims and remedies that may be available to a CLEC.

13.6 This PAP contains a comprehensive set of performance measurements, statistical methodologies, and payment mechanisms that are designed to function together, and only together, as an integrated whole. To elect the PAP, CLEC must adopt the PAP in its entirety, in its interconnection agreement with Qwest in lieu of other alternative standards or relief. In no event is CLEC entitled to remedies under both the PAP and under rules, orders, or other contracts, including interconnection agreements, arising from the same or analogous wholesale performance. Where alternative remedies for Qwest's wholesale performance are available under rules, orders, or other contracts, including interconnection agreements, CLEC will be limited to either the PAP remedies or the remedies available under rules, orders, or other contracts and CLEC's choice of remedies shall be specified in its interconnection agreement.

13.7 If for any reason Qwest is obligated by any Court or regulatory authority of competent jurisdiction to pay to any CLEC that agrees to this QPAP compensatory damages based on the same or analogous wholesale performance covered by this QPAP, Qwest may reduce such award by the amount of any payment made or due to such CLEC under this QPAP, or may reduce the amount of any payments made or due to such CLEC under this QPAP by the amount of any such award, such that Qwest's total liability shall be limited to the greater of the amount of such award or the amount of any payments made or due to such CLEC under this QPAP. By adopting this QPAP, CLEC consents to such offset.

13.8 Qwest shall not be liable for both Tier 2 payments under the PAP and assessments, sanctions, or other payments for the same or analogous performance pursuant to any Commission order or service quality rules.

13.9 Whenever a Qwest Tier 1 payment to an individual CLEC exceeds $3 million in a month, or when all CLEC Tier 1 payments in any given month exceed the monthly cap, Qwest may commence a proceeding. Upon timely commencement of the proceeding, Qwest must pay the balance of payments owed in excess of the threshold amount into escrow, to be held by a third-party pending the outcome of the proceeding. To invoke these escrow provisions, Qwest must file, not later than the due date of the Tier 1 payments, an application demonstrating why it should not be required to pay any amount in excess of the procedural threshold. Qwest will have the burden of proof to demonstrate why, under the circumstances, it would be unjust to require it to make the payments in excess of the applicable threshold amount. If Qwest reports non-conforming performance to CLEC for three consecutive months on 20% or more of the measurements reported to CLEC and has incurred no more than $1 million in liability to CLEC, then CLEC may commence a similar proceeding. In any such proceeding CLEC will have the burden of proof to demonstrate why, under the circumstances, justice requires Qwest to make payments in excess of the amount calculated pursuant to the terms of the PAP. The disputes identified in this section shall be resolved in a manner specified in the Dispute Resolution section of the SGAT or interconnection agreement with the CLEC.

14.0 Reporting

14.1 Upon receiving effective section 271 authority from the FCC for a state, Qwest will provide CLEC that has an approved interconnection agreement with Qwest, a monthly report of Qwest's performance for the measurements identified in the PAP by the last day of the month following the month for which performance results are being reported. However, Qwest shall have a grace period of five business days, so that Qwest shall not be deemed out of compliance with its reporting obligations before the expiration of the five business day grace period. Qwest will collect, analyze, and report performance data for the measurements listed on Attachment 1 in accordance with the most recent version of the PIDs. Upon CLEC's request, data files of the CLEC's raw data, or any subset thereof, will be transmitted, without charge, to CLEC in a mutually acceptable format, protocol, and transmission medium.

14.2 Qwest will also provide the Commission a monthly report of aggregate CLEC performance results pursuant to the PAP by the last day of the month following the month for which performance results are being reported. However, Qwest shall have a grace period of five business days, so that Qwest shall not be deemed out of compliance with its reporting obligations before the expiration of the five business day grace period. Individual CLEC reports of participating CLECs will also be available to the Commission upon request. Upon the Commission's request, data files of participating CLEC raw data, or any subset thereof, will be transmitted, without charge, to the Commission in a mutually acceptable format, protocol, and transmission form. By accepting this PAP, CLEC consents to Qwest providing CLEC's report and raw data to the State Commission.

14.3 In the event Qwest does not provide CLEC and the Commission with a monthly report by the last day of the month following the month for which performance results are being reported, Qwest will pay to the State a total of $500 for each business day for which performance reports are due after a five business day grace period. This amount represents the total payment for missing any deadline, rather than a payment per report. Prior to the date of a payment for late reports, Qwest may file a request for a waiver of the payment, which states the reasons for the waiver. The Commission may grant the waiver, deny the waiver, or provide any other relief that may be appropriate.

15.0 Audits/Investigations of Performance Results

15.1 After the QPAP is approved in the first of the nine states, Qwest will hire an independent auditor chosen from among the national firms with experience in testing and auditing the ILEC OSS and/or performance measurements and metrics to design a plan to identify and audit performance measurements in the QPAP that have a high risk of inaccuracy and are material. The audit of these measurements will occur over two years. The inclusion of any measurement in this program must be substantiated by the Liberty Audit Report. In addition, Qwest will retain the same auditor to audit measurements that change from substantially manual to substantially mechanized measurements. The same auditor will be chosen to conduct all CLEC audits provided for under the QPAP. None of the audits conducted pursuant to the QPAP, including audits initiated in other Qwest states, shall be duplicative or redundant.

Qwest will create a separate financial system which will take performance results as inputs and calculate payments according to the terms of the PAP. An independent audit of this financial system shall be initiated one year after the effective date of the PAP and a second audit shall be started no later than 18 months thereafter. The auditor will be chosen and paid for by Qwest. Alternatively, the Commission may choose to conduct this audit itself. The necessity of any subsequent audits of the financial system shall be considered in the six-month PAP reviews, based upon the experience of the first two audits. If as a result of the audit, it is determined that Qwest underpaid, Qwest will add bill credits to CLEC and/or make additional payments to the State for the amount underpaid. In the event Qwest overpaid, future bill credits to CLEC and/or future payments to the State will be offset by the amount of the overage. All under and over payments will be credited with interest at the one-year U.S. Treasury rate.

15.2 In the event of a disagreement between Qwest and CLEC as to any issue regarding the accuracy or integrity of data collected, generated, and reported pursuant to the PAP, Qwest and the CLEC shall first consult with one another and attempt in good faith to resolve the issue. If an issue is not resolved within 45 days after a request for consultation, CLEC and Qwest may, upon a demonstration of good cause, (e.g., evidence of material errors or discrepancies) request an independent audit to be conducted, at the initiating party's expense. The scope of the audit will be limited to performance measurement data collection, data reporting processes, and calculation of performance results and payments for a specific performance measurement. An audit may not be commenced more than 12 months following the month in which the alleged inaccurate results were first reported.

15.3 If an audit identifies a material deficiency affecting results, the responsible party shall reimburse the other party for the expense of the third-party auditor, (assuming the responsible party was not the party initiating the audit). In the event CLEC is found to be responsible for the deficiency, any overpayment made to CLEC as a result of the deficiency shall be refunded to Qwest with interest and any affected portion of future payments will be suspended until CLEC corrects the deficiency. In the event that Qwest is found to be responsible for the deficiency, Qwest will pay CLEC the amount that would have been due under the PAP, if not for the deficiency, including interest.

15.4 Neither CLEC nor Qwest may request more than two audits per calendar year for the entire region composed of the Qwest in-region states. Each audit request shall be limited to no more than two performance measurements per audit. For purposes of these provisions, a performance measurement is a PID, e.g., OP-3, Installation Commitments Met. CLEC agrees that Qwest shall not be required to conduct more than 3 audits at one time for the region composed of the in-region states, notwithstanding who has initiated the audit, and notwithstanding the provisions in this paragraph. This provision shall exclusively govern audits regarding performance measurements. Qwest agrees to inform Commission Staff and all CLECs of the results of an audit.

15.5 Qwest will investigate any second consecutive Tier 2 miss to determine the cause of the miss and to identify the action needed in order to meet the standard set forth in the performance measurements. To the extent an investigation determines that a CLEC was responsible in whole or in part for the Tier 2 misses, Qwest shall receive credit against future Tier 2 payments in an amount equal to the Tier 2 payments that should not have been made. The relevant portion of subsequent Tier 2 payments will not be owed until any responsible

CLEC problems are corrected. For the purposes of this sub-section, Tier 1 performance measurements that have not been designated as Tier 2 will be aggregated and the aggregate results will be investigated pursuant to the terms of this Agreement.

16.0 Reviews

16.1 Every six (6) months, Qwest, CLECs, and the Commission shall review the performance measurements to determine whether measurements should be added, deleted, or modified; whether the applicable benchmark standards should be modified or replaced by parity standards; and whether to move a classification of a measurement to High, Medium, or Low or Tier 1 to Tier 2. The criterion for reclassification of a measurement shall be whether the actual volume of data points was less or greater than anticipated. Criteria for review of performance measurements, other than for possible reclassification, shall be whether there exists an omission or failure to capture intended performance, and whether there is duplication of another measurement. The first six-month period will begin upon the FCC's approval of Qwest's 271 application for that particular state. Changes shall not be made without Qwest's agreement.

16.2 Qwest will make the PAP available for CLEC interconnection agreements until such time as Qwest eliminates its Section 272 affiliate. At that time, the Commission and Qwest shall review the appropriateness of the PAP and whether its continuation is necessary. However, in the event Qwest exits the interLATA market, that State PAP shall be rescinded immediately.

17.0 Voluntary Performance Assurance Plan

This PAP represents Qwest's voluntary offer to provide performance assurance. Nothing in the PAP or in any conclusion of non-conformance of Qwest's service performance with the standards defined in the PAP shall be construed to be, of itself, non-conformance with the Act.

18.0 Dispute Resolution

This section governs dispute resolution related to the QPAP. Dispute resolution shall be available only for disputes arising under the sections of the QPAP listed in this section 18.0. The mechanism for dispute resolution shall be the dispute resolution procedures specified in sections 5.18.2 through 5.18.8 of the SGAT. Dispute resolution under the procedures provided in those sections of the SGAT shall be the preferred but not the exclusive forum for the disputes specified in this section 18.0. Each party reserves its rights to resort to the Commission or to a court, agency, or regulatory authority of competent jurisdiction. The sections of the QPAP for which dispute resolution is available are:

- Disputes arising under sections 13.3 and 13.3.1;
- Application of an offset against future payments under section 13.7;
- Proceedings under section 13.9;
- Payment adjustments for under- and over-payments under sections 15.1 and 15.3; and
- Establishment of good cause under section 15.2.

Attachment 1: Tier 1 and Tier 2 Performance Measurements Subject to Per Occurrence Payment

Performance Measurement		Tier 1 Payments			Tier 2 Payments		
		Low	Med	High	Low	Med	H
GATEWAY							
Timely Outage Resolution	GA-7						
PRE-ORDER/ORDERS							
LSR Rejection Notice Interval	PO-3[a]	X					
Firm Order Confirmations On Time	PO-5	X				X	
Work Completion Notification Timeliness	PO-6[b]	X					
Billing Completion Notification Timeliness	PO-7[b]	X					
Jeopardy Notice Interval	PO-8	X					
Timely Jeopardy Notices	PO-9	X					
Release Notifications	PO-16						
ORDERING AND PROVISIONING							
Installation Commitments Met	OP-3			X		X	
Installation Intervals	OP-4[c]			X		X	
New Service Installation Quality	OP-5			X		X	
Delayed Days	OP-6[d]			X		X	
Number Portability Timeliness	OP-8			X		X	
Coordinated Cuts On Time – Unbundled Loops	OP-13a			X		X	
LNP Disconnect Timeliness	OP-17						
MAINTENANCE AND REPAIR							
Out of Service Cleared within 24 hours	MR-3			X			
All Troubles Cleared within 4 hours	MR-5			X			
Mean time to Restore	MR-6a,b,c			X			
Repair Repeat Report Rate	MR-7			X		X	
Trouble Rate	MR-8			X		X	
LNP Trouble Reports Cleared within 24 Hours	MR-11			X		X	
LNP Trouble Reports – Mean Time to Restore	MR-12			X		X	
BILLING							
Time to Provide Recorded Usage Records	BI-1	X					
Billing Accuracy-Adjustments for Errors	BI-3	X					
Billing Completeness	BI-4	X				X	
NETWORK PERFORMANCE							
Trunk Blocking	NI-1			X			
NXX Code Activation	NP-1			X			

a. PO-3 is limited to PO-3a-1, PO-3b-1, and PO-3c.

b. PO-6 is included with PO-7 as two "families:" PO-6a/PO-7a and PO-6b/PO-7b. Measurements within each family share a single payment opportunity with only the measurements with the highest payment being paid.

c. OP-4 is included with OP-6 as five "families:" OP-4a/OP-6-1, OP-4b/OP-6-2, OP-4c/OP-6-3, OP-4d/OP-6-4, and OP-4e/OP-6-5. Measurements within each family share a single payment opportunity with only the measurement with the highest payment being paid.

d. For purposes of the PAP, OP-6a and OP-6b will be combined and treated as one. The combined OP-6 breaks down to OP-6-1 (within MSA), OP-6-2 (outside MSA), OP-6-3 (no dispatch), OP-6-4 (zone 1), and OP-6-5 (zone 2).

Attachment 2: Performance Measurements Subject to Per Measurement Caps

Billing

Time to Provide Recorded Usage Records – BI-1 (Tier 1/Tier 2)
Billing Accuracy – Adjustments for Errors – BI-3 (Tier 1)
Billing Completeness – BI-4 (Tier 1/Tier 2)

Attachment 3: Annual Cap on Qwest Payments

The South Dakota annual cap on payments shall be $15 million, based upon 1999 ARMIS reported local earnings:

(Millions)	
Interstate Net Return	$ 16,349
Total Intrastate Operating Revenue	$127,924
Total Intrastate Operating Expense	$ 81,546
Other Intrastate Operating Inc/Losses	$ 36
Total other taxes	$ 4,679
Intrastate Federal Income Taxes	$ 11,131
Net Return (Interstate and Intrastate)	$ 41,591
36% of Net Return	$ 14,973

CONTINUATION

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Post Entry Performance Plan Final Collaborative Summary

June 5, 2001

For More Information:

Bob Center of MTG
bcenter@mtgconsulting.com
916-425-7707

Frank Darr of NRRI
darr.1@osu.edu
614-688-5473

Final Collaborative Summary Document Contents

Project Process Overview

Introduction

This report summarizes the progress of the Qwest Post Entry Performance Plan collaboration (PEPP or collaboration). Part 1 provides a summary of the processes used by the PEPP. Part 2 contains a summary of those areas in which the parties reached agreement. Part 3 contains a summary of those areas in which the parties were not able to agree at the conclusion of the collaboration. The revised Qwest PAP will also be released as a part of the final collaborative documentation.

Part 1: Procedural Summary of the PEPP

A. Creation of the Collaboration

The Qwest Regional Oversight Committee (ROC) announced the creation of a collaborative to discuss a post entry performance plan for Qwest on August 9, 2000.[1] Initially, eleven states agreed to participate[2]; subsequently, Colorado withdrew from the collaboration and New Mexico joined.

After the announcement of the collaboration, the ROC solicited parties to participate in the effort. Interested parties were directed to register through a web site maintained by the Montana commission. A mailing list of state commission staff and another mailing list of all parties that registered were maintained for the duration of the project. A list of participants registered to the collaboration mailing list is attached as Appendix B.

The states and Qwest also agreed to contract for assistance in directing the collaboration. Maxim Telecommunications Consulting Group (MTG) and the National Regulatory Research Institute (NRRI) served as consultants to the collaboration under this agreement. The states directed the activities of the contractors through a staff committee; Qwest provided funding and other resources for the consultants and the collaboration.

B. Collaborative Process

The collaboration was set up to serve as a structured negotiation process. The process of creating a plan was broken down into three steps to acquaint parties with the issues and form increasingly detailed levels of consensus. The first phase consisted of the creation of a set of principles and a framework for a plan. The second phase included the presentation of various plan proposals and negotiation of common features. The last phase was the treatment of implementation.[3]

The process through which the parties communicated was four-fold. First, the parties met in face-to-face workshops. Second, the parties met by conference call on several occasions. Third, the parties communicated through the email list service created through the registration process. Fourth, the parties had access to a common repository of documents in a web site maintained by NRRI for the project.

[1] http://www.nrri.ohio-state.edu/oss/Post271/Post271/roc_release_aug_2000.pdf
[2] The states that initially participated were Colorado, Idaho, Iowa, Nebraska, North Dakota, Montana, Oregon, South Dakota, Utah, Washington, and Wyoming. New Mexico initially monitored the process, then formally joined. Minnesota and Arizona declined the invitation to be involved at this time.
[3] See http://www.nrri.ohio-state.edu/oss/Post271/Post271/mtg_initial_plan_8-21-00.pdf.

The original plan called for three workshops and contained contingency plans for additional conference calls. In practice, face-to-face workshops proved more efficient and conference calls were dropped after December 2000. Likewise, the negotiation process proved to be complex and extended. Additional workshops were added to the process. The content of the conference calls and workshops are discussed more fully below.

To assist the parties in this process, the consultants prepared several documents that were refined by the parties. These documents are archived in the PEPP web site.[4] The key documents found there and used by the collaboration were agendas for each meeting and call, the draft of principles and framework for the plan, a decomposition of the various plans submitted by the parties that was regularly updated for each of the 2001 meeting through April, and various documents that summarized agreements on issues as they arose. Additionally, the web site archives the various proposals and comments the parties provided for each session.

As noted more fully below in the discussion of the content of the meetings, the parties completed much of the first two phases in the original design of the project. There is agreement on much of the structure of a performance plan's performance measurements, statistical structure, and basic remedy structure. Other details remain in dispute. The parties did not reach a detailed recommendation on the manner of bringing a particular plan to a state (the implementation phase), but it is expected that Qwest will make individual filings with each state to initiate that process.

C. Collaborative Meetings

The collaboration was conducted through a series of workshops and conference calls. The sessions are summarized below.

The collaboration commenced with an organizational call on August 21, 2001. During the call, the consultants outlined the process they intended to use for directing the collaborative efforts and discussed a governance model and scheduling.[5]

On October 2, 2000, the consultants distributed an initial set of documents containing a discussion of FCC's treatment of performance plans, a side-by-side analysis of the New York and Texas plans, and a draft set of principles and framework for a performance plan with a request for comments.[6]

On October 5, 2000, the parties met by conference call to discuss the initial distribution of materials.[7]

In response to the October 2, 2000 request for comments, Qwest, Comptel, McLeod, Worldcom, ALTS, ASCENT, COVAD, ICG, Montana Consumers' Counsel, Z-Tel, ATT, Allegiance, and Sprint filed comments.[8]

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[4] http://www.nrri.ohio-state.edu/oss/Post271/index.htm
[5] http://www.nrri.ohio-state.edu/oss/Post271/Minutes/minutes8-21-00.htm
[6] http://www.nrri.ohio-state.edu/oss/Post271/first_workshop_mats.htm
[7] http://www.nrri.ohio-state.edu/oss/Post271/Minutes/minutes10-5-00.htm
[8] http://www.nrri.ohio-state.edu/oss/Post271/first_workshop_mats.htm

The first workshop was held in Denver on October 24 and 25, 2000 to discuss the framework and principles document and governance of the collaboration. Those discussions lead to high-level agreements on many of the principles. That agreement was captured in a revised principles and framework document. In addition, the parties proceeded on several other issues including a review of state enforcement authority and a collaborative governance process. Further the parties set a conference call for December 5 and 6, 2000.[9]

During the December 5 and 6, 2000 conference call, the parties addressed two major areas. First, there was an extended discussion on the governance of the collaboration. When it became apparent that agreement on governance was not going to emerge, Qwest offered to submit a new proposal. (Qwest subsequently withdrew that offer and indicated that it intended to proceed without a formal governance structure.[10]) Second, the parties generally completed discussion of the principles. Further discussion of the framework of the performance plan was suspended as the parties had already distributed proposed plans to the collaborative members. The consultants, therefore, agreed to roll the framework discussion into the discussion of the plans. At the end of the conference call, the parties agreed to an agenda for the next workshop scheduled for January 3 to 5, 2001 in Seattle.[11]

As noted previously, several parties submitted proposed plans between the first and second workshops. Qwest provided drafts of its variation of the Texas plan. In addition, ATT, Worldcom, and Z-Tel also submitted plans. A statement of principles was submitted by ASCENT through a letter addressed to Commissioner Rowe of Montana.[12]

These proposals and position papers became the grist for a decomposition of the various plan elements that structured the discussion for the next three workshops. The decomposition sought to identify the basic elements of the various plans and aggregate the proposals from the various parties concerning those elements. The decomposition then was used as an outline for discussion in the collaborative sessions.[13]

The parties then met in workshops on January 3 to 5 in Seattle,[14] February 13 to 15 in Denver,[15] and March 13 to 15 in Denver[16] to discuss items on the decomposition. In addition, parties made presentations to the collaboration at each of these sessions to detail generally the nature of their proposals (overviews of the various plans in Seattle) and the particular elements of their proposal (statistical approaches were discussed in the February Denver meeting and remedies were discussed in the March Denver meeting). Importantly, the performance measures to be included in the plan were largely agreed to at the March Denver meeting.

Following the discussion of remedies at the March Denver meeting, the states requested "price outs" of the various proposals for the discussion at the next workshop scheduled in Portland on April 24-26, 2001. Pursuant to various agreements concerning the confidentiality of the data, Qwest

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9 http://www.nrri.ohio-state.edu/oss/Post271/first_workshop_mats.htm
10 http://www.nrri.ohio-state.edu/oss/Post271/Post271/stevedavisltrp.pdf
11 http://www.nrri.ohio-state.edu/oss/Post271/Minutes/dec_5&6_minutes.htm
12 http://www.nrri.ohio-state.edu/oss/Post271/position_papers.htm
13 For an early version of the decomposition, see http://www.nrri.ohio-state.edu/oss/Post271/Post271/Decomposition_ver2.pdf
14 http://www.nrri.ohio-state.edu/oss/Post271/third_workshop_materials.htm
15 http://www.nrri.ohio-state.edu/oss/Post271/fourth_workshop_materials.htm
16 http://www.nrri.ohio-state.edu/oss/Post271/fifth_workshop_materials.htm

performed calculations for three states of the effects of its and the modified ATT plan of the remedy provisions. These calculations were presented to the collaboration on April 24 in Portland. Following extended discussion the parties at the Portland meeting agreed to use the Qwest plan as the basis for further negotiation and largely agreed to a statistical approach based on the Qwest plan model. (Z-Tel did not participate in the April meeting and subsequently registered objections to the proposal.)[17] At the conclusion of the April workshop, the parties agreed to a May meeting in Seattle.

The Seattle workshop took place on May 15 to 17, 2001.[18] At the beginning of this workshop several issues that remained open from the prior session were discussed and resolved. Qwest then presented a proposal on remedies to the parties. In response, the CLECs identified the major areas of concern they had with the Qwest proposal and the redline draft of the Qwest PAP they received on May 14, 2001. Qwest declined to discuss further the areas raised by the CLECs except for several areas of clarification on items that had been tentatively agreed to in prior discussions. It also left open the possibility of further discussions concerning higher remedies for high value services. At that point, Qwest indicated that further workshops would be unwarranted and that it would prepare a draft of the performance plan incorporating the areas of agreement previously reached and highlighting those areas that remain unresolved. These items (the Qwest revised performance plan, areas of agreement, and areas of disagreement) form the remainder of this report.

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[17] http://www.nrri.ohio-state.edu/oss/Post271/sixth_workshop_materials.htm

[18] http://www.nrri.ohio-state.edu/oss/Post271/seventh_workshop_materials.html

List of Agreements

Part 2: List of Agreements

The following issues were discussed and agreed to by the collaborative.

A. Principles and Framework Items

1. The collaborative agreed on wording for Principles 4.1 through 4.5 at the October 24, 2000 workshop. This agreed upon wording is contained in the Revised Principles and Framework document posted on the collaborative web site.

B. PEPP Governance

1. The collaborative agreed to work without a defined governance structure.

C. Performance Measurements

1. The collaborative agreed that the PIDs would be used to define whether a measure was a parity or benchmark measure. The PIDs would also define how these measurements were to be evaluated.

2. A matrix of the PIDs that were discussed for inclusion in the plan appears as Appendix A of this document. The matrix outlines areas of agreement and areas of no agreement for the PIDs. This matrix contains an agreed upon structure of families for some of the PIDs. When a measurement family is defined, the collaborative agreed that the remedy would be calculated based upon the measurement resulting in the highest dollar value within the family.

D. Classification of Performance Measurements

1. Qwest proposed to increase the level of Tier 1 payments to CLECs by classifying Tier 1 measurements OP-8, OP-13a, MR-3, MR-5, and MR-6a, 6b, 6c as "high. (See attachment 1 of the Qwest PAP.) This agreement is captured in Appendix A of this document.

2. The collaborative agreed that Tier I remedies would be payable to the individual CLECs, while Tier II remedies will be payable to the states. Tier II remedies will be measured on an aggregate basis.

E. Statistical Methods

1. The collaborative agreed to evaluate benchmark measurements on a "stare and compare" basis.

2. The collaborative agreed to use the Modified Z approach to determine if the difference between the Qwest and CLEC means were statistically significant.

3. A step function to determine the critical z value to utilize for various sample sizes was proposed by Qwest and accepted by the collaborative after some discussion and modification. The proposal was accepted[19] as follows:

   1. K Table eliminated.
   2. For purposes of statistical testing on parity measurements, the following critical values will be used:

Sample Size	All Other	*LIS Trunks, UDITs, Resale, UBL – DS1 and DS3*
1-10	1.645	1.04*
11-150	1.645	1.645
151-300	2.0	2.0
301-600	2.7	2.7
601-3000	3.7	3.7
3001 and above	4.3	4.3

* Applies for individual month testing. For purposes of determining consecutive month misses, 1.645 shall be used. Zone 1 and zone 2 shall be combined.

4. Permutation testing will be used for sample sizes of $n \leq 30$. For benchmark measurements, a mathematical function (incorporated into the Qwest PAP) will determine the benchmark target for $n \leq 100$.

F. Payment Structure

1. The CLECs proposed a method to incorporate "sticky" (or "sliding") duration by incrementing and decrementing remedy levels for each month when the target is missed and/or met. This will be accomplished using the remedy table that exists in the Qwest PAP. Qwest accepted this proposal, and it was subsequently adopted by the collaborative.

2. The collaborative accepted Qwest's proposal to create a stepped penalty structure for the following Tier II measurements: GA-1, GA-2, GA-3, GA-4, GA-6, PO-1, OP-2, and MR-2. The Tier II remedies will be implemented on the month the measure is missed (rather than after 3 months, as originally proposed). PO-1 will be collapsed to EDI and GUI for remedy calculations. The following penalties apply:

GA Measurements	*Remedy Level*
≤ 1%	$1,000 $14,000
> 1% to 3%	$10,000 $140,000
> 3% to 5%	$20,000 $280,000
> 5%	$30,000 $420,000

[19] Note in the next section that additional features were proposed and are in dispute.

OP-2 and MR-2	*Remedy Level*
≤ 1%	$1,000 / $14,000
> 1% to 3%	$5,000 / $70,000
> 3% to 5%	$10,000 / $140,000
> 5%	$15,000 / $210,000

PO-1	*Remedy Level*
2 sec. or less	$1,000 / $14,000
>2 sec. To 5 sec.	$5,000 / $70,000
>5 sec to 10 sec.	$10,000 / $140,000
> 10 sec.	$15,000 / $210,000

G. Cap on Payments

1. The collaborative accepted the following proposal offered by Qwest regarding per-measure caps:
   a. Remove the cap on PO-3
   b. Retain the cap on BI-1, BI-3, and BI-4
   c. Remove the cap on PO-1 (this measure will become a per-measure measure rather than a per-occurrence measure with a cap)
   d. Remove the cap on PO-7
   e. Do not divide by 24 on NI-1. The cap will be removed for NI-1 as well.
   f. Qwest will verify with the TAG that NI-1 will not be counted in the remedy calculations in the month when a TGSR is issued.

H. Other PAP Provisions

1. The collaborative agreed that RSII's would not be combined for the purposes of remedy calculations.

2. Qwest will draft more general wording regarding the states' use of Tier II funds. This wording will be incorporated into the revised Qwest PAP.

3. Some reporting provisions were agreed to by the collaborative. Reports will be issued monthly to the CLECs and the states by the final day of the month following the month for which the performance results are being reported. There will be a grace period of 5 business days.

List of Unresolved Issues

Part 3: List of Unresolved Issues

The following issues were discussed, but no consensus was reached. The topics may be at impasse or open for further discussion as noted below.

A. Principles and Framework Items

2. The Framework items were not discussed separately as a specific workshop topic. The collaborative agreed to defer the Framework items and discuss the specific components of the plan as the meetings progressed.

3. The collaborative agreed on wording for Principles 4.1 through 4.5 at the October 24, 2000 workshop. This agreed upon wording is contained in the Revised Principles and Framework document posted on the collaborative web site. The Collaborative did not reach agreement on the wording for Principles 4.6 and 4.7. These Principles address the issues of exclusivity and enforcement.

B. Performance Measurements

3. Change management PIDs have been proposed by Qwest and are currently before the TAG. Any discussion of their inclusion in the PAP was deferred pending TAG consideration.

4. The CLECs proposed that "parity with a floor" be incorporated into PID standards. No specific proposal of benchmark "floors" was made. This proposal was made at the May 16, 2001 workshop. The collaborati e had previously agreed to use the performance standard stated in the PID.

5. A matrix of the PIDs that were iscussed for inclusion in the plan appears as Appendix A of this document. The matrix ou ines areas of agreement and areas of no agreement for the PIDs.

C. Classification of Performance Measurements

1. Qwest proposed to increase the level of Tier 1 payments to CLECs by classifying Tier 1 measurements OP-8, OP-13a, MR-3, MR-5, and MR-6a, 6b, 6c as "high" and to decrease the level of Tier 2 payments to State Funds by classifying Tier 2 measurements OP-3, OP-4, OP-5, OP-6, MR-7, and MR-8 as "medium." (See attachment 1 of the Qwest PAP.) The CLECs accepted the Tier 1 classifications, but made the classification of the Tier 2 measurements contingent upon Qwest accepting the classifications of PO3, PO7, PO8, MR3, MR5, MR6, BI3, CP1, CP3, CP4 as Tier 2 in same manner as Tier 1 e.g. H, M, L. Qwest rejected the entirety of the CLEC counter-proposal. The CLECs inquired as to Qwest's response if only MR-3 and MR-5 were added as Tier2 measurements. Qwest stated that it would accept, if the CLECs were to make such a proposal. The Qwest proposal was left on the table for the CLECs to determine if they would formalize their inquiry as to MR-3 and MR-5.

2. The CLECs proposed that all performance measurements designated "low" be classified as "medium" and the "low" category be eliminated. Qwest rejected this proposal.

D. Statistical Methods

1. Certain CLECs proposed that a 1.04 critical value be used for statistical testing for all parity performance measurements with samples sizes of 11 or less. The collaborative had previously agreed to a statistical approach that eliminated the K-Table and substituted a table of varying critical value. (See section 5.0 of the Qwest PAP.) Included in this table is a 1.04 critical value applied to sample sizes of 10 or less for performance measurements involving LIS trunks and to DS1s and DS3s for UDITs, resale, and unbundled loops. Qwest rejected this proposal. The previously agreed to statistical approach stands.

E. Payment Structure

1. The CLECs proposed a payment structure for collocation that is that which was adopted by the Michigan Commission. This subject is under discussion in other venues and any agreements reached will be incorporated into the Qwest PAP for the participating ROC states.

2. The CLECs and Qwest discussed adjustments to the payment schedule for "high valued" services, defined as LIS trunks and DS1 and DS3 UDITs, resale, and unbundled loops. This subject is under discussion in other venues and any agreements reached will be incorporated into the Qwest PAP for the participating ROC states.

3. The CLECs proposed that severity of misses for percentage type measurements be incorporated into payment structure. No specific method was proposed. Qwest stated its opposition to the idea.

4. The CLECs proposed that there be no end to the escalation in the level of per occurrence payment amounts for consecutive month misses beyond six months. No specific dollar amounts were proposed. Qwest stated its opposition to the idea.

5. The CLECs proposed that the level of per occurrence payment amounts for the longer durations be increased. States indicated their preference for the per occurrence payment amounts at the shorter durations be decreased while those for the longer durations be increased. Qwest indicated its willingness to consider adjustments along the lines described by the states; however, no CLEC indicated acceptance of this concept.

F. Cap on Payments

1. Qwest proposes a cap on payments equal to 36% of net revenues. (See section 12.0 of the Qwest PAP.) Individual state cap amounts are shown on Attachment 3 of the Qwest PAP. The CLECs oppose a cap on payments and propose a cap act as a trigger for a service investigation by the state commission. Qwest opposes any cap other than a hard cap of 36%.

G. Other PAP Provisions

1. Audits and root cause analysis provisions were discussed by the collaborative. Qwest's proposal is section 15.0 in its PAP. No specific proposals were made by the CLECs. No consensus on this matter was reached.

2. The limitation provisions were discussed by the collaborative. Qwest's proposal is section 13.0 in its PAP. No consensus on limitations was reached.

3. The reporting provisions were discussed by the collaborative. Qwest's proposal is section 14.0 in its PAP. No consensus was reached as to payments for late reports, inaccurate reports, or incomplete reports.

4. Tier 1 payment method was discussed by the collaborative. Qwest's proposal is section 11.0 in its PAP. Qwest volunteered to work with CLECs and the states on the bill credit format and documentation of the payment calculation. No consensus was reached; however, the CLECs indicated that the information may satisfy their concerns over bill credits.

5. The CLECs propose that the PAP be effective upon state commission approval of the PAP. Qwest proposes that the PAP be effective upon FCC approval of its section 271 application for that state. (See section 13.1 of the Qwest PAP.) No consensus on this matter was reached.

6. The CLECs propose that at the effective date of the Qwest PAP that the initial payment levels reflect the number of consecutive months of misses prior to the effective date. No consensus on this matter was reached.

H. Other Topics

1. The CLECs proposed that the provisions of the PAP apply to special access services. No specific proposal of how such would be accomplished was made. Qwest opposed inserting special access as an issue for the first time in the May workshop and rejected the inclusion of special access on the basis that inclusion of special access was inappropriate.

Appendix A
PID Measurements Matrix

Appendix A
PID Measurements Martix

Measurements Matrix

ELECTRONIC GATEWAY AVAILABILITY		Tier I	Tier II	Agreement	No Agreement
GA-1	Gateway Availability - IMA-GUI		X		
GA-2	Gateway Availability - IMA-EDI		X		
GA-3	Gateway Availability - EB-TA		X		
GA-4	System Availability - Exact		X		
GA-5	System Availability - GUI Repair		X		
ORDERING AND PROVISIONING					
PO-1	Pre-Order/Order Response Times		X		
PO-2	Electronic Flow-Through			Diagnostic	
PO-3	LSR Rejection Notice Interval	X		Limited to a-1, b-1, c	X (Tier II)
PO-4	LSRs Rejected			Diagnostic	
PO-5	FOCs On Time (%)	X	X		
PO-6	Work Completion Notification Interval	X		Family w/PO-7	
PO-7	Billing Completion Notification Timeliness	X		Family w/PO-6	X (Tier II)
PO-8	Jeopardy Notice Interval	X			X (Tier II)
PO-9	Timely Jeopardy Notices	X			
PO-10	LSR Accountability			Diagnostic	
PO-11	Number of Due Date Changes per Order			Diagnostic	
ORDERING AND PROVISIONING					
OP-2	Calls Answered within Twenty Seconds -		X		
OP-3	Installation Commitments Met	X	X	Family 3a/3b, 3d/3e	
OP-4	Installation Interval	X	X	Family w/ OP-6	
OP-5a	New Service Installation Quality	X	X		
OP-5b	New Service Installation Quality			Diagnostic	
OP-6	Delayed Days	X	X	Combine 6a/6b, Family w/ OP-4	
OP-7	Coordinated "Hot Cut" Interval - UBL			Diagnostic	
OP-8	Number Portability Timeliness	X	X		
OP-13a	Coordinated Cuts On Time - UBL	X	X		
OP-13b	Coordinated Cuts On Time - UBL			Diagnostic	
MAINTENANCE AND REPAIR					
MR-2	Calls Answered within Twenty Seconds - Interconnect Repair Center		X		
MR-3	Out of Service Cleared within 24 Hours	X	*		X (Tier II)
MR-4	All Troubles Cleared within 48 Hours			Not Included	
MR-5	All Troubles Cleared within 4 Hours	X	*		X (Tier II)
MR-6	Mean Time to Restore	X		6a, 6b, 6c only	X (Tier II)
MR-7	Repair Repeat Report Rate	X	X		
MR-8	Trouble Rate	X	X		
MR-9	Repair Appointments Met			Not Included	
MR-10	Customer-Related Trouble Reports			Diagnostic	
BILLING					
BI-1	Time to Provide Recorded Usage Records	X	X		
BI-2	Invoices Delivered within 10 Days			Not Included	
BI-3	Billing Accuracy - Adjustments for Errors	X			X (Tier II)
BI-4	Billing Completeness	X	X		

Appendix A (continued)

		Tier I	Tier II	Agreement	No Agreement
DATABASE UPDATES					
DB-1	Time to Update Databases			Not Included	
DB-2	Accurate Database Updates			Not Included	
DIRECTORY ASSISTANCE					
DA-1	Speed of Answer - Directory Assistance			Not Included	
DA-2	Calls Answered within Ten Seconds - Directory Assistance			Not Included	
OPERATOR SERVICES					
OS-1	Speed of Answer - Operator Services			Not Included	
OS-2	Calls Answered within Ten Seconds - Operator Services			Not Included	
NETWORK PERFORMANCE					
NI-1	Trunk Blocking	X	X		
NP-1	NXX Code Activation	X	X		
COLLOCATION					
CP-1	Installation Interval	X			X (Tier II)
CP-2	Installation Commitments Met	X	X		
CP-3	Feasibility Study Interval	X			X (Tier II)
CP-4	Feasibility Study Commitments Met	X			X (Tier II)
CP-5	Quote Interval			remove	
CP-6	Quote Commitments Met			remove	
	CLECs inquired if Qwest would agree t included MR-3 and MR-5 in Tier 2 as a resolution of Tier 2 measures and other proposals made by Qwest at the May 16 2001				

Appendix B
PEPP Collaborative Participants

Appendix B
Collaborative Participants

NAME	ASSOCIATION
Andrea P. Harris	Allegiance Telecom
Kimberly M. Kirby	ALTS
John Finnegan	AT&T
Michael Kalb	AT&T
Michelle Engel	AT&T
Steve Weigler	AT&T
Timothy M. Connolly	AT&T
Molly O'Leary	Avista Communication
Mana Jennings-Fader	Colorado Ass't Attorney
Wendie Alstot	Colorado PUC
Lans Chase	Covad
Lisa Strom	Davis Wright Tremaine
Joyce Hundleyus	DOJ
Mary Tee	Electric Lightwave
Mary Tee	Electric Lightwave
Nigel Bates	Electric Lightwave
Garth Morrisette	Eschelon
Gena Doyscher	Global Crossing
Amy Hartzler	ICG Communications
Julia Waysdorf	ICG Communications
Wayne Hart	Idaho PUC
Dennis Rosauer	Iowa Utility Board
John Ridgeway	Iowa Utility Board
Penny Baker	Iowa Utility Board
Vince Hanrahan	Iowa Utility Board
Andrew Newell	JATO
Rod Cox	McLeod USA
Todd McNally	McLeod USA
Mary Lohnes	Midcontinent Communications
Mike Lee	Montana
Allen Buckalew	Montana Consumer Counsel
John Bushnell	Montana Consumer Counsel
Kate Whitney	Montana PSC
Marla Larson	Montana PSC
Michael Lee	Montana PSC
Gene Vuckovich	Montana Rural Development
Theodore Otis	Montana Wireless, Inc
Bob Center	MTG
Denise Anderson	MTG
Marie Bakunas	MTG
Peggy Caraway	MTG
M. Marsh	Nebraska Commission
Chris Post	Nebraska PSC
Dick Palazzolo	Nebraska PSC

Appendix B (continued)

NAME	ASSOCIATION
William Taylor	NERA
Kathleen Sholsky	New Edge Networks
Perry H. Bewick	New Edge Networks
Karl Wyler	New Mexico
Maryanne Reilly	New Mexico Public Reg. Comm
Mike Ripperger	New Mexico Public Reg. Comm
Patrick Fahn	North Dakota PSC
Frank Darr	NRRI
Barbara Combs	Oregon PUC
Sterling Sawyer	Oregon PUC
Marion "Buster" Griffing	QSI Consulting
Andrew Crain	Qwest
Barbara Brohl	Qwest
Bill Taylor	Qwest
Carl T. Inouye	Qwest
David Gonazales	Qwest
David Sather	Qwest
Dennis Wu	Qwest
Ione Wilkens	Qwest
Jeff Carmon	Qwest
Joanne Ragge	Qwest
Lynn Stang	Qwest
Mark Reynolds	Qwest
Michael Williams	Qwest
Nita Taylor	Qwest
Paul McDaniel	Qwest
Peter Cummings	Qwest
Wayne Kobbervig	Qwest
Douglas Hsiao	Rythms
Cheryl Boyd	SBC Telecom
Mark Mattson	SBC Telecom
Harlan Best	South Dakota PUC
Keith Senger	South Dakota PUC
Rolayne Wiest	South Dakota PUC
Barb Young	Sprint
Don Low	Sprint
Jim Kite	Sprint
Dennis Miller	Utah
Wendy Fuller	Utah
Judith Hooper	Utah Division of PUC

Appendix B (continued)

NAME	ASSOCIATION
Dave Griffiths	Washington Utilities & Trans Com
Tom Spinks	Washington Utilities & Trans Com
Chad Warner	Worldcom
Karen Kinard	Worldcom
Liz Balvin	Worldcom
Terry Tan	Worldcom
Thomas Priday	Worldcom
Tom Dixon	Worldcom
Mike Korber	Wyoming PSC
David LaFrance	XO Communications
Rex Knowles	XO Communications
George Ford	Z-Tel
Janet Livengood	Z-Tel

QPAP Estimated Tier 1 and Tier 2 Payments

Month	Number of Measurements	Number of Missed Measurements	Per ent Meets	Tier I and Tier II Payments	Payment per Missed Measurement
May	489	41	92%	$246,825	$6,020
June	539	39	93%	$386,775	$9,917
July	566	26	95%	$200,625	$7,716
Total	1594	106	93%	$834,225	$7,870

A. For the three-month period, approximately $551,925 of the $834,225 total would have been Tier 1 payments to individual CLECs.

B. $7,870 represents the average payment every time a performan e standard is missed when overall servi e performan e is already high, as eviden ed by the overall per ent meets of 93%.

C. QPAP Tier 1 payments for the three provisioning performan e measurements (OP-3, Installation Commitments Met; OP-4, Installation Interval; and OP-6, Delayed Days) would total $162,900.

D. The Tier 1 payments to CLECs v ould have been $26,375, or approximately $347 per late FOC.

BEFORE THE
PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

IN THE MATTER OF THE INVESTIGATION	)	DOCKET TC 01-165
INTO QWEST CORPORATION'S	)	
COMPLIANCE WITH SECTION 271 (C) OF THE	)	
TELECOMMUNICATIONS ACT OF 1996	)	

QWEST CORPORATION'S

REBUTTAL AFFIDAVIT

OF

MARK S. REYNOLDS

PERFORMANCE ASSURANCE PLAN

April 2, 2002

TABLE OF CONTENTS

REBUTTAL AFFIDAVIT

OF

MARK REYNOLDS

Performance Assurance Plan

Mark Reynolds declares as follows:

My name is Mark Reynolds. My business address is 1600 7th Avenue, Room 3206, Seattle, Washington 98191. I am Senior Director – Financial Advocacy for Qwest Corporation ("Qwest"). My education and professional experience are described in my prior affidavit in this proceeding dated October 24, 2001.

I. EXECUTIVE SUMMARY

The purpose of this rebuttal affidavit is to respond to the questions concerning Qwest's performance assurance plan ("QPAP") raised in this proceeding by the following parties: Mark L. Stacy on behalf of the Staff of the Public Utilities Commission of South Dakota; Kyle D. White on behalf of Black Hills FiberCom, LLC ("FiberCom"); W. Thomas Simmons on behalf of Midcontinent Communications ("Midcontinent"); and John F. Finnegan on behalf of AT&T Communications of the Midwest, Inc. ("AT&T").[1] As I explained in my prior affidavit, the QPAP is a robust self-executing performance measurement and enforcement mechanism, and fully satisfies the FCC's criteria for an

[1] *See* Direct Testimony of Mark L. Stacy On Behalf of the Staff of the Public Utilities Commission of South Dakota, Mar. 18, 2002, ("Stacy Testimony"); Direct Testimony of Kyle D. White on Behalf of Black Hills FiberCom, LLC, Mar. 18, 2002 ("FiberCom Testimony"); Pre-filed Testimony of W. Tom Simmons on Behalf of Midcontinent Communications, Mar. 18, 2002 ("Midcontinent Testimony"); AT&T Witness John Finnegan's Verified Comments on Qwest's Performance Assurance Plan, Mar. 18, 2002 ("AT&T Comments").

acceptable performance plan. Indeed, as noted below, the key elements of the QPAP (including most of those to which AT&T and Mr. Stacy object) mirror those in SBC's plans for Texas, Kansas, Oklahoma, Arkansas, and Missouri, and have thus already been approved by the FCC.

FiberCom and Midcontinent raise specific issues concerning provisions of the QPAP, but they also largely accept the basic parameters of the plan Qwest developed in the Multistate Workshops and agree with many of the Multistate Facilitator's modifications to that plan.[2] As described below, Qwest has implemented many of those recommendations in its multistate QPAP and would be willing to offer the multistate QPAP here. In any event, I believe that many of the concerns of these two parties can be adequately addressed through minor revisions to the South Dakota QPAP. AT&T, on the other hand, mischaracterizes the history and nature of the QPAP and makes a number of totally unreasonable demands that conform neither to the FCC's decisions in approving prior plans nor to the needs of the CLECs in South Dakota.

II. BACKGROUND

Although I will address each of the parties' specific concerns in detail below, as initial matter, I would like to clarify the history and development of the QPAP, a subject mischaracterized by AT&T. As I discussed in my prior affidavit, the QPAP Qwest

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[2] *See* FiberCom Testimony at 3. FiberCom suggests that it has been unable to ascertain how Qwest is performing under the PIDs established in the plan. *Id.* at 7. In fact, these PIDs were established long ago, and only a few of them are currently still under review. FiberCom could have reviewed Qwest's monthly performance reports, but apparently has never done so. *See id.*

submitted in this proceeding was not drafted in a legal vacuum. Qwest began with a plan modeled closely along the lines of that previously approved by the FCC in its review of SBC's section 271 application for Texas. *Each of the critical principles of the QPAP described in my original affidavit, and endorsed by the Multistate Facilitator in his report,*[3] *was reflected in the Texas plan approved by the FCC (and approved in at least four other plans thereafter).* Those principles therefore unquestionably lie well within the FCC's controlling "zone of reasonableness"[4] standard for determining whether such plans are designed to ensure that "a BOC would continue to satisfy the requirements of section 271 after entering the long distance market."[5] Mr. Stacy notes that the FCC "has previously predicted that the enforcement mechanisms developed in [the Texas plan] . . . would be effective in practice."[6] This Commission's review of similar mechanisms in the QPAP should therefore proceed with appropriate regard for the FCC's view of the zone of reasonableness standard, and not based on the quite different standard that "more is better."

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[3] Report on Qwest's Performance Assurance Plan, *In the Matter of the Investigation into US WEST Communications Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996*, Docket No. D2000.5.70, Oct. 22, 2001, at 4 ("Multistate Facilitator's Report").

[4] Memorandum Opinion and Order, *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd 3953 ¶ 433 (1999) (subsequent history omitted) ("New York Order").

[5] *Id.* ¶ 429.

[6] Stacy Testimony at 14 n.5.

But Qwest did far more in this case than simply submit a QPAP modeled on the FCC-approved Texas plan. These efforts are completely ignored by AT&T. As noted in my prior affidavit, Qwest agreed to subject that proposal to an extensive review by CLECs and state staffs from this and ten other states, through the ROC PEPP collaborative from October 2000 to May 2001. That review led to a number of further compromises from the Texas plan by Qwest -- including changes to the statistical methodology crucial to the parity measurements upon which the plan is based, changes to the de-escalation features of the Texas plan, elimination of payment caps on virtually all individual performance measurements, increased payments for collocation important to CLECs, reclassification of some measurements' payment level from medium to high, addition of a per measure payment structure for regionwide measures, and agreement that ROC PIDs would be used to define measures and how measures would be evaluated.[7]

AT&T's comments do not address these prior efforts or the prior plans approved by the FCC which clearly demonstrate that the QPAP provisions are reasonable. Instead, AT&T relies time and time again on decisions from Wyoming, Montana, and Colorado (and only with respect to plan provisions that it prefers) that have never been

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[7] *See* Multistate Facilitator's Report at 1. Thus, to say that Qwest thereafter "walked away" from the ROC PEPP collaborative after agreeing to a seven-month process for compromise in efforts to resolve impasse issues (AT&T Comments at 3) is rather absurd. When it became clear that the parties still could not resolve all of their differences over the many provisions of this complex plan, they proceeded to more formal hearings to resolve them. AT&T simply does not like the outcome of that resolution -- or simply wants to delay its implementation.

reviewed by the FCC. AT&T's selective citation to provisions of other plans is not a relevant guide to this Commission. The Colorado plan was drafted not by Qwest but by the Special Master, the Colorado Staff, and the hearing commissioner; it is a very different plan, based on a very different record. Each plan reflects an overall balance of gives and takes on specific issues, which cannot be viewed in isolation. Moreover, Qwest has not yet indicated its willingness to accept any of these plans. Indeed, with respect to Wyoming, Qwest has expressed to the Wyoming Commission its "deep concerns" with the commission's decision and its "inability to accept this unprecedented set of proposed modifications."[8]

The only question before this Commission is whether the plan *submitted by Qwest* meets those criteria, not whether another plan may be preferred by other Commissions.[9] In fact, the major concepts and provisions contained in the QPAP have already been accepted by the FCC, including:

- An annual hard cap based on 36% of net return, as calculated from ARMIS data;
- 100% cap for interval measures;
- A six-month limit on payment escalation;
- Tier 2 payments after three months of nonconforming performance;

8 Letter from R. Steven Davis, Qwest Corporation to Steve Ellenbecker, Chairman, Wyoming Public Service Commission, Feb. 18, 2002, at 1, 2.

9 Mr. Stacy's citation to the FCC's *Pennsylvania Order* for the proposition that each state plan can differ is not to the contrary. That order simply stated the truism that plans need not be identical in every state. It does not mean that a BOC offering a plan that conforms to prior FCC-approved plans can be treated differently from those other BOCs without any reason based on unique circumstances in its state.

- Payments in the form of bill credits;
- Requiring consensus agreement for modifications to the plan arising out of the six-month review;
- Effective date upon FCC approval of the section 271 application.

Because its core elements have already been approved in previous section 271 applications, Qwest believes that the QPAP it has filed in this state will be acceptable to the FCC and is in the public interest.

I would also like at the outset to address one other point made by FiberCom. As it notes, Qwest agreed in November 2001 to make almost all of the Facilitator's recommendations for *further* changes to the QPAP following hearings that he held and in response to his comprehensive decision. Qwest did not agree with many of those changes, and agreed to make them only because it believed that doing so could advance a resolution of the QPAP dockets in those states. FiberCom suggests that those further changes should now also be imported into the QPAP in South Dakota. Qwest would have no objection to accepting in South Dakota the version of the QPAP that it agreed to accept in the multistate jurisdictions last November. But it agreed to those changes only on the assumption that doing so would make the plan acceptable to AT&T and other CLECs. Qwest has no interest in simply continuing to make compromises in the QPAP not required by the FCC and not contained in the plans governing other BOCs in the absence of any recognition by CLECs or by Staff that those concessions will form the basis for an acceptable plan. As the Facilitator recognized, "we nee[d] to be careful not to support an improvement in what [a] party got without considering what had been given in return," lest "we risk disrupting important balances reflected" in the plan.[10]

III. SPECIFIC ISSUES RAISED BY PARTIES

A. Payment Structure and Amounts

1. Payment Levels

FiberCom argues that Qwest's proposed per occurrence payment levels do not account for the business impacts to CLECs of missed standards under the QPAP.[11] The QPAP payment structure and payment levels have been previously approved by the FCC on three separate occasions for five different states: Texas, Kansas, Oklahoma, Arkansas, and Missouri. And these levels received substantial CLEC endorsement in the ROC PEPP collaborative, in which South Dakota staff participated.

FiberCom provides no contrary evidence that these FCC-approved payment levels are not compensatory. Indeed, the QPAP payment levels are not, as FiberCom suggests,[12] merely "near" the revenue Qwest receives from CLEC for the relevant service. My prior testimony actually demonstrated that in many cases the payments are many times the service price level, effectively resulting in many months of free service. Finally, because the plan is self-executing, payments are made to CLECs regardless of

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[10] Multistate Facilitator's Report at 2.

[11] FiberCom Testimony at 9. AT&T does not dispute the QPAP payment levels, and likewise did not challenge the Multistate Facilitator's approval of those levels. *See* AT&T Comments; AT&T's Exceptions to the Liberty Consulting Group's QPAP Report, Nov. 1, 2001 ("AT&T Exceptions").

[12] FiberCom Testimony at 9.

whether any actual harm was caused by Qwest's nonconformance with the measurement standards. Thus, in many cases, the CLEC would be substantially overcompensated by the QPAP. In light of these considerations, there is no reason here to find unacceptable levels of payments in the QPAP which are consistent with those in other plans approved by the FCC.

2. Annual Cap

FiberCom challenges the 36% overall cap on QPAP payments, suggesting that if payments reach the cap before the end of the year, the cap should increase by $1.25 million per month until the end of the year.[13] Mr. Stacy argues that Qwest's potential liability should not be capped at *any* level.[14] Both of these arguments are muted by the FCC's 271 orders approving such a cap as sufficient time and again.

In application after application, the FCC has approved an absolute limit on the BOC's liability.[15] More specifically, the FCC has repeatedly found that placing 36% of

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[13] *See id.* at 10. Similarly, AT&T advocates a "procedural" cap on Qwest's overall liability. *See* AT&T Comments at 30-33.

[14] *See* Stacy Testimony at 11-2[illegible].

[15] *See New York Order* ¶ 435; Memorandum Opinion and Order, *Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications 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*, 15 FCC Rcd 18354 ¶ 424 (2000) ("Texas Order"); Memorandum Opinion and Order, *Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, 16 FCC Rcd 6237 ¶ 274 (2001) (subsequent history omitted) ("Kansas/Oklahoma Order"); Memorandum Opinion and Order, *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon*

the BOC's net local revenues at risk constituted a "meaningful incentive" to maintain a "high level" of performance.[16] Indeed, it has squarely rejected the assertion that a 36% cap provides an inadequate incentive: "We . . . disagree with commenters that suggest that this amount is insufficient and fails to provide adequate assurance of . . . compliance in the future."[17] The commenting parties have failed to demonstrate that the particular facts in this case raise considerations that were not present in the FCC's previous section 271 applications in which a 36% hard cap was included in the plan.[18] In the absence of such a demonstration, the Commission should reject any assertion that a 36% cap provides inadequate financial incentive. This is particularly true in light of the FCC's holding that liability under the PAP need not be sufficient "*standing alone*,

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Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts, 16 FCC Rcd 8988 ¶ 241 (2001) ("Massachusetts Order"); Memorandum Opinion and Order, *Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc. and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Connecticut*, 16 FCC Rcd 14147 ¶ 76 (2001) ("Connecticut Order"); Memorandum Opinion and Order, *Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications 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 Arkansas and Missouri*, 16 FCC Rcd 20719 ¶¶ 128-29 & n.409 (2001) ("Arkansas/Missouri Order").

[16] *See New York Order* ¶¶ 435-36; *Texas Order* ¶ 424; *Kansas/Oklahoma Order* ¶ 274; *Connecticut Order* ¶ 76; *Arkansas/Missouri Order* ¶¶ 128-29 & n.409.

[17] *See Kansas/Oklahoma Order* ¶ 274 (footnote omitted).

[18] FiberCom argues that $15 million a year can translate to 20 cents a day per customer. *See* FiberCom Testimony at 9. This fuzzy math cannot obscure the point that placing *over a third* of Qwest's net return from its South Dakota

to completely counterbalance [the BOC's] incentive to discriminate."[19] in light of other incentives, such as the risk of federal enforcement action (including the potential loss of long distance authorization).

Moreover, as the Multistate Facilitator recognized, Qwest should not be forced to decide whether to accept the significant undertaking it has made in the QPAP without some assurance as to the limit of the potential liability in that undertaking.[20] This is particularly true in light of the fact that subjecting Qwest to unlimited liability has not been shown to be necessary to accomplish the goals of the QPAP — either to provide sufficient incentive for Qwest's wholesale performance or to compensate CLECs for the harm associated with poor performance.

FiberCom also argues that the 36% net return calculation should be updated annually based on previous calendar year data.[21] In order to provide Qwest (and the CLECs) with some measure of certainty regarding Qwest's obligations, the QPAP provides that the payment cap is to be calculated based on Qwest's known net local revenues, as measured by FCC ARMIS data for 1999. As the Multistate Facilitator stated, "it appears preferable to rely upon the firm dollar amounts that the QPAP provides for, as opposed to taking a ratcheting risk of unknown direction and

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regulated operations at risk under the QPAP is a potentially enormous risk to its business prospects in this State.

19 *New York Order* ¶ 435 (emphasis in original).

20 *See* Multistate Facilitator's Report at 16.

21 *See* FiberCom Testimony at 11.

unknowable magnitude."[22] The Facilitator recognized that Qwest's net local revenue is equally likely (if not more likely) to decrease rather than increase in future years following the acceleration of local competition, and that the total dollars at risk may, therefore, actually be higher if the cap is based on the 1999 amounts.[23]

The Texas, Kansas, Oklahoma, Arkansas, and Missouri plans provide for an annual recalculation of the cap, but only to decrease the total dollars at risk in subsequent years.[24] And the most recent of these plans approved by the FCC, submitted in August 2001, continues to rely on 1999 ARMIS data.[25] However, if the Commission is not persuaded that the Facilitator's rationale for a fixed cap is acceptable, Qwest would have no objection to a continuous annual recalculation of the 36% cap based upon the most recently available ARMIS data, by inclusion of the following language:

> The cap shall be recalculated each year based upon the prior year's South Dakota ARMIS results. Qwest shall submit to the Commission the calculation of each year's cap no later than 30 days after submission of ARMIS results to the FCC.[26]

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22 Multistate Facilitator's Report at 22.

23 *Id.* at 21-22.

24 Those plans recalculate the cap within a narrow range and impose a ceiling in the amount of the total dollars at risk in the first year. See section 7.1 of Texas, Kansas, Oklahoma, Arkansas, and Missouri PAPs.

25 Affidavit of William R. Dysart, for Missouri, *In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Arkansas and Missouri*, FCC, Aug. 13, 2001, at 9 n.14.

26 FiberCom also notes that in light of the annual cap "fairly CLECs receiving poor service early in the year are compensated." FiberCom Testimony at 13. Qwest

Mr. Stacy argues that there should be no limit on Qwest's annual liability under the QPAP, because any such limit would allow Qwest to treat the QPAP payments as a cost of doing business.[27] He argues that Qwest could calculate the amount of QPAP payments it would have to make for nonconforming service and weigh these against the marginal cost of compliance with its QPAP obligations.[28] The same argument was made by QSI in the multistate hearing, based on testimony from Mr. Stacy's colleague, Dr. Griffing,[29] on behalf of the New Mexico Advocacy Staff.[30] The Facilitator flatly rejected that argument, noting that Dr. Griffing himself admitted that no party had submitted evidence as to Qwest's marginal cost of compliance, and that it might be *impossible* for Qwest to make such a calculation.[31] The Facilitator also stated that the CLECs' argument ignored other costs that Qwest might face for repeated nonconforming service, such as enforcement proceedings and the revocation of section 271 approval.[32] Mr. Stacy similarly acknowledges that calculating a marginal cost of

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would have no objection to the kind of "pro rata distribution" mechanism Qwest implemented in response to the Multistate Facilitator's recommendation on this point in the November 2001 multistate QPAP.

27 *See* Stacy Testimony at 12.

28 *Id.* at 17.

29 *See* Multistate Facilitator's Report at 20-21.

30 Testimony of Marlon Griffing, *In the Matter of the Investigation into US West Communications Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996*, Aug. 27, 2001 ("8/27/01 Tr.") at 115.

31 *See* Multistate Facilitator's Report at 21.

32 *See id.*

compliance demonstration may not be possible, and that the Facilitator found it "impossible to perform."[33] To premise the requirement of unlimited financial exposure on the lack of evidence that is concededly impossible to obtain would be consistent neither with the FCC's orders approving other plans nor with rational decisionmaking.

Finally, Mr. Stacy's claim that a cap is unjustified because "what Qwest pays is entirely under Qwest's control,"[34] is simply untrue, as the Multistate Facilitator recognized. In fact, while Qwest certainly believes and hopes that it can meet the QPAP's performance standards over an extended period of time, it has no evidence that proves that this will turn out to be true 100% of the time. Given the parties' lack of real world experience with the PIDs, and the fact that new submeasurements or standards may well be introduced after the QPAP becomes effective, it is entirely possible that poorly designed PIDs will prevent Qwest from consistently meeting all of its obligations, *regardless of Qwest's desire to do so*. In his discussion of the six-month limit on escalation, the Facilitator recognized as much:

> [I]t is not so clear that continuation of poor performance past six months means that there was a methodical calculation by Qwest that the continuing costs of compliance exceeded the continuing costs of violation. . . . There is no evidence in this record that would demonstrate with certainty that those levels of performance can be met and sustained at any cost that is within the realm of economic reason. There is certainly a common belief and expectation that they can; otherwise it is difficult to see why Qwest would have agreed to them. However, they generally relate to

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33 Stacy Testimony at 18.

34 *Id.* at 21.

> the provision of services about which there was relatively little experience when the measures were adopted.[35]

It is important to note that the Facilitator's conclusions here are not without considerable experience. The Facilitator's own organization, the Liberty Consulting Group, performed the audit of the performance measurements used by the PAP.[36] In addition, all the parties close to the ongoing PID development and audit understand that the PIDs have required numerous modifications after experience with how they operate in practice.

3. Monthly Cap

FiberCom claims that, if Qwest's "payments under Tier 1 meet or exceed the monthly cap, Tier 2 payments are forfeited."[37] This is incorrect. The QPAP does not contain any such monthly caps. The sole purpose for the monthly cap in Section 12.2 of the QPAP is for purposes of establishing the threshold for permitting Qwest to seek payment relief under Section 13.9.

4. Payment Triggers

Mr. Stacy opposes the QPAP's three-month Tier 2 payment trigger as a potential disincentive for Qwest to take immediate action.[38] Instead, he recommends that Qwest be required to make Tier 2 payments without any time lag and that his "solution would

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[35] Multistate Facilitator's Report at 44.

[36] Liberty Consulting Group, Report on the Audit of Qwest's Performance Measures, Presented to the Regional Oversight Committee, July 11, 2001.

[37] FiberCom Testimony at 9.

[38] *See* Stacy Testimony at 22-23.

be consistent with the criteria set forth by the FCC that the performance assurance plan's structure be designed to detect and sanction poor performance when it occurs.[39] Similarly, FiberCom argues that "I doubt that [the three-month trigger] is the performance expectation the FCC has in mind."[40]

Both parties are wrong about the FCC. The FCC has approved three-month triggers for Tier 2 payments in the Texas, Oklahoma, Kansas, Arkansas, and Missouri performance plans.[41] Such triggers make sense in light of the basic differences between Tier 1 and Tier 2 payments. Tier 1 payments are intended in the first instance to compensate CLECs for nonconforming service. Because of their compensatory purpose, it is appropriate for Tier 1 payments to accrue immediately if Qwest's performance is below standard. Tier 2 payments, by contrast, are designed purely to provide an additional incentive to Qwest, and have payment levels at least three times higher than Tier 1 base payment levels.[42] As such, it is appropriate that the payments are triggered only to incent Qwest to solve the problem once it has an opportunity to do so.

Because it is extremely difficult for Qwest to react to nonconforming performance until the third month after the miss, the three-month trigger for Tier 2 payments is reasonable. Performance results are not known until almost 30 days after the end of

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39 *Id.* at 23.

40 FiberCom Testimony at 8.

41 *See* section 9.2 of Texas, Oklahoma, Kansas, Arkansas, and Missouri PAPs.

the month to which the data relates. If Qwest misses a performance measurement, it may not be aware of that fact until the end of the next month. And if the reason for the miss is recurring, Qwest likely will miss again the following month. Thus, a two consecutive month miss is a strong possibility before Qwest ever has a reasonable opportunity to take steps to fix the problem. Further, if correcting the problem requires adding new personnel, Qwest may not be able to meet performance standards until it has hired and trained additional employees, creating the likelihood of additional consecutive months of missed performance standards.

In contrast, the parties have presented no countervailing evidence that demonstrates that Tier 2 payments should be triggered sooner in order to provide Qwest with sufficient financial incentive to meet performance standards. The parties have also failed to explain why the FCC's repeated approval of other plans with this provision should be ignored. Without such evidence or explanation, there is no reasonable justification for requiring a change to the Tier 2 trigger.

5. Six Month Limit on Escalation

Mr. Stacy claims that a limit on payment escalation after six months is inappropriate, for many of the same reasons he argues that an overall annual cap is not justified. In Mr. Stacy's view, there should be unending escalation of QPAP payments without a time limit in the event of continued misses, to serve as a greater deterrent.[43]

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42 *Compare* QPAP Table 4 (Tier 2 payment levels) with QPAP Table 2 (Tier 1 payment levels).

43 *See* Stacy Testimony at 26; *see also* AT&T Comments at 9-16.

The approach of limiting escalation of Tier 1 payments to the six-month payment level has been repeatedly approved by the FCC (and state commissions) in every one of the Texas-based plans, described above, upon which Qwest modeled its QPAP.[44] For AT&T to suggest that this exact same provision in the QPAP is a "violation of the FCC's guidance,"[45] is incomprehensible. Unlimited escalation would lead to payments far beyond any reasonable approximation of the value of the service to a CLEC. For example, an analog, unbundled loop costs only approximately $20 per month. The base payment *for a single measurement* ranges from $25 to $150 (depending on whether it is designated low, medium, or high), effectively giving the CLEC one month or even several months of free service.[46] After six months, those payments balloon to $400 - $800, which is 20 to 40 times the cost of the original $20 service. Also, there is a very real possibility that Qwest would also be making Tier 2 payments ranging from $200 to $500 for the same occurrences, thus providing additional financial incentive to Qwest. As the matrix below illustrates, the combined effect of Tier 1 payments at various levels of escalation and Tier 2 payments is equivalent to Qwest providing multiple years of service.

44 See pp. 10-11 of the Texas, Kansas, Oklahoma, Arkansas, and Missouri PAPs.

45 AT&T Comments at 11.

46 See QPAP at Table 2.

Number of Months	Tier 1 Payment	Tier 2 Payment	Total Financial Incentive	Equivalent Years of Service* ($20 monthly rate)
6	$800	$500	$1,300	7 yrs. 11 mos.
7	$900	$500	$1,400	8 yrs. 10 mos.
8	$1,000	$500	$1,500	9 yrs. 11 mos.
9	$1,100	$500	$1,600	11 yrs. 1 mo.
10	$1,200	$500	$1,700	12 yrs. 5 mos.
11	$1,300	$500	$1,800	14 yrs.
12	$1,400	$500	$1,900	15 yrs. 10 mos.

* Assumes a 10% discount rate

This matrix reflects payments on just one metric. A single CLEC order could involve multiple performance measurements in a month, both at service initiation (e.g., pre-ordering and provisioning) and during the life of the product (e.g., billing and maintenance/repair), which would generate yet more payments. Payments at these levels are without a doubt sufficier t incentive. There is no record support for Mr. Stacy's tentative view that wildly disproportionate and unending escalation of these amounts is necessary in order to increase the motivation for Qwest to meet the QPAP's performance standards.

The Facilitator agreed that escalation is unnecessary to increase Qwest's incentives. He concluded that it was "speculative" to assume that continued non-compliance signifies that the QPAP has "insufficien[t] . . . inducements" or that Qwest has made a "methodical calculation" that it is cheaper to pay than to comply.[47] As he observed: "If non-compliance continues for half a year in the face of stiff financial

47 Multi-state Facilitator's Report at 44.

circumstances, one of the issues that would bear consideration is the achievability of the established benchmark itself."[46]

The Facilitator's considered judgment on this question, based on his review of the testimony, was fully supported by the record in that proceeding. This point is graphically illustrated by the testimony of Dr. Griffing, Mr. Stacy's colleague at QSI, and a primary advocate of the "more is better" approach. Dr. Griffing, by his own admission, relied on nothing more than pure speculation – about both the need for and the effectiveness of removing the cap on escalation. He stated only that "it's probably a safe assumption" that failure to meet a standard for six months would be cured by higher penalties,[47] and that "it's . . . possible" that a cap on escalation would fail to deter noncompliance.[48] Dr. Griffing offered no concrete facts or economic studies to support his "assumption" about appropriate incentive levels. In fact, he acknowledged that it would be "hard" for Qwest or anyone else to calculate "the exact profit margins, [and] the exact costs" necessary to make the type of economic decision about whether it is cheaper to pay the QPAP payments or to pay for more staff and equipment to bring the service into conformance.[49] Accordingly, rather than try to approximate reasonable incentive levels, which is precisely what the QPAP does (based on the examples of

46 Id.

47 Testimony of Marlon Griffing, 8/27/01 Tr. at 118.

48 Id. at 121

49 Id.

prior pieces, he advocated the "easy" mechanism of no cap at all.[32] However, removing the cap does not eliminate the need to calibrate the incentives appropriately; it simply errs entirely on the side that more deterrence must be better. But overdeterrence presents just as many problems as underdeterrence, including the possibility, which Dr. Griffing conceded, that allowing CLEC payments to "get too high" would provide CLECs with a corresponding "incentive to cause non-compliance" because they would "gain more from having failure than ... [by] having Qwest comply."[33]

Moreover, precisely the same kind of argument was dismissed as "flawed" by the New York Commission in the very first Section 271 proceeding. It was also later ignored by the FCC in that case because the availability of FCC relief and other remedies undermines the "basic assumption" of the argument — *i.e.*, that "liability under the Plan must be sufficient, *standing alone*, to completely counterbalance [the BOC's] incentive to discriminate."[34]

Mr. Stacy's recommendation on escalation thus disregards FCC decisions approving such provisions, would lead to payments to CLECs wildly out of proportion to the value of the services to them, is premised on speculation rather than probative evidence, and fails to come to grips with the Multistate Facilitator's conclusion that given

32 *Id.*

33 *Id.* at 113. Perhaps the best examples of measures that may be subject to this type of problem are those measurements involving trouble reports. The OP-5, MR-7 and MR-8 performance measurements base conformance solely upon the rate of trouble reports as reported by the CLECs themselves.

34 *New York Order* ¶ 435 & n. 1330 (emphasis in original).

Qwest's obvious incentives to meet the plan's standards as repeated misses would just as likely result from poorly designed standards. As the Facilitator recognized, the parties have "relatively little experience" with the plan measures,[39] and "[t]here is no evidence at this point that would demonstrate with certainty that those levels of performance can be met and sustained at any cost that is within the realm of economic reason,"[40] particularly over time. Nor are these measures set in stone. Qwest has agreed to add other sub-measurements for new services now only diagnostic under the plan (e.g., EELs, line sharing, and subloops),[41] and the plan contemplates the possible addition of new measurements during the review process. There is thus no basis for dismissing Qwest's concerns about such a departure from the escalation cap mechanism repeatedly approved by the FCC.

Finally, AT&T's citation of staff opinions and decisions by several state commissions cannot overcome the weight of the FCC's consistent conclusion that performance plans that include escalation which levels off after six months provide sufficient incentive for compliance under the zone of reasonableness standard. Indeed, the BellSouth Georgia and Louisiana plans, both modeled on the Texas plan and currently under review by the FCC, also include a six-month cap on escalation.[42]

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39 Multistate Facilitator's Report at 44.

40 *Id.*

41 *See id.* at 49.

42 *See* Georgia PAP § 4.3.1.2, available at http://bellsouthcorp.com/policy/271/ga/

5. Sticky Duration

Not only does Mr. Stacy argue for unlimited payment escalation, he also believes that the QPAP payments should remain at escalated levels even after subsequent months of compliance (a concept referred to as sticky duration, but probably more accurately referred to as stuck duration), on the premise that allowing payments to deescalate "ignores the concept of economic incentives."[49] As noted above, in this respect the QPAP provides even greater incentives than the Texas plan approved by the FCC. That plan allows payments to return to the lowest payment level upon a single month of conforming performance. In the ROC PEPP collaborative Qwest agreed to a provision whereby payments step down only one notch at a time for each conforming month of performance.

Moreover, as the Multistate Facilitator noted, sticky duration is "wholly inappropriate" for two reasons:

> It is dangerous because it would ignore entirely successful performance by Qwest however long Qwest provided it. The proposal is draconian because its new baseline payments levels, when multiplied by the still applicable escalation levels, could produce payments by Qwest that are an order of magnitude higher than those contemplated by the QPAP. . . .[50]

For this reason, "stuck" duration has never been a part of a plan accepted by the FCC and has only been recommended by one other state commission (Wyoming). Even the

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AppendixA/Varner/Varner_Exhibit_PM-08.doc; Louisiana PAP § 4.3.1.2 available at http://www.bellsouth.com/policy/271/ga/AppendixA/Varner/Varner_Exhibit_PM-10.doc

49 Stacy Testimony at 28.

50 Multistate Facilitator's Report at 63.

Colorado performance plan, which is otherwise cited favorably by Mr. Stacy, includes a step down provision similar to the QPAP.

7. LIS Trunks

Midcontinent seems to claim that, because Qwest "control[s] the timing and availability of LIS trunks," it might discriminate against Midcontinent in provisioning such requests.[61] The Multistate Facilitator rejected just such an argument, noting that "taking each CLEC's claim of particular importance at face value," whether for LIS trunks or anything else, "would inevitably make all measures of high weight."[62] Moreover, Qwest has already modified the Texas model to address this concern. In the ROC PEPP collaborative, Qwest agreed to apply a lower critical value (1.04) to LIS trunks for CLEC volumes of 10 or fewer for the provisioning and maintenance metrics. This lower critical value increases the payment opportunities for those measurements. It should also be noted that the provisioning measurements carry the highest payment level, ranging from $150 to $800 for a Tier 1 payment occurrence, depending on the duration of nonconforming performance, and $500 for a Tier 2 payment occurrence.

8. Use of Tier 2 Payments

The QPAP provides that Tier 2 payments may be used for any purpose relating to Qwest's service territory. AT&T argues that the use of Tier 2 payments should not be restricted to Qwest's territory and proposes to add language stating that the funds may

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61 Midcontinent Testimony at 18.

62 Multistate Facilitator's Report at 55.

be used for any purpose allowed by state law.[63] Qwest would not object to including language that any funds held by the Commission may be used for any purpose authorized by state law. However, Qwest believes it is reasonable to restrict use of the funds to Qwest's territory. The Tier 2 payments are calculated based on provisioning service within Qwest's service territory and it only makes sense to return any benefits from state payments to that service territory.

9. 100% Cap on Misses for Interval Performance Measurements

Only AT&T objects to section 8.2.1.1 of the QPAP, which sets forth the way to calculate payments for misses of performance measures that involve average intervals for multiple orders by a CLEC. This provision is designed to permit some sensitivity for severity of misses, while avoiding paying for orders that do not involve misses, or potentially do not even exist. Among the five Qwest states that have issued preliminary staff decisions or final Commission decisions on the PAP, not a single one has agreed with AT&T's position on this issue.[64] Nor did the Multistate Facilitator.

The Multistate Facilitator examined this issue in some detail, and concluded that in the absence of any more acceptable CLEC counterproposal the 100% cap represents a reasonable "arithmetical compromise" between the need to conform to the plan's basic structure based on actual order volumes, and the goal of increasing payments for more severe misses.[65] Two examples show how the 100% cap addresses severity by

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63 AT&T Comments at 25.

64 These states are Arizona, Colorado, Idaho, Montana, and Wyoming.

65 Multistate Facilitator's Report at 69.

increasing payments for more severe misses. As these examples show, wide variations in intervals (*i.e.*, severe misses) serve by reason of the averaging process dramatically to affect Qwest's per order payment obligations.

First, assume that Qwest's average retail installation interval parity result[66] is 3 days, and that a CLEC has 10 orders, for which its average interval is 4.5 days. Then further assume that these 10 orders include two "misses," one severe (20 days) and one not (4 days), with the remaining orders meeting the retail standard (3 in 2 days and 5 in 3 days). Here, under the formula in Section 8.2.1.2, the payment calculation is as follows:

$$\frac{\text{4.5 day CLEC average} - \text{3 day Qwest average parity result}}{\text{3 day Qwest average}} = 50\%$$

$$50\% * 10 \text{ orders} * 800 = \$4,000$$

Because only two CLEC orders (the ones with 20-day and 4-day intervals) were above the average Qwest interval parity result, Qwest effectively paid an average of $2,000 per CLEC order ($4,000 / 2 orders). A payment of $2,000 per order is certainly a premium over the standard $800 per occurrence payment. That higher payment number is directly attributable to the severity of the 20-day miss and the fact that the formula requires multiplication by the total number of orders, not simply the two missed ones.

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66 The parity result is the interval for Qwest's retail customers, after statistical adjustments for small sample sizes and standard deviation.

Indeed, if Qwest missed the interval by an even greater amount on any of these orders, the payments would continue to escalate, up to the 100% cap. For example, assume that the 20-day interval order used above were increased to a 26-day interval, and that the 4-day interval order were increased to a 13-day interval. The total days interval would increase by 15 days, for a new total of 60 days. This, in turn, would result in a CLEC average interval of 6 days (60 days / 10 orders). The new payment calculation would be as follows:

$$\frac{\text{6 day CLEC average} - \text{3 day Qwest average parity result}}{\text{3 day Qwest average}} = 100\%$$

$$100\% * 10 \text{ orders} * 800 = \$8,000$$

Once again, because only two CLEC orders (the ones with 26-day and 13-day intervals) were above the average Qwest interval, Qwest would have paid an average of $4,000 per CLEC order ($8,000 / 2 or ders). Thus, the additional 6-day delay on one order and the additional 9-day delay for the other would result in significant payment escalation: $2,000 *more* per order. This example shows that there *is* sufficient severity built into a payment structure that is capped at 100%. And as noted above, no party provided any evidence that these payments are insufficient to compensate for any harm caused.

The 100% cap is a reasonable measure that was added to the Texas plan at the first six-month review and has been included in each of the subsequent SBC plans approved by the FCC.[67] As an "arithmetical compromise," it deals with severity of misses in a way that lies well within the FCC's zone of reasonableness.

10. Form of QPAP Payments

The QPAP provides that payments to CLECs will be made by bill credits (unless the monthly QPAP payments to a CLEC exceed the amount the CLEC owes Qwest, in which case Qwest must pay the excess in cash). In my previous affidavit, I explained why this provision was reasonable and lay well within the zone of reasonableness.[68] Without addressing any of my points, AT&T asserts that all QPAP payments should be made in cash[69] -- an argument it never raised in its exceptions to the Facilitator's report endorsing Qwest's position on this issue.[70]

The FCC has not required cash payments. In fact, it has approved PAPs in New York, Connecticut, and Massachusetts even though those plans provided for payments to be made *exclusively* in the form of bill credits.[71] Further, if cash payments were

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[67] *See* section 11.1.2.1 of the Texas, Oklahoma, Arkansas and Missouri PAPs; the Kansas PAP has an even lower cap, 50%. AT&T's reference to an FCC staff letter on this point hardly demonstrates otherwise. *See* AT&T Comments at 27. First, this letter involved a requested change from a quite different performance plan -- in a BOC-to-BOC merger -- that had no such 100% cap. Second, as AT&T concedes, the letter actually approved the use of a 100% cap to conform to the provision in the Texas 271 plan analogous to this one. *See id.* Third, AT&T's argument that such "administrative efficiency" goals are inapplicable here is incorrect. As noted above, not a single state in Qwest's region has endorsed dispensing with this provision.

[68] *See* Qwest Corporation's Affidavit of Mark S. Reynolds, Oct. 24, 2001, at 26-29.

[69] *See* AT&T Comments at 30.

[70] *See* AT&T Exceptions.

[71] *See* § II(C)(2), (D)(2) of those plans.

required, the QPAP would become a vehicle for CLECs to compete with Qwest through unjustified cash subsidies. As noted in my prior affidavit, Qwest's burgeoning accounts receivable from CLECs demonstrate that this concern is not academic. On average, CLEC charges that are more than 30 days past due represent 96% of current month billings, only about one-third of which involve billing disputes. The Facilitator recognized this problem. In recommending that payments be made via bill credits, the Facilitator stated that "it would be inappropriate to require Qwest to make payments to CLECs in cases where CLECs were not current in paying Qwest for the same kinds of services."[72]

11. Interest Rate

The QPAP obligates Qwest to pay interest on late payments and underpayments at the one-year treasury rate, and allows Qwest to collect interest (as an offset against future payments) at the same rate for overpayments. AT&T complains that the one-year treasury rate is too low and proposes several other interest rates that could be used in its place. The Facilitator found:

> Short-term debt rates probably represent the best indicator of payments temporarily delayed through errors in billing or the pendency of disputes. The need for a reliable public benchmark leads to the conclusion that the QPAP interest rate should be the prime rate published daily by one of the numerous services or publications respected in the industry.[73]

Qwest finds the Facilitator's rationale for use of the prime rate compelling and would be willing to substitute the prime rate for the treasury rate in the QPAP.

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[72] Multistate Facilitator's Report at 76.

[73] *Id.* at 73.

B. Statistical Methodology

1. Rounding for Benchmark Measures

Midcontinent expresses concern that Qwest may have too much leeway in meeting performance measurements by being permitted to "round out averages."[74] Qwest assumes that this is a reference is to section 2.4 of the QPAP, which allows Qwest to round up to the next whole integer to determine the allowable number of misses for small sample sizes for benchmark measures. This provision is designed to ensure that Qwest will not otherwise be held to a standard of perfection in cases of very small order volumes. The Multistate Facilitator recommended a different solution to this problem that would address Midcontinent's concerns -- requiring use of data from previous months to determine whether the current month's data should be reflected as a "miss" or a "make."[75] Qwest is willing to modify section 2.4 to reflect the Facilitator's recommendation.

C. Audits and Six-Month Review

1. Audits

FiberCom argues that the QPAP's audit provisions are "not sufficient to protect the CLECs or the long-term public interest," and that, "[a]t a minimum, Qwest should be required to fund an outside audit of its QPAP implementation."[76] Section 15.0 of the QPAP in fact does so. That provision includes several types of audits that provide more

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74 *See* Midcontinent Testimony at 18-19.

75 *See* Multistate Facilitator's Report at 59.

76 *See* FiberCom Testimony at 11.

than adequate assurances of data accuracy and reliability. First, it requires Qwest to retain a nationally recognized firm with experience in testing and auditing ILEC performance measurements and metrics to design and conduct an audit of performance measurements in the QPAP that have a high risk of inaccuracy and are material.[77] Second, it requires Qwest to fund periodic audits of the financial systems used to calculate the QPAP payments. Finally, it provides each CLEC with the right to two CLEC-initiated audits per year and requires Qwest to fund those audits if they demonstrate material error by Qwest.

AT&T raises a number of criticisms regarding the QPAP's audit provision. Qwest believes that this audit provision, which in fact contains features beyond the Texas plan,[78] provides more than adequate assurances of data accuracy and reliability. In order to find an agreeable solution, however, Qwest would be willing to include in the South Dakota QPAP the relevant audit provisions contained in the November 2001 multistate QPAP (which implemented the Facilitator's recommendations) in lieu of the audit provisions in the QPAP attached to my initial affidavit.

The multistate audit provision would resolve many of AT&T's audit-related concerns. For example, AT&T complains that the QPAP allows Qwest to select the

[77] *See* QPAP § 15.1. The independent auditor that *designs* the audit would also *conduct* the audit; any ambiguity in the QPAP language is inadvertent and Qwest would be amenable to state this explicitly.

[78] The Texas plan relies exclusively on CLEC-initiated audits, and limits such audits to one per CLEC per year. *See* Texas PAP § 6.6. As noted above, the Qwest plan has an independent audit every two years, a separate audit of the financial system, *and* CLEC-initiated audits. *See* QPAP § 15.0.

auditor.[79] Under the multistate plan, the auditor would be chosen by the Commissions, thereby removing any concerns regarding the auditor's independence. AT&T also argues that the QPAP "arbitrarily"[80] limits CLECs to two CLEC-initiated audits per year. The multistate plan does not limit the number of CLEC-initiated audits. Instead, CLECs may submit any number of audit requests to the independent auditor who determines in each case whether an audit is necessary. CLECs who dispute the auditor's decision could resort to the dispute resolution process. The multistate plan also envisions audits of both high and low risk performance measures, which resolves AT&T's concerns that audits would be limited to those which the auditor determines have a high risk of inaccuracy and are material.[81] Finally, AT&T's concern about potential audits of its own data are unwarranted.[82] It is only logical that in any dispute over performance results or payments, both parties would bring forward their own evidence regarding the correct results or payments, and that the auditor would have an opportunity to examine both parties' data in order to determine the correct amount. This has already occurred frequently in the data verification process, and it should present no particular surprise or burden to AT&T.

A coordinated multistate audit is the most efficient and effective way to audit the QPAP. As demonstrated in the OSS audit, Qwest uses the same processes to

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79 *See* AT&T Comments at 50-51.

80 *Id.* at 53.

81 *Id.* at 51-52.

82 *See* AT&T Comments at 53.

implement its performance measurements in each of its 14 in-region states. Thus, there is no need to conduct 14 separate audits of the same processes; indeed, to do so would be affirmatively harmful, by diverting resources from the activities and functions necessary to provide wholesale (and retail) services.

AT&T's suggested audit provisions which it claims to have "borrow[ed]" from the Colorado PAP are wholly unreasonable. Among other things, AT&T attempts to import into the PAP entirely new obligations related to change management, which were not part of the multistate proceedings and were in fact rejected in Colorado by the Special Master, Staff, and the Commission itself.[83] AT&T's attempt to use that language here in South Dakota underscores the unreliability inherent in taking provisions from other plans, especially when those plans have not been finalized.

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[83] *See* AT&T Comments at 54. AT&T attempts to include change management obligations that would require Qwest to obtain "approval" for "any CLEC-affecting changes" to the performance measurement and reporting system. *See* id. at 55. That was a vigorously disputed issue in Colorado, because it threatened to put Qwest in a catch-22: preventing Qwest from making changes necessary to ensure accurate performance results and subjecting Qwest to fines either for making the unauthorized changes or for the inaccurate performance reports resulting from a failure to make the changes. The issue was remanded to the Special Master for further factual development, and at its March 27, 2002 oral deliberations on the CPAP, the Colorado Commission substantially revised this provision based on the Special Master's recommendations. *See* Transcript of Hearing, *In the Matter of the Investigation into Alternative Approaches for a Qwest Corporation Performance Assurance Plan in Colorado*, Colo. Pub. Utils. Comm'n, Docket No. 01I-041T, March 27, 2002.

2. Dispute Resolution

FiberCom recommends that the Commission be the deciding body for disputes under the QPAP.[84] Section 18 of the QPAP, however, already allows the parties to bring general disputes about certain aspects of the QPAP before the Commission or an arbitrator. In this respect, the QPAP mirrors the dispute resolution provisions in the SBC plan for Texas. Qwest believes that the forum should be the choice of the parties. If CLECs prefer the dispute resolution provision of the multistate QPAP, Qwest would not object to substituting it here. It states, in pertinent part, that section 5.18 of the SGAT will govern "disputes over the meaning of the provisions of the PAP and how they should be applied." Finally, under either the multistate or South Dakota versions, dispute resolution is limited to *interpreting* the existing QPAP provisions; it is not, and should not become, a backdoor for *changing* the QPAP; any need for such changes is appropriately addressed in the six-month review.

3. Six-Month Review

Mr. Stacy argues that, notwithstanding the extensive process of negotiation and compromise that has resulted in the current QPAP, the Commission should be able to rewrite any provision of the plan.[85] The Multistate Facilitator, however, correctly concluded that Qwest's reliance on prior FCC-approved restrictions on such modifications was well within the FCC's zone of reasonableness. As he recognized, the

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84 *See* FiberCom Testimony at 11-12; *see also* AT&T Comments at 62.

85 *See* Stacy Testimony at 26-27; *see also* Midcontinent Testimony at 19; AT&T Comments at 58.

Texas plan and its progeny provide well-defined criteria for the six-month reviews. They specify the scope of the review, the standard for making changes, and the authority to determine those changes.[86] The QPAP provision has the same features. The scope of the review is the same.[87] The standard for making changes is the same.[88] And, with one exception, the authority to determine the changes is essentially the same. While the plans express this requirement in slightly different terms, the result is equivalent. The Texas plan requires "mutual agreement" to "[a]ny changes to existing performance measures and this remedy plan," though it permits arbitration of new measurements and their classification.[89] The Qwest plan similarly provides that "[c]hanges shall not be made without Qwest's agreement."[90] AT&T's objection that this language gives Qwest the ability to "unilaterally *make* any changes that it wants"[91] is incorrect. As the plain meaning of the language indicates, the provision merely gives Qwest a negative right, *i.e.*, to object to future changes to the commitments it has undertaken in the QPAP, not

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86 See Texas PAP § 6.4; *see also* section 6.4 of the Kansas, Oklahoma, Arkansas, and Missouri PAPs.

87 To the extent AT&T suggests that limiting the six-month review to performance measurements is "inappropriate[]" and "much too narrow," AT&T Comments at 58, its position is inconsistent with the FCC's approval (and five state commissions' approval) of the same scope of six-month reviews in the Texas plan and its progeny.

88 While AT&T objects that the standard for reclassifying a measurement is "vague," AT&T Comments at 59, this standard was adopted straight from the Texas plan.

89 Texas PAP § 6.4.

90 QPAP § 16.1.

91 AT&T Comments at 58 (emphasis added).

an affirmative right to change the plan itself. In its reply brief to the Multistate Facilitat Qwest noted that once the QPAP goes into effect, Qwest cannot make any unilate changes to it.[92]

In its order approving the Texas plan, the FCC endorsed this six-month revi mechanism as providing sufficient opportunity for modification and improvement.[93] T Multistate Facilitator, likewise, approved Qwest's six-month review provision, findi that "[t]he Texas PAP is in almost all respects consistent with what Qwest h proposed"[94] except for the arbitration mechanism for new measurements. Qwest h added this to its multistate QPAP and would have no objection to doing so here.[95] T Facilitator's report recognized Qwest's legitimate need to have "a reasonable degree certainty about the exposures to which it will be subjected."[96] As noted above, it a recognized the concomitant need to avoid unraveling an "agreement [that] was reach through compromise" and not "support an improvement in what [a] party got with

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[92] Reply Brief of Qwest Corporation in Support of its Performance Assurance Pl Sept. 20, 2001, at 39.

[93] *Texas Order* ¶ 425.

[94] Multistate Facilitator's Report at 60.

[95] The arbitration provision of the Texas plan contemplates arbitration before state commission, while the multistate QPAP relies on AAA arbitration, whic already contemplated in the SGAT to which the QPAP is an exhibit. See SGA 5.18 (dispute resolution). AAA arbitration is quick and inexpensive, avoi litigation delays as the FCC recommends. It is also particularly suited t collaborative six month review that might involve multiple state commissions the jurisdictional complexities relating thereto. However, Qwest would have objection to the Texas provision that such arbitration could occur before the s commission.

[96] *See* Multistate Facilitator's Report at 10.

considering what had been given in return, . . . lest we risk disrupting importa balances."[97] The Commission should not disregard such important principles, or t FCC-approved plans upon which they are based. Indeed, AT&T provides no basis f concluding why a unilateral right to rewrite the QPAP, submitted solely by Qwest as p of its proposal for interLATA relief, would be compatible with state or federal law. would make the entire plan wholly illusory.

D. Legal Operation of the QPAP

1. Liquidated Damages & Offset

The issue here is whether the QPAP should be an *alternative* or *cumulat* remedy for *contractual* harm related to wholesale performance. In other words, CLEC elects the QPAP, should the CLEC be entitled to go to court (or another forum receive additional compensatory payments for the same underlying wholes performance under a different remedy structure, such as an interconnection agreem or service quality rules? Midcontinent agrees that the QPAP should address question of compensating CLECs for contractual damages, and that it is appropriat liquidate such damages.[98] Its only question is whether the QPAP adequa compensates CLECs if Qwest's poor performance causes the loss of a custom

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97 *Id.* at 2.

98 *See* Midcontinent Testimony at 17.

99 *Id.*

AT&T, by contrast, contends that the liquidated damages concept should be "strick altogether.[100]

Like traditional liquidated damages provisions, the QPAP establishes in adva what payments are appropriate compensation for damages due to Qwe nonconformance.[101] This payment structure satisfies the FCC's express requirem that a performance assurance plan contain "a self-executing mechanism that does leave the door open unreasonably to litigation and appeal."[102] CLECs that opt into QPAP therefore will receive payments from Qwest for nonconformance with the QP metrics *without ever having to claim, prove, or incur any harm.*

As with many contractual promises for liquidated damages, this remed designed to be the only remedy under "rules, orders, or other contracts, inclu interconnection agreements, arising from the same or analogous whole performance."[103] This is nothing more than the logical implication of traditi liquidated damages provisions, which require the parties to agree in advance or amount of damages that reasonably approximates the anticipated harm. Like o election of remedies provisions, this one also ensures that CLECs cannot have cake and eat it too by electing, on a case-by-case basis, to collect the liquid

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[100] AT&T Comments at 37-38.

[101] AT&T's point that "until the damage at issue actually occurs, it is impossib ascertain the extent of such damages," *see id.* at 37, once again misunderst the purpose of liquidated damages, which is precisely to address situa where quantification of harm is difficult and to set in advance a reasonable f to approximate that harm.

[102] *New York Order* ¶ 433.

damages amount when they can prove no harm and to pursue some higher amo when they do claim harm. To allow CLECs the option of taking the liquidated damag or suing for actual damages is inconsistent with the basic purpose of liquida damages and would transform the payments simply into a floor for further litigation. T election of remedies provision also prevents the unreasonable scenario of subjec Qwest to different performance standards for the same activity.

AT&T's attempt to characterize the QPAP's liquidated damages as me incentives to Qwest, not compensation to CLECs, is simply incorrect, and appear reflect a view of QPAP payments as "free money" with no corresponding obligations CLECs. In fact, Tier 1 payments are designed to function as compensatory damage CLECs. Otherwise, there would be no reason to make any payments to CLECs payments would be made to the state instead. While Tier 1 payments also act a financial incentive for Qwest to provide service that conforms with the performa standards, the incentive effect on Qwest does not change the fundamen compensatory purpose of these payments vis-à-vis CLECs.

Prior FCC-approved plans have recognized that PAP payments are appropri treated as liquidated damages. The Texas plan and subsequent SBC plans expre refer to Tier 1 payments as "liquidated damages."[104] QPAP § 13.6 states: "To elec PAP, CLEC must adopt the PAP . . . in lieu of other alternative standards or relief" "[i]n no event is CLEC entitled to remedies under both the PAP and under rules, or

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[103] QPAP § 13.6.

[104] *See* section 6.1 of the Texas, Kansas, Oklahoma, Arkansas, and Missouri PA

or other contracts, including interconnection agreements, arising from the same analogous wholesale performance." As AT&T has recognized, the Texas plan simil does "not allow the recovery of contractual type remedies."[105] The Facilitator, likew recognized, "it is not reasonable to allow CLECs to keep Tier 1 base payments and 1 accelerated payments when it suited them, but to seek more when it did not."[106] further observed,

> The QPAP represents a comprehensive payment structure for compensating CLECs for harm. They have the right to elect all of it or none of it. It would not be reasonable to allow them to select those portions of it that are on balance more favorable than other remedies, while choosing to take other remedies in cases where they are more favorable. Qwest has no right to do so; a proper sense of balance with respect to liquidated damages should require the same of CLECs.[107]

Any other approach would result in a pure windfall to CLECs.

AT&T's claim that "no Commission has allowed Qwest to maintain language" is both irrelevant and wrong.[108] It is irrelevant because the most prob issue is whether the FCC has accepted such provisions. And it is wrong because Idaho Commission's recent QPAP decision accepted as "appropriate" the QP election of remedies provisions, which, as it described, "limit[] recovery of dama based on contract theories of action," while permitting "recovery [under] non-contra

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[105] AT&T Exceptions at 18.

[106] Multistate Facilitator's Report at 33.

[107] *Id.*

[108] AT&T Comments at 40.

theories of liability."[109] The Montana Commission has not reached a final decisio the QPAP, and the Wyoming Commission's decision reflected the mistaken impres that "the QPAP might be an inadequate remedy for unfair, anticompetitive monopolistic behavior by Qwest."[110] The QPAP does not extinguish noncontractual remedies.

With respect to offset of recovery for such noncontractual claims, A concedes that the QPAP "should not be [an] opportunity for double recovery."[111] argues that the QPAP should contain no requirement to apply an offset when specified standard is met.

AT&T also continues to mischaracterize the QPAP offset as a self-help provi It clearly is not. The Texas plan contains an offset in section 6.2, which refer proceedings "relating to the same conduct" in which SWBT "seeks to offset" payments against "other damages a CLEC might recover." It does not, however, cl address the legal consequences of such a request. Section 13.7 of the Q establishes that Qwest has a right of offset where the prerequisite of "the sam

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109 Commission Decision on Qwest's Performance Assurance Plan, *In the Matt U S WEST Communications, Inc.'s Motion for an Alternative Procedur Manage its Section 271 Application*, Case No. USW-T-00-3, Idaho Pub. Comm'n, Mar. 7, 2002, at 6 ("Idaho QPAP Decision").

110 First Order on Group 5A Issues, *In the Matter of the Application of Q Corporation Regarding Relief Under Section 271 of the Fe Telecommunications Act of 1996, Wyoming's Participation in a Multi-S Section 271 Process, and Approval of Its Statement of Generally Avail Terms*, Docket 70000-TA-00-599, Wyo. Pub. Serv. Comm'n, Jan. 30, 2001, ("Wyoming QPAP Decision").

111 AT&T Comments at 39.

analogous wholesale performance" is satisfied. Whether that prerequisite to offse met in any given case would be a question presented to the court for its resolution p to its award of damages. Thus, as the Facilitator recognized, "If Qwest's languag adopted, nothing in it gives Qwest the right to make an unreviewable decision al whether an offset is allowable."[112] In this respect, QPAP § 13.7 is no different f Texas § 6.2. The only difference is that the court or other entity hearing the dis would have a clear legal standard to apply in resolving the question whether offse appropriate. Clearly establishing this standard falls within the FCC's zone reasonableness by avoiding future litigation about the matter.

2. Effective Date

Midcontinent suggests that the effective date for the QPAP "perform measurements be upon State Commission issuance of its consultative report," but "[p]ayments for poor performance would be assessed after the FCC approves Qw 271 application."[113] Qwest is willing to provide QPAP reports with payment estim based on monthly performance measurements prior to section 271 approval. Qwe already providing such mock bill credit reports in 10 of its other in-region states. Q agrees with Midcontinent that payments for nonconforming performance would commence until after the FCC approves Qwest's section 271 application for S

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112 Multistate Facilitator's Report at 35. While the offset language considered b Facilitator was slightly different, the fundamental nature of the provision -- t establishes a binding standard for applying an offset -- is the same.

113 Midcontinent Testimony at 19.

Dakota: the QPAP is a part of the *quid pro quo* for interLATA relief and should n required prior to such relief.

AT&T contends that the QPAP should remain effective even if Qwest exi interLATA market,[114] but this position ignores the basic purpose of the QPAP. QPAP is not intended, as AT&T suggests, to fulfill Qwest's obligations under se 251. It is designed to prevent "backsliding" after Qwest receives section 271 aut to offer interLATA service. As the Multistate Facilitator recognized, it would mak sense at all to continue to enforce the QPAP if Qwest is no longer in the interl market.[115]

3. QPAP Implementation

FiberCom argues that Tier 2 payments "are only calculated for those S Dakota CLECs that have amended their interconnection agreements to includ QPAP," and that "[w]ithout these amendments, neither the State nor the CLECs eligible for penalty payments for performance and the resulting harm to South Dak public interest."[116] Qwest needs some legal mechanism to implement the QPA each individual CLEC that wishes to opt into it, and incorporating the QPAP int interconnection agreements is an appropriate way to do that. To the extent FiberCom is concerned about any administrative delay associated with amendin interconnection agreement, Qwest can furnish a model amendment to simplif

114 *See* AT&T Comments at 59.

115 *See* Multistate Facilitator's Report at 75.

116 FiberCom Testimony at 8-9.

process. Finally, while Tier 1 payments, quite logically, flow only to those CLECs t have opted into the QPAP, Tier 2 payments are based on volumes for *all* CLECs in state.

4. Retail Service Quality Payments

Midcontinent raises concerns as to whether Qwest should be responsible CLECs' retail service quality payments, if such payments were due to Qwe performance.[117] The Multistate Facilitator addressed this issue in his QPAP report, concluded that there was "sufficient justification for precluding such indemnity in QPAP," just as it had also been "precluded elsewhere in the SGAT."[118]

Under the QPAP, CLECs receive liquidated damages payments for Qw performance. As noted above, these payments do not require proof of any a damages, but as with liquidated damages provisions are designed to be a com remedy. Midcontinent's suggestion would have the opposite effect: It applies situations, including where it has already received a payment under the QPAP. this provision appears to be simply another attempt to carve out an extra pay opportunity from the liquidated damages established under the QPAP.

In addition, the proposed reimbursement would be administratively unwo and likely to lead to litigation, in contravention of one of the FCC's principal go certainty in application.[119] In particular, there would be significant issues of cau

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117 *See* Midcontinent Testimony at 17-18.

118 Multistate Facilitator's Report at 34.

119 *See New York Order* ¶ 433.

involved in determining whether the retail service quality issue was due to Qwe performance or the CLEC's performance. These issues would need to be litiga based on the circumstances of each case to avoid windfalls to CLECs when violation of the state rule was due to their own performance.

5. Limitations

AT&T quarrels with certain aspects of the force majeure and CLEC-bad exceptions in the QPAP.[120] In particular, AT&T notes that the force majeure provi does not reflect the additional refinements suggested by the Facilitator.[121] While Q does not believe these provisions are necessary, it has no objection to including t provisions of the November 2001 multistate QPAP in the South Dakota plan.[122]

The exception for bad faith acts or omissions by CLECs, however, is an esse part of the QPAP.[123] It has been included in prior FCC plans,[124] and was approve

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120 *See* AT&T Comments at 33-36.

121 *See id.* at 33.

122 Those refinements to the force majeure provision include the following: Firs SGAT's force majeure clause is incorporated into the QPAP to replace the standalone clause. Second, the force majeure exception applies on benchmark measurements, not parity. Third, Qwest will provide notice of a majeure event within 72 hours of the triggering event. Fourth, the foreca obligation is limited to those explicitly required by the SGAT. Fifth, the majeure or other excusing exception is limited to the duration of the trigg event.

123 One example of the potential for CLEC abuse was pointed out in a Verizon lawsuit against Covad alleging, among other things, that fraudulently reported false trouble tickets to "obtain[] inflated PAP conces from Verizon" and "[i]n a single year in New York and Pennsylvania alone, received over $1.6 million in PAP price reductions *as a result of its false rep practices*." *See Verizon Delaware Inc. v. Covad Communications Co.*

the Facilitator.[125] Dr. Griffing of QSI also recognized the very real possibility that CLE could attempt to "game" the QPAP in order to receive additional payments.[126] Thus, unreasonable and disingenuous for AT&T to ask for this exception to be "stricken."[127]

6. Voluntary Nature of the QPAP

The QPAP states that "[n]othing . . . in any conclusion of non-conformance Qwest's service performance with the standards defined in the PAP shall be constr

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Amended Complaint, Case No. 5:01-cv-20524, ¶ 95 (N.D. Cal. Dec. 18, 20 (emphasis added). In addition, Verizon alleges that "Covad's false reports infected Verizon's overall PAP reports" causing Verizon to "fail[] to achi certain established performance metrics . . . [resulting in] PAP price concessi to other carriers." *Id.* ¶ 96. In support of its allegations, Verizon has obtai declarations from 36 former Covad employees. *See id.* Ex. F.

124 *See* sections 7.1 and 7.2 of the Texas, Kansas, Oklahoma, Arkansas, Missouri PAPs. The Verizon plans contain an even broader exception, wh does not even require "bad faith," simply that the CLEC action "negati influences" the performance results for any metric. *See, e.g.* New York P Exceptions and Waiver Process, at 17-18 (including among other things, p order quality, excessive missed appointments, incorrect dispatch identificat inappropriate X coding on orders where extended due dates are desired, delays in rescheduling appointments).

125 *See* Multistate Facilitator's Report at 38-39. The Facilitator recommen adding a sentence clarifying that this exception does not apply when Qwest c have reasonably been expected to deliver conforming performance base foreseeable volumes and patterns of demand. Qwest would not be oppose including that in the South Dakota plan.

126 *See* Testimony of Marlon Griffing, 8/27/01 Tr. at 119 (agreeing that if Q payments "get too high, CLECs will have an incentive to cause non-complia they'll gain [sic] [game] the system somehow, save up all their orders, send t all in at once, take actions that they otherwise wouldn't do . . . [because] th gain more from having failure than they will [from] having Qwest comply.") *also* Multistate Facilitator's Report at 38 (recognizing "theoretically pos manipulative conduct" by CLECs).

127 AT&T Comments at 34.

to be, of itself, non-conformance with the [Telecommunications Act of 1996].[128] AT contends that because Qwest is using the PIDs in the QPAP to demonstrate sect 271 performance, Qwest's non-conformance to the PIDs should be viewed as n conformance with section 271.[129] AT&T's proposal is unreasonable because it wo mean the PIDs are mandated by federal law. While the FCC has stated that implementation of a PAP is "probative evidence" that the BOC will continue to mee obligations after receiving 271 approval,[130] the FCC has *never* stated that conforma with a PAP standard is the *same* as conformance with section 271, or that n conformance constitutes a violation of the Act.[131] Indeed, the parties may have agr to standards that *exceed* the requirements of the 1996 Act. And in any event, performance results themselves are merely numerical data, which do not reflect legally relevant defenses such as force majeure events or bad faith actions by CLEC

E. Other Features

1. CLEC Requests for Raw Data

Qwest has agreed to make CLEC raw data available upon CLEC requ However, AT&T's proposal to set an arbitrary two-week dea-line (and accompan

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128 QPAP § 17.0.

129 *See* AT&T Comments at 60.

130 *Kansas/Oklahoma Order* ¶ 269.

131 In light of the FCC's repeated statements that it has never required applicants to demonstrate that they are subject to a PAP before granting approval, *see, e.g.*, *Kansas/Oklahoma Order* ¶ 269, it is hard to imagine non-conformance with a PAP standard could violate federal law.

late payment) by which Qwest must provide the data is unreasonable. The time need to produce the raw data is dependent upon a number of factors, including ones beyo Qwest's control: the circumstances of the request, the timing of the request, number of CLECs requesting data during the same time period, and most importan the extent of the data requested.[132] As the Multistate Facilitator recognized, "Nothing the QPAP limits [CLEC raw data requests] sufficiently to justify firm respo deadlines."[133] The Facilitator recommended that Qwest be required to provide the d as soon as reasonably possible.[134] Qwest would be willing to include similar langu in the QPAP.

2. CLEC Data Protection

Pursuant to section 14.2, Qwest would provide the Commission with CLEC d so that the Commission can analyze the QPAP results and evaluate whether Qwe performing adequately.[135] AT&T argues that Qwest should not be permitted to pro the CLEC data to the Commission; rather, the Commission should approach the va CLECs directly for the information.[136] Such authorization, however, is administrat difficult. Moreover, because Qwest's compliance with the QPAP will be at issue, Q must be allowed to provide the information directly, without the concern of tampering

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[132] AT&T also has not demonstrated that the CLECs would suffer any harm if do not receive the data within two weeks of their request.

[133] Multistate Facilitator's Report at 83.

[134] *See id.*

[135] *See* Testimony of Carl Inouye, 8/14/01 Tr. at 150.

[136] *See* AT&T Comments at 48.

3. Late Reporting Fee

Qwest has agreed to pay a $500 fee for each business day (after a five-d grace period) that Qwest is late in providing a monthly report of aggregate CL performance results. AT&T contends that this late fee should be increased to $5,0 per day and that Qwest should also be obligated to pay $1,000 per day for ea "missing" performance report.[137] Qwest believes that its late fee provision is reasona in light of the fact that if a report is late (or incomplete), it likely will be late not jus South Dakota, but thirteen other states as well. Thus, under AT&T's proposal, Qw would pay $70,000 per day for late reports. Obviously, this figure is unreasonable.

Further, Qwest already has an incentive to provide reports in a timely mann Section 11.1 of the QPAP obligates Qwest to pay interest on late payments. Given t Qwest cannot make QPAP payments until it submits the monthly CLEC performa results, a late report means that payments will likely be late and Qwest will have to p interest.

4. QPAP Payment Recovery in Rates

AT&T argues that the QPAP should be amended to include language stating t Qwest may not recover payouts under the QPAP by increasing its rates.[138] As Facilitator recognized, establishing such a prohibition is the province of federal

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137 *See* AT&T Comments at 49-50. For purposes of clarification, while A appears to draw on the Texas plan for its recommendations, the Texas pl $1,000/day payment applies to *incomplete* reports, not "missing" reports. Texas PAP § 10.1.

138 *See* AT&T Comments at 63.

state rate regulation and goes well beyond the purpose of the QPAP.[139] The propo also is entirely unnecessary because it would simply restate the FCC's already clea articulated position.[140]

IV. SUMMARY AND CONCLUSION

As demonstrated in my initial affidavit and further described in this rebuttal, QPAP falls well within the FCC's zone of reasonableness identified in prior 271 orde In each of the key areas -- the payment levels, annual cap, escalation of Tie payments, trigger for Tier 2 payments, six-month review, and countless other provisio -- the QPAP either meets or exceeds the provisions included in performance assura plans approved by the FCC (and the respective state commissions).

Accordingly, Qwest respectfully requests that the Commission issue recommendation to the FCC determining that the QPAP satisfies the FCC's zone reasonableness criteria under the public interest standard of section 271.

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139 *See* Multistate Facilitator's Report at 86.

140 *See New York Order* ¶ 443; *Texas Order* ¶ 430.

CONTINUATION

[2]

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Being first duly sworn upon oath, I declare under penalty of perjury under th laws of the United States of America that the foregoing is true and correct to the best my knowledge, information, and belief.

Executed on this ______ day of __________, 2002.

____
MARK S. REYNOLDS

STATE OF SOUTH DAKOTA

COUNTY OF MINNEHAHA

Subscribed and sworn to before me this _____ day of ____________, 2002.

____
Notary Public

BEFORE THE
PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

IN THE MATTER OF THE INVESTIGATION INTO QWEST CORPORATION'S COMPLIANCE WITH SECTION 271 (C) OF THE TELECOMMUNICATIONS ACT OF 1996	))))	DOCKET TC 01-165

QWEST'S SUBMISSION OF ALTERNATIVE QPAP PROPOSALS

Pursuant to the Commission's request, Qwest is hereby providing in Attachment A, a draft of a proposed South Dakota Qwest Performance Assurance Plan ("QPAP") containing the recommendations of the multi-state Facilitator. This plan includes all changes Qwest agreed to make in the April 25, 2002 hearing, except it does not reflect the option of using annually updated ARMIS data. Qwest stands by that offer in any case. With the exception o changing the provision requiring the use of 1999 ARMIS data, Qwest offers the multi-state QPAP in Attachment A in its entirety.

Qwest is also filing in Attachment B, as a possible alternative QPAP, the multi-state Facilitator's recommended QPAP, as amended by the Stipulation between Utah Advocacy St and Qwest. Attachment B includes the Utah Stipulation and the multi-state QPAP redlined b the Utah Stipulation. Again, Qwest offers that amended plan in its entirety.

EXHIBIT
Qwest
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Respectfully submitted this 26th day of April, 2002.

Mary S. Hobson
Stoel Rives LLP
101 S. Capitol Blvd., Suite 1900
Boise, ID 83702
208-387-4277

Lynn Anton Stang
Qwest Corporation
1801 California Street, 49th Floor
Denver, CO 80202
303-672-2734

Attorneys for Qwest Corporation

Exhibit K
PERFORMANCE ASSURANCE PLAN

1.0 Introduction

1.1 As set forth in this Agreement, Qwest and CLEC voluntarily agree to the terms of th following Performance Assurance Plan ("PAP"), prepared in conjunction with Qwest' application for approval under Section 271 of the Telecommunications Act of 1996 (th "Act") to offer in-region long distance service.

2.0 Plan Structure

2.1 The PAP is a two-tiered, self-executing remedy plan. CLEC shall be provided wit Tier 1 payments if, as applicable, Qwest does not provide parity between the service provides to CLEC and that which it provides to its own retail customers, or Qwest fails t meet applicable benchmarks.

2.1.1 As specified in section 7.0, if Qwest fails to meet parity and benchmark standards o an aggregate CLEC basis, Qwest shall make Tier 2 payments to a Fund established by th state regulatory commission or, if required by existing law, to the state general fund.

2.2 As specified in sections 6.0 and 7.0 and Attachments 1 and 2, payment is generally o a per occurrence basis, (i.e., a set dollar payment times the number of non-conforming servic events). For the performance measurements which do not lend themselves to per occurrenc payment, payment is on a per measurement basis, (i.e., a set dollar payment). The level o payment also depends upon the number of consecutive months of non-conformin performance, (i.e., an escalating payment the longer the duration of non-conformin performance).

2.3 Qwest shall be in conformance with the parity standard when service Qwest provid to CLEC is equivalent to that which it provides to its retail customers. The PAP relies up statistical scoring to determine whether any difference between CLEC and Qwe performance results is significant, that is, not attributable to simple random variati Statistical parity shall exist when performance results for CLEC and for Qwest retail analog result in a z-value that is no greater than the critical z-values listed in the Critical Z-Statisti Table in section 5.0

2.4 For performance measurements that have no Qwest retail analogue, agreed up benchmarks shall be used. Benchmarks shall be evaluated using a "stare and compa method. For example, if the benchmark is for a particular performance measurement is 9 or better, Qwest performance results must be at least 95% to meet the benchmark. Percent benchmarks will be adjusted to round the allowable number of misses up or down to closest integer, except when ~~the sample size is~~a benchmark standard and low CLEC volu are such that a 100% performance result would be required to meet the standard and has been attained. In such a situation, the determination of whether Qwest meets or fails th benchmark standard will be made using performance results for the month in question, plus sufficient number of consecutive months so that a 100% performance result would not b required to meet the standard. For purposes of section 6.2, a meet or fail determined by th procedure shall count as a single month. ~~5 or less in which case the rounding will be up to th nearest integer. For example, for a 90% benchmark, the number of allowable misses is 10% times the sample size, rounded to the nearest integer. If the sample size is eight observation (10% multiplied by 8 = 0.8) is rounded to 1, one miss would be permitted, and the effecti benchmark would be 88% (1 minus 1/8).~~

3.0 Performance Measurements

3.1 The performance measurements included in the PAP are set forth in Attachment Each performance measurement identified is defined in the Performance Indicator Definition ("PIDs") developed in the ROC Operational Support System ("OSS") collaborative, an which are included in the SGAT at Exhibit B. The measurements have been designated Tier 1, Tier 2, or both Tier 1 and Tier 2 and given a High, Medium, or Low designation.

4.0 Statistical Measurement

4.1 Qwest uses a statistical test, namely the modified "z-test," for evaluating th difference between two means (i.e., Qwest and CLEC service or repair intervals) or tw percentages (e.g., Qwest and CLEC proportions), to determine whether a parity conditio exists between the results for Qwest and the CLEC(s). The modified z-tests shall b applicable if the number of data points are greater than 30 for a given measurement. Fo testing measurements for which the number of data points are 30 or less, Qwest will use permutation test to determine the statistical significance of the difference between Qwest an CLEC.

4.2 Qwest shall be in conformance when the monthly performance results for pari measurements (whether in the form of means, percents, or proportions and at the equivaler level of disaggregation) are such that the calculated z-test statistics are not greater than th critical z-values as listed in Table 1, section 5.0.

4.3 Qwest shall be in conformance with benchmark measurements when the monthl performance result equals or exceeds the benchmark, if a higher value means bett performance, and when the monthly performance result equals or is less than the benchmark a lower value means better performance.

The formula for determining parity using the modified z-test is:

$$z = \mathrm{DIFF} / \sigma_{\mathrm{DIFF}}$$

Where:

$\mathrm{DIFF} = M_{Qwest} - M_{CLEC}$

M_{QWEST} = Qwest average or proportion

M_{CLEC} = CLEC average or proportion

σ_{DIFF} = square root $[\sigma^2 Qwest\ (1/n_{CLEC} + 1/n_{Qwest})]$

σ^2_{Qwest} = calculated variance for Qwest

n_{Qwest} = number of observations or samples used in Qwest measurement

n_{CLEC} = number of observations or samples used in CLEC measurement

The modified z-tests will be applied to reported parity measurements that contain more than 30 data points.

In calculating the difference between Qwest and CLEC performance, the above formula applies when a larger Qwest value indicates a better level of performance. In cases where a smaller Qwest value indicates a higher level of performance, the order is reversed, i.e., M_{CLEC} - M_{QWEST}.

4.3.1 For parity measurements where the number of data points is 30 or less, Qwest will apply a permutation test to test for statistical significance. Permutation analysis will be applied to calculate the z-statistic using the following logic:

Calculate the modified z-statistic for the actual arrangement of the data
Pool and mix the CLEC and Qwest data sets
Perform the following 1000 times:

Randomly subdivide the pooled data sets into two pools, one the same size as the original CLEC data set (n_{CLEC}) and one reflecting the remaining data points, and one reflecting the remaining data points, (which is equal to the size of the original Qwest data set or n_{QWEST}).

Compute and store the modified z-test score (Z_s) for this sample.

Count the number of times the z-statistic for a permutation of the data is greater than the actual modified z- statistic
Compute the fraction of permutations for which the statistic for the rearranged data is greater than the statistic for the actual samples

If the fraction is greater than α, the significance level of the test, the hypothesis of no difference is not rejected, and the test is passed. The α shall be .05 when the critical z value is 1.645 and .15 when the critical z value is 1.04.

5.0 Critical Z-Value

5.1 The following table shall be used to determine the critical z-value that is referred to in section 6.0. It is based on the monthly business volume of the CLEC for the particula performance measurements for which statistic testing is being performed.

TABLE 1: CRITICAL Z-VALUE

CLEC volume (Sample size)	LIS Trunks, UDITs, Resale, UBL-DS1 and DS-3	All Other
1-10	1.04*	1.645
11-150	1.645	1.645
151-300	2.0	2.0
301-600	2.7	2.7
601-3000	3.7	3.7
3001 and above	4.3	4.3

* The 1.04 applies for individual month testing for performance measurements involving LIS trunks and DS-1 and DS-3 that are UDITs, Resale, or Unbundled Loops. The performance measurements are OP-3d/e, OP-4d/e, OP-5, OP-6-4/5, MR-5a/b, MR-7d/e, and MR-8.
For purposes of determining consecutive month misses, 1.645 shall be used. When performance measurements disaggregate to zone 1 and zone 2, the zones shall be combined for purposes of statistical testing.

6.0 Tier 1 Payments to CLEC

6.1 Tier 1 payments to CLEC shall be made solely for the performance measurement designated as Tier 1 on Attachment 1. The payment amount for non-conforming servic varies depending upon the designation of performance measurements as High, Medium, an Low and the duration of the non-conforming service condition as described below. Non conforming service is defined in section 4.0.

6.1.1 Determination of Non-Conforming Measurements: The number of performanc measurements that are determined to be non-conforming and, therefore, eligible for Tier payments, are limited according to the critical z-value shown in Table 1, section 5.0. Th critical z-values are the statistical standard that determines for each CLEC performanc measurement whether Qwest has met parity. The critical z-value is selected from Table according to the monthly CLEC volume for the performance measurement. For instance, the CLEC sample size for that month is 100, the critical z-value is 1.645 for the statistic testing of that parity performance measurement.

6.2 Determination of the Amount of Payment: Tier 1 payments to CLEC, except provided for in sections <u>6.3 and</u> 10.0, are calculated and paid monthly based on the number performance measurements exceeding the critical z-value. Payments will be made on either per occurrence or per measurement basis, depending upon the performance measuremen using the dollar amounts specified in Table 2 below. The dollar amounts vary dependin upon whether the performance measurement is designated High, Medium, or Low as escalate depending upon the number of consecutive months for which Qwest has not met the standard for the particular measurement.

6.2.1 The escalation of payments for consecutive months of non-conforming service will be matched month for month with de-escalation of payments for every month of conforming service. For example, if Qwest has four consecutive monthly "misses" it will make payments that escalate from month 1 to month 4 as shown in Table 2. If, in the next month, service meets the standard, Qwest makes no payment. A payment "indicator" de-escalates down from month 4 to month 3. If Qwest misses the following month, it will make payment at the month 3 level of Table 2 because that is where the payment "indicator" presently sits. If Qwest misses again the following month, it will make payments that escalate back to the month 4 level. The payment level will de-escalate back to the original month 1 level only upon conforming service sufficient to move the payment "indicator" back to the month 1 level.

6.2.2 For those performance measurements listed on Attachment 2 as "Performance Measurements Subject to Per Measurement Caps," payment to a CLEC in a single month shall not exceed the amount listed in Table 2 below for the "Per Measurement" category. For those performance measurements listed on Attachment 2 as "Performance Measurements Subject to Per Measurement Payments," payment to a CLEC will be the amount set forth in Table 2 below under the section labeled "per measurement."

TABLE 2: TIER-1 PAYMENTS TO CLEC

Per Occurrence						
Measurement Group	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6 and each following month
High	$150	$250	$500	$600	$700	$800
Medium	$ 75	$150	$300	$400	$500	$600
Low	$ 25	$ 50	$100	$200	$300	$400

Per Measurement Cap						
Measurement Group	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6 and each following month
High	$25,000	$50,000	$75,000	$100,000	$125,000	$150,000
Medium	$10,000	$20,000	$30,000	$ 40,000	$ 50,000	$ 60,000
Low	$ 5,000	$10,000	$15,000	$ 20,000	$ 25,000	$ 30,000

6.3 For collocation, CP-2 and CP-4 performance measurements shall be relied upon for delineation of collocation business rules. For purposes of calculating Tier 1 payments, collocation jobs and collocation feasibility studies that are later than the due date will have a per day payment applied according to Table 3. The per day payment will be applied to each collocation job in which the feasibility study is provided or the collocation installation is completed later than the scheduled date. The calculation of the payment amount will b performed by applying the per day payment amounts as specified in Table 3. Thus, for days through 10, the payment is $150 per day. For days 11 through 20, the payment is $300 pe day and so on.

TABLE 3: TIER-1 COLLOCATION PAYMENTS TO CLECS

Days Late	Completion Date	Feasibility Study
1 to 10 days	$150/day	$45/day
11 to 20 days	$300/day	$90/day
21 to 30 days	$450/day	$135/day
31 to 40 days	$600/day	$180/day
More than 40 days	$1,000/day	$300/day

6.4 A minimum payment calculation shall be performed at the end of each year for eac CLEC with annual order volumes of no more than 1,200. The payment shall be calculated b multiplying $2,000 by the number of months in which at least one payment was made to th CLEC. To the extent that the actual CLEC payment for the year is less than the product of th preceding calculation, Qwest shall make an additional payment equal to the difference.

7.0 Tier 2 Payments to the State

7.1 Payments to the State shall be limited to the performance measurements designated i section 7.4 for Tier 2 per measurement payments and in Attachment 1 for per occurrenc payments and which have at least 10 data points each month for the period payments ar being calculated. Similar to the Tier 1 structure, Tier 2 measurements are categorized a High, Medium, and Low and the amount of payments for non-conformance varies accordin to this categorization.

7.2 Determination of Non-Conforming Measurements: The determination of non conformance will be based upon the aggregate of all CLEC data for each Tier 2 performanc measurement. Non-conforming service is defined in section 4.2 (for parity measurement and 4.3 (for benchmark measurements), except that a 1.645 critical z-value shall be used fo all parity measurements but MR-2 and OP-2. ~~The number of performance measurement determined to be non-conforming and, therefore, eligible for Tier 2 payments, is limite according to the critical z-value shown in Table 1, section 5.0.~~ The critical z-value is th statistical standard that determines for each performance measurement whether Qwest has me parity.

7.3 Determination of the Amount of Payment: Except as provided in section 7.4, Tier 2 payments are calculated and paid monthly based on the number of performance measurement failing performance standards ~~exceeding the critical z-value~~ for a third ~~three~~ consecutiv month~~s~~, or if two out of three consecutive months in the 12 month period have been missed the second consecutive month for Tier 2 measurements with Tier 1 counterparts and one month for Tier 2 measurements that do not have Tier 1 counterparts. Payment will be made on either a per occurrence or per measurement basis, whichever is applicable to the performance measurement, using the dollar amounts specified in Table 4~~3~~ or Table 5~~4~~ below. Except as provided in section 7.4, the dollar amounts vary depending upon whether the performance measurement is designated High, Medium, or Low.

7.3.1 For those Tier 2 measurements listed on Attachment 2 as "Performance Measurements Subject to Per Measurement Caps," payment to the State in a single month shall not exceed the amount listed in Table 4~~3~~ for the "Per Measurement" category.

TABLE 4~~3~~: TIER-2 PAYMENTS TO STATE FUNDS

Per Occurrence

Measurement Group	
High	$500
Medium	$300
Low	$200

Per Measurement/Cap

Measurement Group	
High	$75,000
Medium	$30,000
Low	$20,000

7.4 Performance Measurements Subject to Per Measurement Payment: The following Tier 2 performance measurements shall have their performance results measured on a region-wide (14 state) basis. Failure to meet the performance standard, therefore, will result in a per measurement payment in each of the Qwest in-region 14 states adopting this PAP. The performance measurements are:

GA-1: Gateway Availability - IMA-GUI
GA-2: Gateway Availability - IMA-EDI
GA-3: Gateway Availability – EB-TA
GA-4: System Availability – EXACT
GA-6: Gateway Availability – GUI-Repair
PO-1: Pre-Order/Order Response Times
OP-2: Call Answered within Twenty Seconds – Interconnect Provisioning Center
MR-2: Calls Answered within Twenty Seconds – Interconnect Repair Center

GA-1 has three sub-measurements: GA-1A, GA-1B, and GA-1C. PO-1 shall have two sub-measurements: PO-1A and PO-1B. PO-1A and PO-1B shall have their transaction types aggregated together.

For these measurements, Qwest will make a Tier 2 payment based upon monthly performance results according to Table 5~~4~~: Tier 2 Per Measurement Payments to State Funds.

TABLE 5~~4~~: TIER-2 PER MEASUREMENT PAYMENTS TO STATE FUNDS

Measurement	Performance	State Payment	14 State Payment
GA-1,2,3,4,6	1% or lower	$1,000	$14,000
	>1% to 3%	$10,000	$140,000

	>3% to 5%	$20,000	$280,000
	>5%	$30,000	$420,000
PO-1	2 sec. Or less	$1,000	$14,000
	>2 sec. to 5 sec.	$5,000	$70,000
	>5 sec. to 10 sec.	$10,000	$140,000
	>10 sec.	$15,000	$210,000
OP-2/MR-2	1% or lower	$1,000	$14,000
	>1% to 3%	$5,000	$70,000
	>3% to 5%	$10,000	$140,000
	>5%	$15,000	$210,000

7.5 Payment of Tier 2 Funds: Payments to a state fund shall be used for any purpose determined by the Commission that is allowed to it by state law. ~~that relates to the Qwest service territory that may be determined by the State Commission.~~ If the Commission is not permitted by state ~~existing~~ law to receive or administer Tier 2 ~~the~~ payments, ~~under a state fund,~~ the payments shall be made to the state general fund or to such other source as may be provided for under state law.

8.0 Step by Step Calculation of Monthly Tier 1 Payments to CLEC

8.1 Application of the Critical Z-Values: Qwest shall identify the Tier 1 parity performance measurements that measure the service provided to CLEC by Qwest for the month in question and the critical z-value from Table 1 in section 5.0 that shall be used for purposes of statistical testing for each particular performance measurement. The statistical testing procedures described in section 4.0 shall be applied. For the purpose of determining the critical z-values, each disaggregated category of a performance measurement is treated as a separate sub-measurement. The critical z-value to be applied is determined by the CLEC volume at each level of disaggregation or sub-measurement.

8.2 Performance Measurements for which Tier 1 Payment is Per Occurrence:

8.2.1 Performance Measurements that are Averages or Means:

8.2.1.1 Step 1: For each performance measurement, the average or the mean that would yield the critical z-value shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

8.2.1.2 Step 2: The percentage differences between the actual averages and the calculated averages shall be calculated. The calculation is % diff = (CLEC result - Calculated Value)/Calculated Value. The percent difference shall be capped at a maximum of 100%. For all calculations of percent differences in sections 8.0 and 9.0, the calculated percent differences is capped at 100%.

8.2.1.2 Step 3: For each performance measurement, the total number of data points shall be multiplied by the percentage calculated in the previous step and the per occurrence dollar amounts from the Tier 1 Payment Table shall determine the payment to the CLEC for each non-conforming performance measurement.

8.2.2 Performance Measurements that are Percentages:

8.2.2.1 Step 1: For each performance measurement, the percentage that would yield the critical z-value shall be calculated. The same denominator as the one used in calculating the z- statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

8.2.2.2 Step 2: The difference between the actual percentages for the CLEC and the calculated percentages shall be determined.

8.2.2.3 Step 3: For each performance measurement, the total number of data points shall be multiplied by the difference in percentage calculated in the previous step, and the per occurrence dollar amount taken from the Tier 1 Payment Table, to determine the payment to the CLEC for each non-conforming performance measurement.

8.2.3 Performance Measurements that are Ratios or Proportions

8.2.3.1 Step 1: For each performance measurement the ratio that would yield the critical z-value shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

8.2.3.2 Step 2: The absolute difference between the actual rate for the CLEC and the calculated rate shall be determined.

8.2.3.3 Step 3: For each performance measurement, the total number of data points shall be multiplied by the difference calculated in the previous step, and the per occurrence dollar amount taken from the Tier 1 Payment Table, to determine the payment to the CLEC for each non-conforming performance measurement.

8.3 Performance Measurements for which Tier 1 Payment is Per Measure

8.3.1 For each performance measurement where Qwest fails to meet the standard, the payment to the CLEC shall be, the dollar amount shown on the "per measure" portion of Table 2: Tier 1 Payments to CLEC.

9.0 Step by Step Calculation of Monthly Tier 2 Payments to State Funds

9.1.1 Application of the Critical Z-Value: ~~Step 1:~~ Qwest shall identify the [illegible] Tier 2 parity performance measurements that measure the service provided by Qwest to [illegible]

CLECs for the month in question~~ shall be determined~~. The statistical testing procedures described in section 4.0 shall be applied, except that a 1.645 critical z-value shall be used for all parity measurements but MR-2 and OP-2.~~For the purpose of determining the critical z-values, each disaggregated category of a performance measurement is treated as a separate sub-measurement. The critical z-value to be applied is determined by the CLEC volume at each level of disaggregation or sub-measurement.~~

~~9.1.2 Step 2: The Tier 2 performance measurement for which Qwest's service performance is non-conforming for the month in question shall be identified using the critical z-values from Table 1 in Section 5.0.~~

9.1.2~~3~~ To determine if Tier 2 payments for performance measurements listed on Attachment 1 shall be made in the current month, the following shall be determined. For Tier 2 measurements that have Tier 1 counterparts, it shall be determined whether Qwest missed the performance standard for three consecutive months, or if Qwest has missed the standard in any two out of three consecutive months for the 12 month period, for two consecutive months. For Tier 2 measurements that do not have Tier 1 counterparts, it shall be determined whether Qwest missed the performance standard for three consecutive months, or if Qwest has missed the standard in any two out of three consecutive months for the 12 month period, for the current month. If any of these conditions are met and there are at least 10 data points for the measurement in each month, a Tier 2 payment will be calculated and paid as described below and will continue in each succeeding month until Qwest's performance meets the applicable standard.~~Step 3: For each performance measurement that is identified as non-conforming, it shall be determined whether the non-conformance has continued for three consecutive months and whether there are at least 10 data points for each month. If the non-conformance meets these conditions, a Tier 2 payment will be calculated and paid as described below and will continue in each succeeding month until Qwest's performance meets the applicable standard.~~

9.2 Performance Measurements for which Tier 2 Payment is Per Occurrence:

9.2.1 Performance Measurements that are Averages or Means:

9.2.1.1 Step 1: The monthly average or the mean for each performance measurement that would yield the critical z-value for each month shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

9.2.2.2 Step 2: The percentage difference between the actual averages and the calculated averages for each month shall be calculated . The calculation for parity measurements is % diff = (actual average – calculated average)/calculated average. The percent difference shall be capped at a maximum of 100%. In all calculations of percent differences in section 8.0 and section 9.0, the calculated percent difference is capped at 100%.

9.2.2.3 Step 3: For each performance measurement, the total number of data points each month shall be multiplied by the percentage calculated in the previous step. The average for three months (rounded to the nearest integer) shall be calculated and multiplied by the of the per occurrence dollar amount taken from the Tier 2 Payment Table to determine the payment to the State for each non-conforming performance measurement.

9.3 Performance Measurements that are Percentages:

9.3.1 Step 1: For each performance measurement, the monthly percentage that would yield the critical z-value for each month shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

9.3.1.2 Step 2: The difference between the actual percentages and the calculated percentages for each of the three non-conforming months shall be calculated. The calculation for parity measurement is diff = (CLEC result – calculated percentage). This formula shall be applicable where a high value is indicative of poor performance. The formula shall be reversed where high performance is indicative of good performance.

9.3.1.3 Step 3: For each performance measurement, the total number of data points for each month shall be multiplied by the difference in percentage calculated in the previous step. The average for three months shall be calculated (rounded to the nearest integer) and multiplied by the result of the per occurrence dollar amounts taken from the Tier 2 Payment Table to determine the payment to the State.

9.4 Performance Measurements that are Ratios or Proportions:

9.4.1 Step 1: For each performance measurement, the ratio that would yield the critical z-value for each month shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

9.4.1.1 Step 2: The difference between the actual rate for the CLEC and the calculated rate for each month of the non-conforming three-month period shall be calculated. The calculation is: diff = (CLEC rate – calculated rate). This formula shall apply where a high value is indicative of poor performance. The formula shall be reversed where high performance is indicative of good performance.

9.4.1.2 Step 3: For each performance measurement, the total number of data points shall b multiplied by the difference calculated in the previous step for each month. The average fo three months shall be calculated (rounded to the nearest integer) and multiplied by the resu of the per occurrence dollar amounts taken from the Tier 2 Payment Table to determine th payment to the State.

9.5 Performance Measurements for which Tier 2 Payment is Per Measure:

9.5.1 For each performance measurement where Qwest fails to meet the standard, th payment to the State Fund shall be the dollar amount shown on the "per measure" portion the Tier 2 Payment Table.

10.0 Low Volume, Developing Markets

10.1 For certain qualifying performance standards, if the aggregate monthly volumes of CLECs participating in the PAP are more than 10, but less than 100, Qwest will make Tier 1 payments to CLECs for failure to meet the parity or benchmark standard for the qualifying performance sub-measurements. The qualifying sub-measurements are the UNE-P (POTS), megabit resale, and ADSL qualified loop product disaggregation of OP-3, OP-4, OP-5, MR-3, MR-5, MR-7, and MR-8. If the aggregate monthly CLEC volume is greater than 100, the provisions of this section shall not apply to the qualifying performance sub-measurement.

10.2 The determination of whether Qwest has met the parity or benchmark standards will be made using aggregate volumes of CLECs participating in the PAP. In the event Qwest does not meet the applicable performance standards, a total payment to affected CLECs will be determined in accordance with the high, medium, low designation for each performance measurement (see Attachment 1) and as described in section 8.0, except that CLEC aggregate volumes will be used. In the event the calculated total payment amount to CLECs is less than $5,000, a minimum payment of $5,000 shall be made. The resulting total payment amount to CLECs will be apportioned to the affected CLECs based upon each CLEC's relative share of the number of total service misses.

10.3 At the six (6)-month reviews, Qwest will consider adding to the above list of qualifying performance sub-measurements, new products disaggregation representing new modes of CLEC entry into developing markets.

11.0 Payment

11.1 Payments to CLEC, ~~or~~ the State, or the Special Fund shall be made one month following the due date of the performance measurement report for the month for which payment is being made. Qwest will pay interest on any late payment and underpayment at the prime rate as reported in the Wall Street Journal. On any overpayment, Qwest is allowed to offset future payments by the amount of the overpayment plus interest at the prime rate.

11.2 Payment to CLEC shall be made via bill credits. Bill credits shall be identified on a summary format substantially similar to that distributed as a prototype to the CLECs and the Commissions. To the extent that a monthly payment owed to CLEC under this PAP exceeds the amount owed to Qwest by CLEC on a monthly bill, Qwest will issue a check or wire transfer to CLEC in the amount of the overage. Payment to the State shall be made via check or wire transfer.

11.3 A Special Fund shall be created for the purpose of (a) payment of an independent auditor and audit costs as specified in section 15.0, (b) payment of an independent arbitrator to resolve disputes arising out of the six-month review as described in section 16.0, and (c) payment of other expenses incurred by the participating Commissions in the regional administration of the PAP.

11.3.1 Qwest shall establish the Special Fund as an interest bearing escrow account upon the first FCC section 271 approval of the PAP applicable to a participating state Commission. Qwest shall be authorized to withhold and deposit into the Special Fund one-fifth of all Tier 1 payments to CLECs that exceed the month 1 payment amounts in Table 2 and one-third of all Tier 2 payments. The cost of the escrow account will be paid for from account funds.

11.3.2 Commissions participating in the Special Fund shall appoint a person designated to administer and authorize disbursement of funds. All claims against the fund shall be presented to the Commissions' designates and shall be the responsibility of the participating Commissions. Disbursements from the Special Fund shall first be from Tier 2 funds and second from Tier 1 funds. Not less than every two years, Tier 1 funds that are not needed to meet the continuing obligations of the Special Fund shall be returned on a pro-rata basis to CLECs.

11.3.3 Qwest shall advance funds, not to exceed $200,000, to meet initial claims against the Special Fund to the extent Tier 1 and Tier 2 contributions are insufficient. Qwest shall be allowed to recover any such advances plus interest at the rate that the escrow account would have earned.

12.0 Cap on Tier 1 and Tier 2 Payments

12.1 There shall be a cap on the total payments made by Qwest for a 12 month period beginning with the effective date of the PAP ~~calendar year~~ for the State of South Dakota. The annual cap for the State of South Dakota shall be $15,000,000 (36% of the 1999 ARMIS Net Return), subject to any applicable adjustment permitted pursuant to section 12.2.~~amounts by state are shown in Attachment 3.~~ CLEC agrees that this amount constitutes a maximum annual cap that shall apply to the aggregate total of Tier 1 liquidated damages, including any such damages paid pursuant to this Agreement, any other interconnection agreement, or any other payments made for the same underlying activity or omission ~~or analogous performance~~ under any other contract, order or rule~~)~~ and Tier 2 assessments or payments made by Qwest for the same underlying activity or omission ~~or analogous performance~~ under any other ~~another~~ contract, order or rule.

12.2 ~~The monthly cap will be determined by dividing the amount of the annual cap by twelve. The monthly cap shall be calculated by applying all payments or credits made by Qwest under this PAP as well as all payments made or credits applied for wholesale service performance pursuant to interconnection agreements, state rules or orders. To the extent in any given month the monthly cap (i.e., the annual cap divided by 12) is not reached, the subsequent month's cap will be increased by an amount equal to the unpaid portion of the previous month's cap.~~The 36% annual cap may be increased to 44% or decreased to 30% of 1999 ARMIS Net Return as follows:

12.2.1 An increase in the cap of a maximum of 4 percentage points at any one time (i.e., first to 40 percent) shall occur upon order by the Commission if the cap has been exceeded for any consecutive period of 24 months by that same 4 percent or more, provided that: (a) the Commission has determined that the preponderance of the evidence shows Qwest could have remained beneath the cap through reasonable and prudent effort, and (b) the Commission has made that determination after having available to it on the record the results of audits and root cause analyses, and provided an opportunity for Qwest to be heard.

12.2.2 A decrease in the cap of a maximum of 4 percentage points at any one time shall occur upon order by the Commission after performance for any consecutive period of 24 months in which total payments are 8 or more percentage points below the cap amount, provided that: (a) the Commission has determined that the preponderance of the evidence shows the performance results underlying those payments results from an adequate Qwest commitment to meeting its responsibilities to provide adequate wholesale service and to keeping open its local markets and (b) the Commission shall have made that determination after providing all interested parties an opportunity to be heard.

12.2.3 The provisions of 12.2.1 and 12.2.2 shall be in effect for the next 24 month period commencing with the end of the 24 month period upon which the Commission's order is based.

12.3 If the annual cap is reached, each CLEC shall, as of the end of the year, be entitled to receive the same percentage of its total calculated Tier 1 payments. In order to preserve the operation of the annual cap, the percentage equalization shall take place as follows:

12.3.1 The amount by which any month's total year-to-date Tier 1 and Tier 2 payments exceeds the cumulative monthly cap (defined as 1/12th of the annual cap times the cumulative number of months to date) shall be calculated and apportioned between Tier 1 and Tier 2 according to the percentage that each bore of total payments for the year-to-date. The Tier 1 apportionment resulting of this calculation shall be known as the "Tracking Account."

12.3.2 The Tier 1 apportionment shall be debited against the monthly payment due to each CLEC, by applying to the year-to-date payments received by each-the percentage necessary to generate the required total Tier 1 amount.

12.3.3 The Tracking Amount shall be apportioned among all CLECs so as to provide each with payments equal in percentage of its total year to date Tier 1 payment calculations.

12.3.4 This calculation shall take place in the first month that the year-to-date total Tier 1 and Tier 2 payments are expected to exceed the cumulative monthly cap and for each month of that year thereafter. Qwest shall recover any debited amounts by reducing payments due to any CLEC for that month and any succeeding months, as necessary.

~~12.3 In the event the annual cap is reached within a calendar year and Qwest continues to deliver non-conforming performance during the same year to any CLEC or to all CLECs, the Commission may recommend to the FCC that Qwest should cease offering in-region interLATA services to new customers.~~

13.0 Limitations

13.1 The PAP shall not become available in the State unless and until Qwest receives effective section 271 authority from the FCC for that State.

13.2 Qwest will not be liable for Tier 1 payments to CLEC in an FCC approved state until the Commission has approved an interconnection agreement between CLEC and Qwest which adopts the provisions of this PAP.

13.3 Qwest shall not be obligated to make Tier 1 or Tier 2 payments for any measurement if and to the extent that non-conformance for that measurement was the result of any of the following: 1) with respect to performance measurements with a benchmark standard, a Force Majeure event as defined in section 5.7 of the SGAT. Qwest will provide notice of the occurrence of a Force Majeure event within 72 hours of the time Qwest learns of the event or within a reasonable time frame that Qwest should have learned of it; ~~, including but not limited to acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers;~~ 2) an act or omission by a CLEC that is contrary to any of its obligations under its interconnection agreement with Qwest or under federal or state law; an act or omission by CLEC that is in bad faith. Examples of bad faith conduct include, but are not limited to: unreasonably holding service orders and/or applications, "dumping" orders or applications in unreasonably large batches, "dumping" orders or applications at or near the close of a business day, on a Friday evening or prior to a holiday, and failing to provide timely forecasts to Qwest for services or facilities when such forecasts are explicitly required by the SGAT;~~to reasonably provide services or facilities; or~~ 3) problems associated with third party systems or equipment, which could not have been avoided by Qwest in the exercise of reasonable diligence, *provided, however*, that this third party exclusion will not be raised in the State more than three times within a calendar year. If a Force Majeure event or other excusing event recognized in this section merely suspends Qwest's ability to timely perform an activity subject to a performance measurement that is an interval measure, the applicable time frame in which Qwest's compliance with the parity or benchmark criterion is measured will be extended on an hour-for-hour or day-for-day basis, as applicable, equal to the duration of the excusing event.

13.3.1 Qwest will not be excused from Tier 1 or Tier 2 payments for any reason except as described in Section 13.0. Qwest will have the burden of demonstrating that its non-conformance with the performance measurement was excused on one of the grounds described in this PAP. A party may petition the Commission to require Qwest to deposit disputed payments into an escrow account when the requesting party can show cause, such as grounds provided in the Uniform Commercial Code for cases of commercial uncertainty.

13.3.2 Notwithstanding any other provision of this PAP, it shall not excuse performance that Qwest could reasonably have been expected to deliver assuming that it had designed, implemented, staffed, provisioned, and otherwise provided for resources reasonably required to meet foreseeable volumes and patterns of demands upon its resources by CLECs.

13.4 Qwest's agreement to implement these enforcement terms, and specifically its agreement to pay any "liquidated damages" or "assessments" hereunder, will not be considered as an admission against interest or an admission of liability in any legal, regulatory, or other proceeding relating in whole or in part to the same performance.

13.4.1 CLEC may not use: 1) the existence of this enforcement plan; or 2) Qwest's payment of Tier -1 "liquidated damages" or Tier 2 "assessments" as evidence that Qwest has discriminated in the provision of any facilities or services under Sections 251 or 252, or has violated any state or federal law or regulation. Qwest's conduct underlying its performance measures, however are not made inadmissible by its terms.

13.4.2 By accepting this performance remedy plan, CLEC agrees that Qwest's performance with respect to this remedy plan may not be used as an admission of liability or culpability fo a violation of any state or federal law or regulation. (Nothing herein is intended to preclude Qwest from introducing evidence of any Tier 1 "liquidated damages" under these provision for the purpose of offsetting the payment against any other damages or payments a CLEC might recover.) The terms of this paragraph do not apply to any proceeding before th Commission or the FCC to determine whether Qwest has met or continues to meet th requirements of section 271 of the Act.

13.5 By incorporating these liquidated damages terms into the PAP, Qwest and CLEC accepting this PAP agree that proof of damages from any non-conforming performanc measurement would be difficult to ascertain and, therefore, liquidated damages are reasonable approximation of any contractual damages that may result from a non-conformin performance measurement. Qwest and CLEC further agree that Tier 1 payments mad pursuant to this PAP are not intended to be a penalty. The application of the assessments an damages provided for herein is not intended to foreclose other noncontractual legal and non contractual regulatory claims and remedies that may be available to a CLEC.

13.6 This PAP contains a comprehensive set of performance measurements, statistica methodologies, and payment mechanisms that are designed to function together, and onl together, as an integrated whole. To elect the PAP, CLEC must adopt the PAP in its entiret in its interconnection agreement with Qwest ~~in lieu of other alternative standards or relief. I no event is CLEC entitled to remedies under both the PAP and under rules, orders, or oth contracts, including interconnection agreements, arising from the same or analogou wholesale performance. Where alternative remedies for Qwest's wholesale performance a available under rules, orders, or other contracts, including interconnection agreements, CLE will be limited to either the PAP remedies or the remedies available under rules, orders, other contracts and CLEC's choice of remedies shall be specified in its interconnecti agreement~~. By electing remedies under the PAP, CLEC waives any causes of action based o a contractual theory of liability, and any right of recovery under any other theory of liabili (including but not limited to a regulatory rule or order) to the extent such recovery is related to harm compensable under a contractual theory of liability (even though it is sought through a noncontractual claim, theory, or cause of action).

13.7 If for any reason CLEC agreeing to this PAP is awarded compensation for the same underlying activity or omission ~~or analogous wholesale performance~~ for which Tier 1 assessments are made under this PAP, ~~covered by this PAP,~~ Qwest may offset the award with amounts paid under this PAP or offset future payments due under the PAP by the amount of any such award. This section is not intended to permit offset of those portions of any damages allowed by noncontractual theories of liability that are not also recoverable under contractual theories of liability. Nothing in this PAP shall be read as permitting an offset related to Qwest payments related to CLEC or third-party physical damage to property or personal injury.

13.8 Qwest shall not be liable for both Tier 2 payments under the PAP and assessments, sanctions, or other payments for the same underlying activity or omission ~~or analogous performance~~ pursuant to any Commission order or service quality rules.

13.9 Whenever a Qwest Tier 1 payment to an individual CLEC exceeds $3 million in a month, ~~or when all CLEC Tier 1 payments in any given month exceed the monthly cap,~~ Qwest may commence a proceeding to demonstrate why it should not be required to pay any amount in excess of the $3 million. Upon timely commencement of the proceeding, Qwest must pay the balance of payments owed in excess of $3 million ~~the threshold amount~~ into escrow, to be held by a third-party pending the outcome of the proceeding. To invoke these escrow provisions, Qwest must file, not later than the due date of the Tier 1 payments, its ~~a~~ application ~~demonstrating why it should not be required to pay any amount in excess of the procedural threshold~~. Qwest will have the burden of proof to demonstrate why, under the circumstances, it would be unjust to require it to make the payments in excess of $3 million. ~~the applicable threshold amount.~~ If Qwest reports non-conforming performance to CLEC for three consecutive months on 20% or more of the measurements reported to CLEC and has incurred no more than $1 million in liability to CLEC, then CLEC may commence a similar proceeding. In any such proceeding CLEC will have the burden of proof to demonstrate why, under the circumstances, justice requires Qwest to make payments in excess of the amount calculated pursuant to the terms of the PAP. The disputes identified in this section shall be resolved in a manner specified in the Dispute Resolution section of the SGAT ~~or interconnection agreement~~ with the CLEC.

14.0 Reporting

14.1 Upon receiving effective section 271 authority from the FCC for a state, Qwest will provide CLEC that has an approved interconnection agreement with Qwest, a monthly report of Qwest's performance for the measurements identified in the PAP by the last day of the month following the month for which performance results are being reported. However, Qwest shall have a grace period of five business days, so that Qwest shall not be deemed out of compliance with its reporting obligations before the expiration of the five business days grace period. Qwest will collect, analyze, and report performance data for the measurements listed on Attachment 1 in accordance with the most recent version of the PIDs. Upon CLEC's request, data files of the CLEC's raw data, or any subset thereof, will be transmitted, without charge, to CLEC in a mutually acceptable format, protocol, and transmission medium.

14.2 Qwest will also provide the Commission a monthly report of aggregate CLEC performance results pursuant to the PAP by the last day of the month following the month for which performance results are being reported. However, Qwest shall have a grace period of five business days, so that Qwest shall not be deemed out of compliance with its reporting obligations before the expiration of the five business day grace period. Individual CLEC reports of participating CLECs will also be available to the Commission upon request. ~~Upon the Commission's request, data files of participating CLEC raw data, or any subset thereof will be transmitted, without charge, to the Commission in a mutually acceptable format, protocol, and transmission form.~~ By accepting this PAP, CLEC consents to Qwest providing CLEC's report and raw data to the State Commission. Pursuant to the terms of an order of the Commission, Qwest may provide CLEC-specific data that relates to the PAP, provided that Qwest shall first initiate any procedures necessary to protect the confidentiality and to prevent the public release of the information pending any applicable Commission procedures and further provided that Qwest provides such notice as the Commission directs to the CLEC involved, in order to allow it to prosecute such procedures to their completion. Data files of participating CLEC raw data, or any subset thereof, will be transmitted, without charge, to the Commission in a mutually acceptable format, protocol, and transmission form.

14.3 In the event Qwest does not provide CLEC and the Commission with a monthly report by the last day of the month following the month for which performance results are being reported, Qwest will pay to the State a total of $500 for each business day for which performance reports are ~~due after a five business day grace period.~~6 to 10 business days past the due date; $1,000 for each business day for which performance reports are 11 to 15 business days past the due date; and $2,000 for each business day for which performance results are more than 15 business days past the due date. If reports are on time but are missing performance results, Qwest will pay to the State a total of one-fifth of the late report amount for each missing performance measurement, subject to a cap of the full late report amount. ~~This~~ These amounts represents the total payments for omitting performance measurements or missing any report deadlines, rather than a payment per report. Prior to the date of a payment for late reports, Qwest may file a request for a waiver of the payment which states the reasons for the waiver. The Commission may grant the waiver, deny the waiver, or provide any other relief that may be appropriate.

14.4 To the extent that Qwest recalculates payments made under this PAP, such recalculation shall be limited to the preceding three years (measured from the later of the provision of a monthly credit statement or payment due date). Qwest shall retain sufficient records to demonstrate fully the basis for its calculations for long enough to meet this potential recalculation obligation. CLEC verification or recalculation efforts should be made reasonably contemporaneously with Qwest measurements. In any event, Qwest shall maintain the records in a readily useable format for one year. For the remaining two years the records may be retained in archived format. Any payment adjustments shall be subject t the interest rate provisions of section 11.1.

15.0 Integrated Audit Program~~s~~/Investigations of Performance Results

15.1 Audits of the PAP shall be conducted in a two-year cycle under the auspices of th participating Commissions in accordance with a detailed audit plan developed by a independent auditor retained for a two-year period. The participating Commissions sha select the independent auditor with input from Qwest and CLECs.

15.1.1 The participating Commissions shall form an oversight committee of Commissione who will choose the independent auditor and approve the audit plan. Any disputes as to th choice of auditor or the scope of the audit shall be resolved through a vote of the chairs of th participating commissions pursuant to Section 15.1.4.

15.1.2 The audit plan shall be conducted over two years. The audit plan will identify th specific performance measurements to be audited, the specific tests to be conducted, and th entity to conduct them. The audit plan will give priority to auditing the higher risk area identified in the OSS report. The two-year cycle will examine risks likely to exist across th period and the past history of testing, in order to determine what combination of high an more moderate areas of risk should be examined during the two-year cycle. The first year o a two-year cycle will concentrate on areas most likely to require follow-up in the second yea

15.1.3 The audit plan shall be coordinated with other audit plans that may be conducted b other state commissions so as to avoid duplication, shall not impede Qwest's ability t comply with the other provisions of the PAP and should be of a nature and scope that ~~it~~ can b conducted in accordance with the reasonable course of Qwest's business operations.

15.1.4 Any dispute arising out of the audit plan, the conduct of the audit, or audit resul shall be resolved by the oversight committee of Commissioners. Decisions of the oversig committee of Commissioners may be appealed to a committee of the chairs of th participating Commissions.

15.2 Qwest may make management processes more accurate or more efficient to perfor without sacrificing accuracy. These changes are at Qwest's discretion but will be reported t the independent auditor in quarterly meetings in which the auditor may ask questions abo changes made in the Qwest measurement regimen. The meetings, which will be limited t Qwest and the independent auditor, will permit an independent assessment of the materiali and propriety of any Qwest changes, including, where necessary, testing of the change detai by the independent auditor. The information gathered by the independent auditor may be th basis for reports by the independent auditor to the participating Commissions and, where th Commissions deem it appropriate, to other participants.

15.3 In the event of a disagreement between Qwest and CLEC as to any issue regardin the accuracy or integrity of data collected, generated, and reported pursuant to the PA

Qwest and the CLEC shall first consult with one another and attempt in good faith to resolv the issue. If an issue is not resolved within 45 days after a request for consultation, CLEC an Qwest may, upon a demonstration of good cause, (e.g., evidence of material errors c discrepancies) request an independent audit to be conducted, at the initiating party's expense The independent auditor will assess the need for an audit based upon whether there exists material deficiency in the data or whether there exists an issue not otherwise addressed by th audit plan for the current cycle. The dispute resolution provision of section 18.0 is availab to any party questioning the independent auditor's decision to conduct or not conduct a CLE requested audit and the audit findings, should such an audit be conducted. An audit may n proceed until dispute resolution is completed. Audit findings will include: (a) genera applicability of findings and conclusions (i.e., relevance to CLECs or jurisdictions other tha the ones causing test initiation), (b) magnitude of any payment adjustments required and, (whether cost responsibility should be shifted based upon the materiality and clarity of an Qwest non-conformance with measurement requirements (no pre-determined variance appropriate, but should be based on the auditor's professional judgment). CLEC may n request an audit of data more than three years from the later of the provision of a monthl credit statement or payment due date.

15.4 Expenses for the audit of the PAP and any other related expenses, except that whic may be assigned under section 15.3, shall be paid first from the Tier 2 funds in the Speci Fund. The remainder of the audit expenses will be paid one half from Tier 1 funds in th Special Fund and one half by Qwest.

~~15.1 Qwest will create a separate financial system which will take performance results inputs and calculate payments according to the terms of the PAP. An independent audit this financial system shall be initiated one year after the effective date of the PAP and second audit shall be started no later than 18 months thereafter. The auditor will be chos and paid for by Qwest. Alternatively, the Commission may choose to conduct this au itself. The necessity of any subsequent audits of the financial system shall be considered the six-month PAP reviews, based upon the experience of the first two audits. If as a result the audit, it is determined that Qwest underpaid, Qwest will add bill credits to CLEC and make additional payments to the State for the amount underpaid. In the event Qw overpaid, future bill credits to CLEC and/or future payments to the State will be offset by t amount of the overage. All under and over payments will be credited with interest at the on year U.S. Treasury rate.~~

~~15.2 In the event of a disagreement between Qwest and CLEC as to any issue regardi the accuracy or integrity of data collected, generated, and reported pursuant to the PA Qwest and the CLEC shall first consult with one another and attempt in good faith to resol the issue. If an issue is not resolved within 45 days after a request for consultation, CLEC a Qwest may, upon a demonstration of good cause, (e.g., evidence of material errors discrepancies) request an independent audit to be conducted, at the initiating party's expen The scope of the audit will be limited to performance measurement data collection, d reporting processes, and calculation of performance results and payments for a speci performance measurement. An audit may not be commenced more than 12 months followi the month in which the alleged inaccurate results were first reported.~~

~~15.3 If an audit identifies a material deficiency affecting results, the responsible party shal reimburse the other party for the expense of the third-party auditor, (assuming the responsibl party was not the party initiating the audit). In the event CLEC is found to be responsible fo the deficiency, any overpayment made to CLEC as a result of the deficiency shall be refunde to Qwest with interest and any affected portion of future payments will be suspended unti CLEC corrects the deficiency. In the event that Qwest is found to be responsible for th deficiency, Qwest will pay CLEC the amount that would have been due under the PAP, if no for the deficiency, including interest.~~

~~15.4 Neither CLEC nor Qwest may request more than two audits per calendar year for th entire region composed of the Qwest in-region states. Each audit request shall be limited t no more than two performance measurements per audit. For purposes of these provisions, performance measurement is a PID, e.g., OP-3, Installation Commitments Met. CLEC agre that Qwest shall not be required to conduct more than 3 audits at one time for the regio composed of the in-region states, notwithstanding who has initiated the audit, an notwithstanding the provisions in this paragraph. This provision shall exclusively gover audits regarding performance measurements. Qwest agrees to inform Commission Staff an all CLECs of the results of an audit.~~

15.5 Qwest will investigate any second consecutive Tier 2 miss to determine the cause o the miss and to identify the action needed in order to meet the standard set forth in th performance measurements. To the extent an investigation determines that a CLEC wa responsible in whole or in part for the Tier 2 misses, Qwest shall receive credit against futur Tier 2 payments in an amount equal to the Tier 2 payments that should not have been made The relevant portion of subsequent Tier 2 payments will not be owed until any responsibl CLEC problems are corrected. For the purposes of this sub-section, Tier 1 performanc measurements that have not been designated as Tier 2 will be aggregated and the aggregat results will be investigated pursuant to the terms of this Agreement.

16.0 Reviews

16.1 Every six (6) months, beginning six months after the effective date of the first Sectio 271 approval by the FCC of one of the states that participated in the multi-state QPAP sectio 271 proceeding, Qwest, CLECs, and the Commissions of those state shall participate in common review of the performance measurements to determine whether measuremen should be added, deleted, or modified; whether the applicable benchmark standards should b modified or replaced by parity standards; and whether to move a classification of measurement to High, Medium, or Low or Tier 1 to Tier 2. The criterion for reclassificatio of a measurement shall be whether the actual volume of data points was less or greater tha anticipated. Criteria for review of performance measurements, other than for possib reclassification, shall be whether there exists an omission or failure to capture intende performance, and whether there is duplication of another measurement. The first six-mon period will begin upon the FCC's approval of Qwest's 271 application for that particular stat Changes shall not be made without Qwest's agreement, except that disputes as to wheth new performance measurements should be added shall be resolved by one arbitratio proceeding conducted pursuant to section 5.18.3 of the SGAT, which shall bind CLEC an Qwest and all parties to the arbitration and determine what new measures, if any, should b included in Exhibit K to the SGAT. The administration expenses of the six month review and of an arbitrator shall be paid from the Special Fund.

16.2 Two years after the effective date of the first FCC 271 approval of the PAP, th participating Commissions may conduct a joint review by a independent third party t examine the continuing effectiveness of the PAP as a means of inducing complian performance. This review shall not be used to open the PAP generally to amendment, bu would serve to assist Commissions in determining existing conditions and reporting to th FCC on the continuing adequacy of the PAP to serve its intended functions. The expense o the reviews shall be paid from the Special Fund.

16.3~~2~~ Qwest will make the PAP available for CLEC interconnection agreements until suc time as Qwest eliminates its Section 272 affiliate. At that time, the Commission and Qwes shall review the appropriateness of the PAP and whether its continuation is necessary However, in the event Qwest exits the interLATA market, that State PAP shall be rescinde immediately.

17.0 Voluntary Performance Assurance Plan

This PAP represents Qwest's voluntary offer to provide performance assurance. Nothing i the PAP or in any conclusion of non-conformance of Qwest's service performance with th standards defined in the PAP shall be construed to be, of itself, non-conformance with th Act.

18.0 Dispute Resolution

For the purpose of resolving disputes over the meaning of the provisions of the PAP and ho they should be applied, the dispute resolution provisions of the SGAT, section 5.18, sha apply whether the CLEC uses the SGAT as its contract or elects to make the PAP part of i interconnection agreements (i.e., the unique dispute resolution provisions of interconnectio agreements should not apply).

Performance Measurement		Tier 1 Payments			Tier 2 Paym	
		Low	Med	High	Low	Med
GATEWAY						
Timely Outage Resolution	GA-7					
PRE-ORDER/ORDERS						
LSR Rejection Notice Interval	PO-3[a]	X				
Firm Order Confirmations On Time	PO-5	X				X
Work Completion Notification Timeliness	PO-6[b]	X				
Billing Completion Notification Timeliness	PO-7[b]	X				
Jeopardy Notice Interval	PO-8	X				
Timely Jeopardy Notices	PO-9	X				
Release Notifications	PO-16					
ORDERING AND PROVISIONING						
Installation Commitments Met	OP-3[c]			X		X
Installation Intervals	OP-4[c]			X		X
New Service Installation Quality	OP-5			X		X
Delayed Days	OP-6[c]			X		X
Number Portability Timeliness	OP-8			X		X
Coordinated Cuts On Time – Unbundled Loops	OP-13a			X		X
LNP Disconnect Timeliness	OP-17			X		X
MAINTENANCE AND REPAIR						
Out of Service Cleared within 24 hours	MR-3			X		
All Troubles Cleared within 4 hours	MR-5			X		
Mean time to Restore	MR-6a,b,c			X		
Repair Repeat Report Rate	MR-7			X		X
Trouble Rate	MR-8			X		X
LNP Trouble Reports Cleared within 24 Hours	MR-11			X		X
LNP Trouble Reports—Mean Time to Restore	MR-12			X		X
BILLING						
Time to Provide Recorded Usage Records	BI-1	X				
Billing Accuracy-Adjustments for Errors	BI-3	X				
Billing Completeness	BI-4	X				X
NETWORK PERFORMANCE						
Trunk Blocking	NI-1			X		
NXX Code Activation	NP-1			X		
~~COLLOCATION~~						
~~Installation Interval~~	~~CP-1~~	~~X~~				
~~Installation Commitments Met~~	~~CP-2~~			~~X~~		
~~Feasibility Study Interval~~	~~CP-3~~	~~X~~				
~~Feasibility Study Commitments Met~~	~~CP-4~~	~~X~~				

a. PO-3 is limited to PO-3a-1, PO-3b-1, and PO-3c.

b. PO-6 is included with PO-7 as two "families:" PO-6a/PO-7a and PO-6b/PO-7b. Measurements within each family share a single payment opportunity with only the measurements with the highest payment being paid.

~~c. OP-3 is included as three "families:" OP-3a/3b, OP-3c, and OP-3d/e. Measurements within each family share a single payment opportunity with only the measurement with the highest payment being paid.~~

~~d.~~c. OP-4 is included with OP-6 as five "families:" OP-4a/OP-6-1, OP-4b/OP-6-2, OP-4c/OP-6-3, OP-4d/OP-6-4, and OP-4e/OP-6-5. Measurements within each family share a single payment opportunity with only the measurement with the highest payment being paid.

d.~~e.~~ For purposes of the PAP, OP-6a and OP-6b will be combined and treated as one. The combined OP-6 breaks down to OP-6-1 (within MSA), OP-6-2 (outside MSA), OP-6-3 (no dispatch), OP-6-4 (zone 1), and OP-6-5 (zone 2).

Attachment 2: Performance Measurements Subject to Per Measurement Caps

Billing

Time to Provide Recorded Usage Records – BI-1 (Tier 1/Tier 2)
Billing Accuracy – Adjustments for Errors – BI-3 (Tier 1)
Billing Completeness – BI-4 (Tier 1/Tier 2)

~~State ($ Millions)~~	~~1999 ARMIS Net Return~~	~~Adjustment for Commission Rate Orders~~	~~Annual Cap~~
~~Idaho~~	~~68~~		~~24~~
~~Iowa~~	~~85~~		~~31~~
~~Minnesota~~	~~246~~	~~(18)~~	~~82~~
~~Montana~~	~~44~~		~~16~~
~~Nebraska~~	~~84~~		~~30~~
~~New Mexico~~	~~80~~	~~(10)**~~	~~28~~
~~North Dakota~~	~~35~~		~~13~~
~~Oregon~~	~~132~~	~~(32)~~	~~36~~
~~South Dakota~~	~~42~~		~~15~~
~~Utah~~	~~128~~		~~46~~
~~Washington~~	~~225~~		~~81~~
~~Wyoming~~	~~34~~		~~12~~

~~The individual state annual payment cap amounts were calculated based upon Qwest's 199[illegible] ARMIS results, adjusted to reflect the full annual effect of subsequent general rate cas[illegible] orders of the respective state regulatory commissions.~~

~~** The New Mexico adjustment reflects the New Mexico Commission's interim rate order i[illegible] Docket No. 3007. Permanent rates will be set in Docket No. 3008 and will be reflected in thi[illegible] adjustment when rates are final.~~

Lynn Anton Stang
Qwest Corporation
1801 California Street, Suite 5100
Denver, CO 80202
Phone: 303/672-2734
Fax: 303/295-7069

Gregory B. Monson (2294)
Ted D. Smith (3017)
STOEL RIVES LLP
201 South Main Street, Suite 1100
Salt Lake City, UT 84111
Phone: 801/328-3131
Fax: 801/578-6999

Attorneys for Qwest Corporation

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of QWEST CORPORATION for Approval of Compliance with 47 U.S.C. § 271(d)(2)(B)	Docket No. 00-049-08 **STIPULATION BETWEEN ADVOCACY STAFF AND QWEST REGARDING PERFORMANCE ASSURANCE PLAN**

Judith Hooper, temporarily acting as Advocacy Staff for the Public Service Commission of Utah ("Advocacy Staff") pursuant to the Procedural Order issued December 6, 2001 ("Order"), and Qwest Corporation ("Qwest") hereby stipulate that the sections of the Performance Assurance Plan ("PAP") attached to this Stipulation as Attachment 1 are intended to resolve issues raised and changes to the PAP recommended by the "Staff Report on the Qwest Post Entry Assurance Plan (QPAP)" dated October 26, 2001 ("Advisory Staff's

Report") that differ from those in the "Report on Qwest's Performance Assurance Plan" issued by the Facilitator on October 22, 2001.[1] This Stipulation is based upon the following:

1. In August of 2000, eleven of the 14 states participating in Qwest's Regional Oversight Committee ("ROC"), including Utah, invited interested parties to participate in a collaborative process designed to seek creation of a consensus PAP. Staffs of the state commissions, competitive local exchange carriers ("CLECs"), including AT&T Communications of the Mountain States, Inc. ("AT&T"), WorldCom, Inc. ("WorldCom"), McLeodUSA Telecommunications Services, Inc. ("McLeod"), XO Utah, Inc. ("XO") and Electric Lightwave, Inc. ("ELI") (XO and ELI will be referred to hereinafter collectively as "XO/ELI") and other CLECs, and Qwest participated in the collaborative. Five multi-day workshops, a number of conference calls and numerous exchanges of proposals, supporting data and other information occurred from October 2000 through May of 2001.

2. The statistical methods and payment structure of the PAP approved by the Federal Communications Commission ("FCC") in SBC Communications, Inc.'s application under 47 U.S.C. § 271 for the state of Texas ("Texas PAP") served as the starting point for the ROC collaborative. Through the collaborative process, consensus was reached on a number of issues, including several modifications to the Texas PAP.

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[1] In addition to Advisory Staff's Report, John Antonuk of The Liberty Consulting Group, the facilitator selected by the Commission and the commissions from six other states to conduct multi-state workshops on issues arising under 47 U.S.C. § 271 ("Facilitator") issued a report on the PAP dated October 22, 2001 ("Facilitator's Report"). Qwest filed a PAP with the Commission on November 15, 2001 that incorporated the Facilitator's recommendations. Qwest will file a red-lined version of the PAP incorporating the changes in Attachment 1 into the PAP filed in this docket on November 15, 2001

3. After it appeared in May 2001 that further collaborative efforts were in doubt, the seven state commissions then participating in multi-state workshops on other aspects of Qwest's 271 compliance, including Utah, determined to hold multi-state hearings to determine the sufficiency of the PAP. Two additional states also decided to participate in these multi-state PAP hearings. The Facilitator, who had not previously been involved in the ROC collaborative, was asked to conduct these hearings. Procedural issues were resolved by conference and briefing. Hearings were held during the weeks of August 13 and August 27, 2001, during which several parties submitted evidence and comment. Briefs and reply briefs were filed in September of 2001. In addition to the staffs of the nine state commissions, CLECs, including AT&T, WorldCom, and XO/ELI, participated in this process. Through this process, consensus was reached on additional PAP issues.

4. On October 22, 2001, the Facilitator issued the Facilitator's Report in all states except Utah. The Facilitator's Report recommended resolutions for all impasse issues.

5. On October 26, 2001, Utah Staff issued Advisory Staff's Report. Although Advisory Staff's Report was consistent with the Facilitator's Report on many issues, it departed from the Facilitator's Report on several significant issues.

6. Qwest filed comments in the other eight states on the Facilitator's Report on November 1, 2001 with an errata filed on November 6, 2001. Although Qwest did not agree with all of the further modifications to the PAP recommended by the Facilitator, it stated that it was prepared to accept them subject to clarification and limited modification. Qwest filed a red-lined PAP with its comments providing changes consistent with the Facilitator's Report and its comments. Various CLECs also filed comments on the Facilitator's Report accepting some recommendations and disagreeing with others.

7. On November 6, 2001, Qwest filed comments on Advisory Staff's Report generally disagreeing with the changes made by Advisory Staff to the Facilitator's recommendations. AT&T, WorldCom and XO/ELI also filed comments. They agreed with some of the recommendations of Advisory Staff's Report, but suggested that Advisory Staff did not go far enough in increasing Qwest's obligations under the PAP on some issues.

8. A technical conference on the PAP was held before the Commission on November 19, 2001. At the technical conference, Qwest and the CLECs presented their positions to the Commission and responded to questions from the Commission and Advisory Staff.

9. On December 6, 2001, the Commission issued the Order temporarily designating Judith Hooper as Advocacy Staff for purposes of determining if agreement could be reached on the PAP. The Order directed interested parties to contact her to participate in negotiations and directed that at a minimum one meeting should be held on December 12, 2001 at which all parties could participate. The Order also directed the parties to file a report of the status of their negotiations by December 18, 2001 and indicated that any party could seek to extend the date for negotiations beyond December 18, 2001.

10. Pursuant to the Order and notice issued on December 10, 2001, Advocacy Staff held a meeting on December 12, 2001 at which Qwest, AT&T, WorldCom, XO/ELI and the Utah Rural Telecom Association participated. At the meeting, Advocacy Staff stated that the purpose of the discussions was to determine if agreement could be reached on resolution of issues with the bounds being the Facilitator's Report and Advisory Staff's Report. All parties were allowed to present their views on each of the issues in which the Facilitator's and

Advisory Staff's Reports differed. In addition, at least one CLEC presented positions that sought to impose obligations on Qwest in excess of those imposed by Advisory Staff's Report.

11. Following the December 12, 2001 meeting, Advocacy Staff continued to meet with Qwest and to meet separately with other parties. Qwest was unwilling to be bound to joint negotiations with all parties. Advocacy Staff determined that further negotiations, holding separate Qwest and CLEC meetings, would be worthwhile and requested that the Commission extend the date for negotiations beyond December 18, 2001. Since December 18, 2001, Advocacy Staff has had several additional meetings and discussions with Qwest and separate meetings and discussions with CLECs.[2]

12. Advocacy Staff and Qwest stipulate that the provisions of the PAP attached to and incorporated in this Stipulation are intended to resolve the issues raised and changes to the PAP recommended by Advisory Staff's Report that differ from those in the Facilitator's Report.

13. Although the CLEC parties have not entered into this Stipulation, Advocacy Staff believes it has given serious consideration to the positions they have expressed in both their filed comments and positions taken during this negotiation period, and has attempted to accommodate these positions to the extent possible consistent with the public interest. Advocacy Staff and Qwest stipulate that the Commission should immediately issue a notice

[2] On January 23, 2001, AT&T filed "AT&T's Notice of Violation of the Public Service Commission of Utah's December 6, 2001 Order and Motion To Remand the QPAP to the Commission with Request for Forthwith Determination" objecting to the separate negotiations. Qwest responded on January 24, 2002, objecting to AT&T's notice and requesting that the negotiations be allowed to continue. AT&T filed "AT&T's Notice of Continued Violation of the Public Service Commission of Utah's December 6, 2001 Order and Motion To Compel" on March 4, 2002, reiterating the argument in the original notice.

affording CLECs an opportunity to comment on this Stipulation and recommend that they be given ten days to submit comments to the Commission before the Commission accepts this Stipulation. If CLECs submit comments opposed to this Stipulation, Advocacy Staff and Qwest recommend that they be given seven days to respond to those comments before the Commission acts on this Stipulation. Thereafter, if the Commission believes further proceedings are necessary, Advocacy Staff and Qwest recommend that the Commission conduct a technical conference or hearing at the Commission's earliest convenience.

14. The Order directed that "public policy justification" be provided for the agreements reached on the PAP. In general, Advocacy Staff and Qwest have attempted to balance Staff's interest in allowing future changes in the PAP with Qwest's interest in having certainty regarding its obligations and potential liability under the PAP. They have attempted to balance Advisory Staff's interest in flexibility in approaching issues either on a Utah-only basis or a multi-state basis with Qwest's interest in limiting exposure to potentially duplicative proceedings.

15. Advocacy Staff and Qwest reserve the right to withdraw from this Stipulation or to advocate or support positions different than those set forth in this Stipulation if the Commission rejects all or any portion of the proposed language contained in Attachment 1, recommends any different or additional conditions with respect to such issues or is not able to make a positive recommendation to the FCC based on the November 15, 2001 PAP as modified by Attachment 1. In such case, neither Advocacy Staff nor Qwest shall be bound or prejudiced by the terms of this Stipulation, and each of them shall be entitled to seek reconsideration of the Commission's recommendation regarding changes to the proposed PAP and to take other steps as it deems appropriate.

16. Except to the extent expressly stated in this Stipulation, nothing in this Stipulation shall be (1) cited or construed as precedent or as indicative of Advocacy Staff's or Qwest's positions on a resolved issue or (2) asserted or deemed to mean that either of them agreed with or adopted the other's legal or factual assertions in this or any other proceeding, including those before the Commission, the state courts of Utah or of any other state, the federal courts of the United States of America, or the FCC. The limitation in this paragraph shall not apply to any proceeding to enforce the terms of this Stipulation. In entering into this Stipulation, neither Advocacy Staff nor Qwest is waiving any position regarding the Commission's authority.

17. Advocacy Staff and Qwest acknowledge that this Stipulation is the product of negotiation and compromise and shall not be construed against either of them on the basis that it was the drafter of any or all portions of this Stipulation. This Stipulation constitutes Advocacy Staff's and Qwest's entire resolution of all matters set forth herein, and it supersedes any and all prior oral and written understandings or resolutions on such matters that previously existed or occurred in this proceeding, and no such prior understanding or resolution or related representations shall be relied upon by them.

18. Advocacy Staff and Qwest agree to support acceptance of the Stipulation by the Commission.

DATED: March 27, 2002.

Judith Hooper

Advocacy Staff

Lynn Anton Stang
Qwest Corporation

Gregory B. Monson
Ted D. Smith
STOEL RIVES LLP

Attorneys for Qwest Corporation

CERTIFICATE OF SERVICE

I hereby certify that a copy of STIPULATION BETWEEN ADVOCACY STAFF AND QWEST REGARDING PERFORMANCE ASSURANCE PLAN was served upon all parties on the service list for this docket and upon the Multi-state 271 Super List by electronic mail on March 27, 2002.

ATTACHMENT 1
STIPULATION BETWEEN ADVOCACY STAFF AND QWEST
REGARDING PERFORMANCE ASSURANCE PLAN

TIER 2 TRIGGERS

9.1.3 Notwithstanding the Tier 2 payment provision in section 9.1.2, if Qwest's monthly conforming measurement payment percentage (as measured by the percentage of measurement payment opportunities where the plan did not require Qwest to make a payment to CLECs to the total payment opportunities) falls below 85% for any 5 of 12 consecutive months, it will result in the removal of the Tier 2 "2 out of 3 consecutive month" provision for Tier 2 performance metrics, discussed in section 9.1.2, such that payments for Tier 2 measurements without a Tier 1 counterpart would be made with respect to the first month of nonconforming performance and payments for Tier 2 performance measurements with a Tier 1 counterpart would be made with respect to the second consecutive month of nonconforming performance. All other provisions in section 9.1.2 shall apply. This modification shall be limited to those performance measurements where the percentage of nonconforming sub-measures was below 85% during the same 5 months which invoked this provision. If Qwest's monthly conforming measurement payment percentage is above 90% for any 9 consecutive months following modifications required by this section, the plan provisions shall revert to their state prior to such modifications.

INTEREST

11.1 Payments to CLEC, the State, or the Special Fund shall be made one month following the due date of the performance measurement report for the month for which payment is being made. Qwest will pay interest on any late payment and underpayment at the State of Utah post judgment interest rate, as found in Utah Code Ann. § 15-1-4. On any overpayment, Qwest is allowed to offset future payments by the amount of the overpayment plus interest at the Utah post judgment interest rate.

SPECIAL FUND

11.3 Upon the execution of a memorandum of understanding with the Utah Commission, a Utah Special Fund and a Utah Discretionary Fund shall be created for the purposes and in accordance with section 11.0. The Utah Commission shall appoint a person designated to administer and authorize disbursement of funds. All claims against the funds shall be presented to the Commission's designate and shall be the responsibility of the Utah Commission.

11.3.1 Qwest shall establish the Utah Special Fund and the Utah Discretionary Fund as separate interest bearing escrow accounts. Upon Qwest receiving effective section 271 authority from the FCC for the state of Utah, the Commission shall determine and direct Qwest to deposit into the Utah Special Fund either 1) one-fifth of all Tier 1 payments that exceed the month 1 payment amounts in Table 2 and one-third of all Tier 2 payments or 2) 50% of all Tier 2 payments.

Qwest shall deposit any other Tier 2 payments into the Utah Discretionary Fund. The costs of the escrow accounts will be paid for from the accounts' funds.

11.3.2 The Utah Special Fund shall be created to pay the independent auditor and audit costs for the purpose of a regional audit as specified in section 15.0-15.4 or audit costs associated with a state audit pursuant to section 15.5, and to pay expenses incurred by the Commission in participating in any regional review of the PIDs. Disbursements from the Utah Special Fund shall first be from Tier 2 funds and second from Tier 1 funds. Not less than every two years, Tier 1 funds that are not needed to meet the continuing obligations of the Special Fund shall be returned on a pro-rata basis to CLECs, including any interest not used for fund administration. Other than the transfer of funds allowed in section 11.3.2.1, disbursements from the Utah Discretionary Fund shall be limited to Utah telecommunications initiatives. Any excess funds in the Utah Special Fund may be transferred to the Utah Discretionary Fund at the Commission's discretion.

11.3.2.1 If the Utah Commission chooses not to participate in the regional audit pursuant to sections 15.0-15.4 and the account balance of the Utah Special Fund escrow account is less than $50,000 at the time of any annual audit described in section 15.5, a transfer of funds from the Utah Discretionary Fund to the Utah Special Fund shall be allowed in the amount necessary to bring the Utah Special Fund balance to $50,000.

11.3.3 Notwithstanding the provisions herein, Qwest shall advance sufficient funds to any consolidated Special Fund established by participating states, set up for the purpose of a regional audit as specified in sections 15.0-15.4, not to exceed $200,000 (or $500,000 in the event 6 or more states participate in the regional audit) in order to meet initial claims against that Fund to the extent that contributions from Tier 1 and/or Tier 2 payments are insufficient. Qwest shall be allowed to recover any such advances plus interest at the rate that such an escrow account would have earned from future Tier 2 payments.

CAP

12.1 There shall be an initial procedural annual cap ('initial cap') on the total payments made by Qwest for any consecutive 12-month period beginning with the effective date of the PAP for the State of Utah ("plan year"). The amount of this initial annual cap for the State of Utah shall be $31,000,000 (24% of the 1999 Utah ARMIS Net Return). During any given plan year, Qwest may be required to make payments in excess of the initial annual cap, as described in section 12.2, but in no event shall the annual payments exceed maximum cap of 44% of the 1999 ARMIS Utah Net Return, or $56,000,000. CLEC agrees that these provisions will result in a maximum annual cap that shall apply to the aggregate total of Tier 1 liquidated damages, including any such damages paid pursuant to this Agreement, any other interconnection agreement, or any other payments made for the same underlying activity or omission under any other contract, and Tier 2 assessments or payments made by Qwest for the same underlying activity or omission under any other contract, order or rule.

12.2 If the initial procedural cap described in 12.1, or any subsequent cap established by the Commission pursuant to this section which is under the 44% maximum cap ('existing cap'), is exceeded, or is projected to be exceeded, prior to the end of any plan year, Qwest may file a petition with the Commission seeking relief from making payments in excess of the existing cap. Upon Qwest's filing, the Commission shall initiate an expedited proceeding to determine whether and to what extent Qwest should be required to make payments in excess of the existing cap (but not to exceed the 44% annual cap.) Qwest will not be required to make payments in excess of the existing cap pending the outcome of the proceeding before the Commission. The Commission shall use a public interest standard in deciding whether to raise the existing cap. Qwest will be required to make payments in excess of the existing cap only if the Commission finds, after the expedited proceeding, that the public interest requires the existing cap to be raised. In making its determination on whether the public interest requires such action, one of the Commission's primary considerations in raising or maintaining an existing cap shall be whether Qwest could have remained below the cap through reasonable and prudent efforts. In such a proceeding, Qwest shall have the burden of establishing that it could not have remained below the existing cap through the use of reasonable and prudent effort. If the Commission determines that Qwest should make payments in excess of the existing cap, Qwest shall be required to make any and all payments that were suspended with interest and continue to make payments pursuant to the new cap established by the Commission. If no petition is filed, Qwest shall be required to continue to make Tier 1 and Tier 2 payments under the plan for the remainder of the plan year up to an annual cap of 44% of 1999 ARMIS Utah Net Return.

EQUALIZATION

12.3 If the annual cap is reached, each CLEC shall, as of the end of the plan year, be entitled to receive the same percentage of its total calculated Tier 1 payments. In order to preserve the operation of the annual cap, the percentage of equalization shall take place as follows:

> 12.3.1 The amount by which any month's total year-to-date Tier 1 and Tier 2 payments exceeds the cumulative monthly cap (defined as $1/12^{th}$ of the annual cap times the cumulative number of months to date) shall be calculated and apportioned between Tier 1 and Tier 2 according to the percentage that each bore of total payments for the year-to-date. The Tier 1 apportionment resulting of this calculation shall be known as the "Tracking Account."
>
> 12.3.2 The Tier 1 apportionment shall be debited against the monthly payment due to each CLEC, by applying to the year-to-date payments received by each the percentage necessary to generate the required total Tier 1 amount.
>
> 12.3.3 The Tracking Amount shall be apportioned among all CLECs so as to provide each with payments equal in percentage of its total year to date Tier 1 payment calculations.
>
> 12.3.4 This calculation shall take place in the first month that the year-to-date total Tier 1 and Tier 2 payments are expected to exceed the cumulative monthly cap and for each month of that year thereafter. Qwest shall recover any debited amounts by reducing payments due to any CLEC for that month and any succeeding months, as necessary.

OFFSET

13.6 This PAP contains a comprehensive set of performance measurements, statistical methodologies, and payment mechanisms that are designed to function together, and only together, as an integrated whole. To elect the PAP, CLEC must adopt the PAP in its entirety in its interconnection agreement with Qwest in lieu of other alternative standards or relief. Where alternative standards or remedies for Qwest's wholesale performance are available under rules, orders, or contracts, including interconnection agreements, CLEC will be limited to either PAP standards and remedies or the standards and remedies available under rules, orders or contracts and CLECs choice of remedies shall be specified in its interconnection agreement.

13.7 Qwest shall be entitled to seek an offset against any recovery by CLEC under any noncontractual theory of liability (including but not limited to tort and antitrust claims). Nothing in this PAP shall be read as permitting an offset related to Qwest payments related to CLEC or third-party physical damage to property or personal injury.

13.8 To the extent Qwest believes that some Tier 2 payments required to be made under this PAP would duplicate payments that have been assessed by or on behalf of the Commission pursuant to any service quality rules or Commission orders, Qwest may make such Tier 2 payments to a special interest bearing escrow account and then dispute the payments before the Utah Commission. If Qwest can show that the payments relate to the same underlying activity or omission, it may retain the Tier 2 payments and any interest accrued on such payments.

AUDITS

15.0 Integrated Audit Program/Investigations of Performance Results

15.1 Audits of the PAP shall be conducted in a two-year cycle under the auspices of the participating Commissions in accordance with a detailed audit plan developed by an independent auditor retained for a two-year period. The participating Commissions shall select the independent auditor with input from Qwest and CLECs.

15.1.2 The participating Commissions shall form an oversight committee of Commissioners who will choose the independent auditor and approve the audit plan. Any disputes as to the choice of auditor or the scope of the audit shall be resolved through a vote of the chairs of the participating commissions pursuant to Section 15.1.5.

15.1.3 The audit plan shall be conducted over two years. The audit plan will identify the specific performance measurements to be audited, the specific tests to be conducted, and the entity to conduct them. The audit plan will give priority to auditing the higher risk areas identified in the OSS report. The two-year cycle will examine risks likely to exist across that period and the past history of testing, in order to determine what combination of high and more moderate areas of risk should be examined during the two-year cycle. The first year of a two-year cycle will concentrate on areas most likely to require follow-up in the second year.

15.1.4 The audit plan shall be coordinated with other audit plans that may be conducted by other state commissions so as to avoid duplication, shall not impede Qwest's ability to comply with the other provisions of the PAP and should be of a nature and scope that it can be conducted consistent with the reasonable course of Qwest's business operations.

15.1.5 Any dispute arising out of the audit plan, the conduct of the audit, or audit results shall be resolved by the oversight committee of Commissioners. Decisions of the oversight committee of Commissioners may be appealed to a committee of the chairs of the participating Commissions.

15.2 Qwest may make management processes more accurate or more efficient to perform without sacrificing accuracy. These changes are at Qwest's discretion but will be reported to the independent auditor in quarterly meetings in which the auditor may ask questions about changes made in the Qwest measurement regimen. The meetings, which will be limited to Qwest and the independent auditor, will permit an independent assessment of the materiality and propriety of any Qwest changes, including, where necessary, testing of the change details by the independent auditor. The information gathered by the independent auditor may be the basis for reports by the independent auditor to the participating Commissions and, where the commissions deem it appropriate, to other participants.

15.3 In the event of a disagreement between Qwest and CLEC as to any issue regarding the accuracy or integrity of data collected, generated, and reported pursuant to the PAP, Qwest and the CLEC shall first consult with one another and attempt in good faith to resolve the issue. If an issue is not resolved within 45 days after a request for consultation, CLEC and Qwest may, upon a demonstration of good cause, (e.g., evidence of material errors or discrepancies) request an independent audit to be conducted, at the initiating party's expense. The independent auditor will assess the need for an audit based upon whether there exists a material deficiency in the data or whether there exists an issue not otherwise addressed by the audit plan for the current cycle. The dispute resolution provision of section 18.0 is available to any party questioning the independent auditor's decision to conduct or not conduct a CLEC request audit and the audit findings, should such an audit be conducted. An audit may not proceed until dispute resolution is completed. Audit findings will include: (a) general applicability of findings and conclusions (i.e., relevance to CLECs or jurisdictions other than the ones causing audit initiation), (b) magnitude of any payment adjustments required and, (c) whether cost responsibility should be shifted based upon the materiality and clarity of any Qwest non-conformance with measurement requirements (no pre-determined variance is appropriate, but should be based on the auditor's professional judgment). CLEC may not request an audit of data more than three years from the later of the provision of a monthly credit statement or payment due date.

15.4 Expenses for the regional audit of the PAP and any other related expenses, except that which may be assigned under section 15.3, shall be paid first from the Tier 2 funds in the Special Fund. The remainder of audit expenses will be paid one half from Tier 1 funds in the Special Fund and one half by Qwest.

15.5 If the Utah Commission chooses not to participate in the regional audit described in sections 15.0-15.4 it may conduct an audit with the monies contained in the Utah Special Fund pursuant to the following:

A. The audit shall be limited to (1) problem areas requiring further oversight as specifically identified in a previous audit; (2) any submeasurements changed or being changed from a manual to an electronic system; (3) any submeasurement responsible for at least 20% of the payments paid by Qwest over the prior year, and (4) whether Qwest is exercising due diligence in evaluating which, if any, performance data can be properly excluded from its performance measurements.

B. The first audit pursuant to this section 15.5 shall be conducted no sooner than twelve months after Qwest receives effective 271 authority from the FCC for the state of Utah and may be conducted every twelve months thereafter. Any audits conducted pursuant to this section 15.5 shall be conducted by the same auditor retained to conduct the regional audit unless the Commission, for good cause (i.e., conflict, price, integrity, or viability of the firm), finds the regional auditor is unacceptable.

C. No investigation or audit of any performance measurement shall be conducted within 12 months of any audit of the same performance measurement or submeasurement, including any audit conducted under the regional audit program or by another state or by a CLEC so long as the results of the other audits are made available to the Commission and the Division of Public Utilities and such audit is applicable to Utah specific data. If any audit has been conducted but does not include Utah specific data, the Commission may audit the performance measurement to the degree necessary to verify Utah specific results without duplicating relevant parts of the prior audit, unless the Commission finds the data produced by a performance measurement to be unreliable.

D. Any audit conducted pursuant to this section must be designed and conducted to specifically address the perceived problem or condition that triggers the audit.

E. No audit or investigation requested pursuant to this section 15.5 shall be duplicative of any other audit. Any audit requested pursuant to this section shall be coordinated with other audits including audits planned or conducted by the regional audit program or pursuant to any other PAP, shall be planned and conducted so as to avoid duplication and interference with Qwest's ability to comply with the other provisions of the PAP, and shall be of a nature and scope that it can be conducted within the reasonable course of Qwest's business. Qwest shall not be required to audit more than three performance measurements at the same time and Qwest's resources shall be allocated first to any ongoing regional audits.

SIX MONTH REVIEW

16.1 Every six (6) months, beginning six months after the effective date of Section 271 approval by the FCC for the state of Utah, Qwest, CLECs, the Commission, and the Utah Division of Public Utilities shall participate in a review of the performance measurements to determine whether measurements should be added, deleted, or modified; whether the applicable benchmark standards should be modified or replaced by parity standards; and whether to move a classification of a measurement to High, Medium, or Low, Tier 1 or Tier 2. The criterion for reclassification of a measurement shall be whether the actual volume of data points was less or greater than anticipated. Criteria for review of performance measurements, other than for possible reclassification, shall be whether there exists an omission or failure to capture intended performance, and whether there is duplication of another measurement. Any reclassification of performance measurements must be approved by Qwest. Any disputes regarding adding, deleting, or modifying performance measurements shall be resolved pursuant to a proceeding before the Commission and subject to judicial review. No new performance measurements shall be added to this PAP that have not been subject to observation as diagnostic measurements for a period of 6 months. Any changes made at the six-month review pursuant to this section and as a result of a final non-appealable decision shall upon finality apply to and modify this agreement between CLEC and Qwest.

Qwest shall not be liable for making any payments under the QPAP that result from changes made pursuant to the preceding paragraph and section 16.3, that exceed 10% of the monthly payments that Qwest would have made absent the effect of such changes as a whole. Such payment limitation shall be accomplished by factoring the payments resulting from the changes to ensure that such payments remain within 10% of the payments Qwest would have made absent such changes.

ESCALATION

16.2. If at the time the Commission conducts any six-month review, Qwest is making Tier 1 sub-measurement payments that have reached the 6 month payment escalation level, as described in section 6.2 and Table 2 of this plan, the Commission may consider whether the Tier 1 payment for any such measurements should continue to escalate beyond the six month payment level identified in Table 2. The Commission shall base its decision on whether Qwest, through reasonable and prudent efforts, could have limited such payment and whether continued escalation is in the public interest. For those measures that the Commission decides payments should escalate beyond 6 months, any escalated payments beyond 12 months shall be deemed Tier 2 payments, payable to the state in accordance with section 7.5.

16.3 If the Commission determines that the payment levels for the specified performance measurements should continue to escalate, based on the criterion in section 16.2, Qwest shall add $100 per month to the 6 month Tier 1 payment levels in Table 2 for each consecutive month of non-conforming performance. For payment levels that have escalated beyond 6 months there shall be an accelerated payment de-escalation process based on consecutive months of conforming performance, as follows. For payment levels that have escalated 9 months or more, 3 consecutive months of conforming performance will reduce the payments to the 6-month level. After 3 more consecutive months of conforming performance, the payment level will reduce to the base amount. Except as specifically provided by the accelerated payment de-escalation process in this section, payment de-escalation shall occur in accordance the 'step down' provision described in section 6.2.1. Performance measurements that have been subject to escalation beyond 6 months, in accordance with this section, but which subsequently de-escalate below the 6 month payment level, would only be subject to further escalation beyond 6 months if decided by the Commission in a subsequent 6 month review in accordance with this section 16.3 and section 16.2.

16.4 Any changes made pursuant to sections 16.2 and 16.3 shall be subject to and included in the calculation and application of the 10% payment collar identified in section 16.1.

VOLUNTARY PLAN

17.0 Voluntary Performance Assurance Plan

This PAP represents Qwest's voluntary offer to provide performance assurance. Nothing in the PAP or in any conclusion of non-conformance of Qwest's service performance with the standards defined in the PAP shall be construed to be, of itself, non-conformance with the Act. Except for those changes expressly provided in sections 12.2, 9.1.3 and 16.1, no changes shall be made to this QPAP.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN RE: APPLICATION FOR interLATA RELIEF OF U S WEST COMMUNICATIONS INC. PURSUANT TO SECTION 271 OF THE TELECOMMUNICATIONS ACT OF 1996	Docket No. TC01-165 CERTIFICATE OF SERVICE

I, Mary S. Hobson, do hereby certify that I am a member of the law firm of Stoel Rives LLP, and on this ___ day of April, 2002, true and corrected copies of Qwest's Submission of Alternative QPAP Proposals that was filed with the South Dakota Public Utilities Commission on April 26, 2002, were sent to the following intervenors:

Steven H. Weigler — **via E-Mail and Overnight Delivery**
AT&T Communications of the Midwest
1875 Lawrence Street
Denver, CO
Email: weigler@lga.att.com

Black Hills Fiber Com — **via E-Mail and Overnight Delivery**
Gregory J. Bernard
Morrill, Thomas, Nooney & Braun
PO Box 8108
Rapid City, SD 57709

Midcontinent Communications — **via E-Mail and Overnight Delivery**
David A. Gerdes
May, Adam, Gerdes & Thompson LLP
503 S. Pierre St.
Pierre, SD 57501-0160

Harlan Best, Staff Analyst — **via Overnight Delivery**
Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

Karen Cremer, Staff Attorney — **via Overnight Delivery**
Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

____
Mary S. Hobson
Attorney for Qwest Corporation

Exhibit K
PERFORMANCE ASSURANCE PLAN

1.0 Introduction

1.1 As set forth in this Agreement, Qwest and CLEC voluntarily agree to the terms of the following Performance Assurance Plan ("PAP"), prepared in conjunction with Qwest's application for approval under Section 271 of the Telecommunications Act of 1996 (the "Act") to offer in-region long distance service.

2.0 Plan Structure

2.1 The PAP is a two-tiered, self-executing remedy plan. CLEC shall be provided with Tier 1 payments if, as applicable, Qwest does not provide parity between the service it provides to CLEC and that which it provides to its own retail customers, or Qwest fails to meet applicable benchmarks.

2.1.1 As specified in section 7.0, if Qwest fails to meet parity and benchmark standards on an aggregate CLEC basis, Qwest shall make Tier 2 payments to a Fund established by the state regulatory commission or, if required by existing law, to the state general fund.

2.2 As specified in sections 6.0 and 7.0 and Attachments 1 and 2, payment is generally on a per occurrence basis, (i.e., a set dollar payment times the number of non-conforming service events). For the performance measurements which do not lend themselves to per occurrence payment, payment is on a per measurement basis, (i.e., a set dollar payment). The level of payment also depends upon the number of consecutive months of non-conforming performance, (i.e., an escalating payment the longer the duration of non-conforming performance).

2.3 Qwest shall be in conformance with the parity standard when service Qwest provides to CLEC is equivalent to that which it provides to its retail customers. The PAP relies upon statistical scoring to determine whether any difference between CLEC and Qwest performance results is significant, that is, not attributable to simple random variation. Statistical parity shall exist when performance results for CLEC and for Qwest retail analogue result in a z-value that is no greater than the critical z-values listed in the Critical Z-Statistical Table in section 5.0

2.4 For performance measurements that have no Qwest retail analogue, agreed upon benchmarks shall be used. Benchmarks shall be evaluated using a "stare and compare" method. For example, if the benchmark is for a particular performance measurement is 95% or better, Qwest performance results must be at least 95% to meet the benchmark. Percentage benchmarks will be adjusted to round the allowable number of misses up or down to the closest integer, except when a benchmark standard and low CLEC volume are such that a

100% performance result would be required to meet the standard and has not been attained. In such a situation, the determination of whether Qwest meets or fails the benchmark standard will be made using performance results for the month in question, plus a sufficient number of consecutive months so that a 100% performance result would not be required to meet the standard. For purposes of section 6.2, a meet or fail determined by this procedure shall count as a single month.

3.0 Performance Measurements

3.1 The performance measurements included in the PAP are set forth in Attachment 1. Each performance measurement identified is defined in the Performance Indicator Definitions ("PIDs") developed in the ROC Operational Support System ("OSS") collaborative, and which are included in the SGAT at Exhibit B. The measurements have been designated as Tier 1, Tier 2, or both Tier 1 and Tier 2 and given a High, Medium, or Low designation.

4.0 Statistical Measurement

4.1 Qwest uses a statistical test, namely the modified "z-test," for evaluating the difference between two means (i.e., Qwest and CLEC service or repair intervals) or two percentages (e.g., Qwest and CLEC proportions), to determine whether a parity condition exists between the results for Qwest and the CLEC(s). The modified z-tests shall be applicable if the number of data points are greater than 30 for a given measurement. For testing measurements for which the number of data points are 30 or less, Qwest will use a permutation test to determine the statistical significance of the difference between Qwest and CLEC.

4.2 Qwest shall be in conformance when the monthly performance results for parity measurements (whether in the form of means, percents, or proportions and at the equivalent level of disaggregation) are such that the calculated z-test statistics are not greater than the critical z-values as listed in Table 1, section 5.0.

4.3 Qwest shall be in conformance with benchmark measurements when the monthly performance result equals or exceeds the benchmark, if a higher value means better performance, and when the monthly performance result equals or is less than the benchmark if a lower value means better performance.

The formula for determining parity using the modified z-test is:

$$z = DIFF / \sigma_{DIFF}$$

Where:

$DIFF = M_{Qwest} - M_{CLEC}$

M_{QWEST} = Qwest average or proportion

M_{CLEC} = CLEC average or proportion

σ_{DIFF} = square root [σ^2Qwest (1/ n $_{CLEC}$ + 1/ n $_{Qwest}$)]

σ^2_{Qwest} = calculated variance for Qwest

n_{Qwest} = number of observations or samples used in Qwest measurement

n_{CLEC} = number of observations or samples used in CLEC measurement

The modified z-tests will be applied to reported parity measurements that contain more than 30 data points.

In calculating the difference between Qwest and CLEC performance, the above formula applies when a larger Qwest value indicates a better level of performance. In cases where a smaller Qwest value indicates a higher level of performance, the order is reversed, i.e., M_{CLEC} - M_{QWEST}.

4.3.1 For parity measurements where the number of data points is 30 or less, Qwest will apply a permutation test to test for statistical significance. Permutation analysis will be applied to calculate the z-statistic using the following logic:

Calculate the modified z-statistic for the actual arrangement of the data
Pool and mix the CLEC and Qwest data sets
Perform the following 1000 times:
- Randomly subdivide the pooled data sets into two pools, one the same size as the original CLEC data set (n_{CLEC}) and one reflecting the remaining data points, and one reflecting the remaining data points, (which is equal to the size of the original Qwest data set or n_{QWEST}).
- Compute and store the modified z-test score (Z_S) for this sample.

Count the number of times the z-statistic for a permutation of the data is greater than the actual modified z- statistic
Compute the fraction of permutations for which the statistic for the rearranged data is greater than the statistic for the actual samples

If the fraction is greater than α, the significance level of the test, the hypothesis of no difference is not rejected, and the test is passed. The α shall be .05 when the critical z value is 1.645 and .15 when the critical z value is 1.04.

5.0 Critical Z-Value

5.1 The following table shall be used to determine the critical z-value that is referred to in section 6.0. It is based on the monthly business volume of the CLEC for the particular performance measurements for which statistic testing is being performed.

TABLE 1: CRITICAL Z-VALUE

CLEC volume (Sample size)	LIS Trunks, UDITs, Resale, UBL-DS1 and DS-3	All Other
1-10	1.04*	1.645
11-150	1.645	1.645
151-300	2.0	2.0
301-600	2.7	2.7
601-3000	3.7	3.7
3001 and above	4.3	4.3

* The 1.04 applies for individual month testing for performance measurements involving LIS trunks and DS-1 and DS-3 that are UDITs, Resale, or Unbundled Loops. The performance measurements are OP-3d/e, OP-4d/e, OP-5, OP-6-4/5, MR-5a/b, MR-7d/e, and MR-8. For purposes of determining consecutive month misses, 1.645 shall be used. Where performance measurements disaggregate to zone 1 and zone 2, the zones shall be combined the purposes of statistical testing.

6.0 Tier 1 Payments to CLEC

6.1 Tier 1 payments to CLEC shall be made solely for the performance measurements designated as Tier 1 on Attachment 1. The payment amount for non-conforming service varies depending upon the designation of performance measurements as High, Medium, and Low and the duration of the non-conforming service condition as described below. Non-conforming service is defined in section 4.0.

6.1.1 Determination of Non-Conforming Measurements: The number of performance measurements that are determined to be non-conforming and, therefore, eligible for Tier 1 payments, are limited according to the critical z-value shown in Table 1, section 5.0. The critical z-values are the statistical standard that determines for each CLEC performance measurement whether Qwest has met parity. The critical z-value is selected from Table 1 according to the monthly CLEC volume for the performance measurement. For instance, if the CLEC sample size for that month is 100, the critical z-value is 1.645 for the statistical testing of that parity performance measurement.

6.2 Determination of the Amount of Payment: Tier 1 payments to CLEC, except as provided for in sections 6.3 and 10.0, are calculated and paid monthly based on the number of performance measurements exceeding the critical z-value. Payments will be made on either a per occurrence or per measurement basis, depending upon the performance measurement, using the dollar amounts specified in Table 2 below. The dollar amounts vary depending upon whether the performance measurement is designated High, Medium, or Low and escalate depending upon the number of consecutive months for which Qwest has not met the standard for the particular measurement.

6.2.1 The escalation of payments for consecutive months of non-conforming service will be matched month for month with de-escalation of payments for every month of conforming service. For example, if Qwest has four consecutive monthly "misses" it will make payments that escalate from month 1 to month 4 as shown in Table 2. If, in the next month, service meets the standard, Qwest makes no payment. A payment "indicator" de-escalates down from month 4 to month 3. If Qwest misses the following month, it will make payment at the month 3 level of Table 2 because that is where the payment "indicator" presently sits. If Qwest misses again the following month, it will make payments that escalate back to the month 4 level. The payment level will de-escalate back to the original month 1 level only upon conforming service sufficient to move the payment "indicator" back to the month 1 level.

6.2.2 For those performance measurements listed on Attachment 2 as "Performance Measurements Subject to Per Measurement Caps," payment to a CLEC in a single month shall not exceed the amount listed in Table 2 below for the "Per Measurement" category. For those performance measurements listed on Attachment 2 as "Performance Measurements Subject to Per Measurement Payments," payment to a CLEC will be the amount set forth in Table 2 below under the section labeled "per measurement."

TABLE 2: TIER-1 PAYMENTS TO CLEC

Per Occurrence						
Measurement Group	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6 and each following month
High	$150	$250	$500	$600	$700	$800
Medium	$ 75	$150	$300	$400	$500	$600
Low	$ 25	$ 50	$100	$200	$300	$400

Per Measurement Cap						
Measurement Group	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6 and each following month
High	$25,000	$50,000	$75,000	$100,000	$125,000	$150,000
Medium	$10,000	$20,000	$30,000	$ 40,000	$ 50,000	$ 60,000
Low	$ 5,000	$10,000	$15,000	$ 20,000	$ 25,000	$ 30,000

6.3 For collocation, CP-2 and CP-4 performance measurements shall be relied upon for delineation of collocation business rules. For purposes of calculating Tier 1 payments, collocation jobs and collocation feasibility studies that are later than the due date will have a per day payment applied according to Table 3. The per day payment will be applied to any collocation job in which the feasibility study is provided or the collocation installation is completed later than the scheduled date. The calculation of the payment amount will be performed by applying the per day payment amounts as specified in Table 3. Thus, for days 1 through 10, the payment is $150 per day. For days 11 through 20, the payment is $300 per day and so on.

TABLE 3: TIER-1 COLLOCATION PAYMENTS TO CLECS

Days Late	Completion Date	Feasibility Study
1 to 10 days	$150/day	$45/day
11 to 20 days	$300/day	$90/day
21 to 30 days	$450/day	$135/day
31 to 40 days	$600/day	$180/day
More than 40 days	$1,000/day	$300/day

6.4 A minimum payment calculation shall be performed at the end of each year for each CLEC with annual order volumes of no more than 1,200. The payment shall be calculated by multiplying $2,000 by the number of months in which at least one payment was made to the CLEC. To the extent that the actual CLEC payment for the year is less than the product of the preceding calculation, Qwest shall make an additional payment equal to the difference.

7.0 Tier 2 Payments to the State

7.1 Payments to the State shall be limited to the performance measurements designated in section 7.4 for Tier 2 per measurement payments and in Attachment 1 for per occurrence payments and which have at least 10 data points each month for the period payments are being calculated. Similar to the Tier 1 structure, Tier 2 measurements are categorized as High, Medium, and Low and the amount of payments for non-conformance varies according to this categorization.

7.2 Determination of Non-Conforming Measurements: The determination of non-conformance will be based upon the aggregate of all CLEC data for each Tier 2 performance measurement. Non-conforming service is defined in section 4.2 (for parity measurements) and 4.3 (for benchmark measurements), except that a 1.645 critical z-value shall be used for all parity measurements but MR-2 and OP-2. The critical z-value is the statistical standard that determines for each performance measurement whether Qwest has met parity.

7.3 Determination of the Amount of Payment: Except as provided in section 7.4, Tier 2 payments are calculated and paid monthly based on the number of performance measurements failing performance standards for a third consecutive month, or if two out of three consecutive months in the 12 month period have been missed, the second consecutive month for Tier 2 measurements with Tier 1 counterparts and one month for Tier 2 measurements that do not have Tier 1 counterparts. Payment will be made on either a per occurrence or per measurement basis, whichever is applicable to the performance measurement, using the dollar amounts specified in Table 4 or Table 5 below. Except as provided in section 7.4, the dollar amounts vary depending upon whether the performance measurement is designated High, Medium, or Low.

9.3.1 For those Tier 2 measurements listed on Attachment 2 as "Performance Measurements Subject to Per Measurement Caps," payment to the State in a single month shall not exceed the amount listed in Table 4 for the "Per Measurement" category.

TABLE 4: TIER-2 PAYMENTS TO STATE FUNDS

Per Occurrence

Measurement Group	
High	$500
Medium	$300
Low	$200

Per Measurement/Cap

Measurement Group	
High	$75,000
Medium	$30,000
Low	$20,000

9.4 Performance Measurements Subject to Per Measurement Payment: The following Tier 2 performance measurements shall have their performance results measured on a region-wide (14 state) basis. Failure to meet the performance standard, therefore, will result in a per measurement payment in each of the Qwest in-region 14 states adopting this PAP. The performance measurements are:

GA-1: Gateway Availability - IMA-GUI
GA-2: Gateway Availability - IMA-EDI
GA-3: Gateway Availability – EB-TA
GA-4: System Availability – EXACT
GA-6: Gateway Availability – GUI-Repair
PO-1: Pre-Order/Order Response Times
OP-2: Call Answered within Twenty Seconds – Interconnect Provisioning Center
MR-2: Calls Answered within Twenty Seconds – Interconnect Repair Center

GA-1 has three sub-measurements: GA-1A, GA-1B, and GA-1C. PO-1 shall have two sub-measurements: PO-1A and PO-1B. PO-1A and PO-1B shall have their transaction types aggregated together.

For these measurements, Qwest will make a Tier 2 payment based upon monthly performance results according to Table 5: Tier 2 Per Measurement Payments to State Funds.

TABLE 5: TIER-2 PER MEASUREMENT PAYMENTS TO STATE FUNDS

Measurement	Performance	State Payment	14 State Payment
GA-1,2,3,4,6	1% or lower	$1,000	$14,000
	>1% to 3%	$10,000	$140,000
	>3% to 5%	$20,000	$280,000
	>5%	$30,000	$420,000
PO-1	2 sec. Or less	$1,000	$14,000

	>2 sec. to 5 sec.	$5,000	$70,000
	>5 sec. to 10 sec.	$10,000	$140,000
	>10 sec.	$15,000	$210,000
OP-2/MR-2	1% or lower	$1,000	$14,000
	>1% to 3%	$5,000	$70,000
	>3% to 5%	$10,000	$140,000
	>5%	$15,000	$210,000

7.5 Payment of Tier 2 Funds: Payments to a state fund shall be used for any purpose determined by the Commission that is allowed to it by state law. If the Commission is not permitted by state law to receive or administer Tier 2 payments, the payments shall be made to the state general fund or to such other source as may be provided for under state law.

8.0 Step by Step Calculation of Monthly Tier 1 Payments to CLEC

8.1 Application of the Critical Z-Values: Qwest shall identify the Tier 1 parity performance measurements that measure the service provided to CLEC by Qwest for the month in question and the critical z-value from Table 1 in section 5.0 that shall be used for purposes of statistical testing for each particular performance measurement. The statistical testing procedures described in section 4.0 shall be applied. For the purpose of determining the critical z-values, each disaggregated category of a performance measurement is treated as a separate sub-measurement. The critical z-value to be applied is determined by the CLEC volume at each level of disaggregation or sub-measurement.

8.2 Performance Measurements for which Tier 1 Payment is Per Occurrence:

8.2.1 Performance Measurements that are Averages or Means:

8.2.1.1 Step 1: For each performance measurement, the average or the mean that would yield the critical z-value shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

8.2.1.2 Step 2: The percentage differences between the actual averages and the calculated averages shall be calculated. The calculation is % diff = (CLEC result – Calculated Value)/Calculated Value. The percent difference shall be capped at a maximum of 100%. In all calculations of percent differences in sections 8.0 and 9.0, the calculated percent differences is capped at 100%.

8.2.1.3 Step 3: For each performance measurement, the total number of data points shall be multiplied by the percentage calculated in the previous step and the per occurrence dollar amounts from the Tier 1 Payment Table shall determine the payment to the CLEC for each non-conforming performance measurement.

8.2.2 Performance Measurements that are Percentages:

8.2.2.1 Step 1: For each performance measurement, the percentage that would yield the critical z-value shall be calculated. The same denominator as the one used in calculating the z- statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

8.2.2.2 Step 2: The difference between the actual percentages for the CLEC and the calculated percentages shall be determined.

8.2.2.3 Step 3: For each performance measurement, the total number of data points shall be multiplied by the difference in percentage calculated in the previous step, and the per occurrence dollar amount taken from the Tier 1 Payment Table, to determine the payment to the CLEC for each non-conforming performance measurement.

8.2.3 Performance Measurements that are Ratios or Proportions:

8.2.3.1 Step 1: For each performance measurement the ratio that would yield the critical z-value shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

8.2.3.2 Step 2: The absolute difference between the actual rate for the CLEC and the calculated rate shall be determined.

8.2.3.3 Step 3: For each performance measurement, the total number of data points shall be multiplied by the difference calculated in the previous step, and the per occurrence dollar amount taken from the Tier 1 Payment Table, to determine the payment to the CLEC for each non-conforming performance measurement.

8.3 Performance Measurements for which Tier 1 Payment is Per Measure:

8.3.1 For each performance measurement where Qwest fails to meet the standard, the payment to the CLEC shall be the dollar amount shown on the "per measure" portion of Table 2: Tier 1 Payments to CLEC.

9.0 Step by Step Calculation of Monthly Tier 2 Payments to State Funds

9.1.1 Application of the Critical Z-Value: Qwest shall identify the Tier 2 parity performance measurements that measure the service provided by Qwest to all CLECs for the month in question. The statistical testing procedures described in section 4.0 shall be applied, except that a 1.645 critical z-value shall be used for all parity measurements but MR-2 and OP-2.

9.1.2 To determine if Tier 2 payments for performance measurements listed on Attachment 1 shall be made in the current month, the following shall be determined. For Tier 2 measurements that have Tier 1 counterparts, it shall be determined whether Qwest missed the performance standard for three consecutive months, or if Qwest has missed the standard in any two out of three consecutive months for the 12 month period, for two consecutive months. For Tier 2 measurements that do not have Tier 1 counterparts, it shall be determined whether Qwest missed the performance standard for three consecutive months, or if Qwest has missed the standard in any two out of three consecutive months for the 12 month period, for the current month. If any of these conditions are met and there are at least 10 data points for the measurement in each month, a Tier 2 payment will be calculated and paid as described below and will continue in each succeeding month until Qwest's performance meets the applicable standard.

9.1.3 Notwithstanding the Tier 2 payment provision in section 9.1.2, if Qwest's monthly conforming measurement payment percentage (as measured by the percentage of measurement payment opportunities where the plan did not require Qwest to make a payment to CLECs to the total payment opportunities) falls below 85% for any 5 of 12 consecutive months, it will result in the removal of the Tier 2 "2 out of 3 consecutive month" provision for Tier 2 performance metrics, discussed in section 9.1.2, such that payments for Tier 2 measurements without a Tier 1 counterpart would be made with respect to the first month of nonconforming performance and payments for Tier 2 performance measurements with a Tier 1 counterpart would be made with respect to the second consecutive month of nonconforming performance. All other provisions in section 9.1.2 shall apply. This modification shall be limited to those performance measurements where the percentage of nonconforming sub-measures was below 85% during the same 5 months which invoked this provision. If Qwest's monthly conforming measurement payment percentage is above 90% for any 9 consecutive months following modifications required by this section, the plan provisions shall revert to their state prior to such modifications.

9.2 Performance Measurements for which Tier 2 Payment is Per Occurrence:

9.2.1 Performance Measurements that are Averages or Means:

9.2.1.1 Step 1: The monthly average or the mean for each performance measurement that would yield the critical z-value for each month shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

9.2.2.2 Step 2: The percentage difference between the actual averages and the calculated averages for each month shall be calculated . The calculation for parity measurements is % diff = (actual average – calculated average)/calculated average. The percent difference shall be capped at a maximum of 100%. In all calculations of percent differences in section 8.0 and section 9.0, the calculated percent difference is capped at 100%.

9.2.2.3 Step 3: For each performance measurement, the total number of data points each month shall be multiplied by the percentage calculated in the previous step. The average for three months (rounded to the nearest integer) shall be calculated and multiplied by the result of the per occurrence dollar amount taken from the Tier 2 Payment Table to determine the payment to the State for each non-conforming performance measurement.

9.3 Performance Measurements that are Percentages:

9.3.1 Step 1: For each performance measurement, the monthly percentage that would yield the critical z-value for each month shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

9.3.1.2 Step 2: The difference between the actual percentages and the calculated percentages for each of the three non-conforming months shall be calculated. The calculation for parity measurement is diff = (CLEC result – calculated percentage). This formula shall be applicable where a high value is indicative of poor performance. The formula shall be reversed where high performance is indicative of good performance.

9.3.1.3 Step 3: For each performance measurement, the total number of data points for each month shall be multiplied by the difference in percentage calculated in the previous step. The average for three months shall be calculated (rounded to the nearest integer) and multiplied by the result of the per occurrence dollar amounts taken from the Tier 2 Payment Table to determine the payment to the State.

9.4 Performance Measurements that are Ratios or Proportions:

9.4.1 Step 1: For each performance measurement, the ratio that would yield the critical z-value for each month shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

9.4.1.1 Step 2: The difference between the actual rate for the CLEC and the calculated rate for each month of the non-conforming three-month period shall be calculated. The calculation is: diff = (CLEC rate – calculated rate). This formula shall apply where a high value is indicative of poor performance. The formula shall be reversed where high performance is indicative of good performance.

9.4.1.2 Step 3: For each performance measurement, the total number of data points shall be multiplied by the difference calculated in the previous step for each month. The average for three months shall be calculated (rounded to the nearest integer) and multiplied by the result of the per occurrence dollar amounts taken from the Tier 2 Payment Table to determine the payment to the State.

9.5 Performance Measurements for which Tier 2 Payment is Per Measure:

9.5.1 For each performance measurement where Qwest fails to meet the standard, the payment to the State Fund shall be the dollar amount shown on the "per measure" portion of the Tier 2 Payment Table.

10.0 Low Volume, Developing Markets

10.1 For certain qualifying performance standards, if the aggregate monthly volumes of CLECs participating in the PAP are more than 10, but less than 100, Qwest will make Tier 1 payments to CLECs for failure to meet the parity or benchmark standard for the qualifying performance sub-measurements. The qualifying sub-measurements are the UNE-P (POTS), megabit resale, and ADSL qualified loop product disaggregation of OP-3, OP-4, OP-5, MR-3, MR-5, MR-7, and MR-8. If the aggregate monthly CLEC volume is greater than 100, the provisions of this section shall not apply to the qualifying performance sub-measurement.

10.2 The determination of whether Qwest has met the parity or benchmark standards will be made using aggregate volumes of CLECs participating in the PAP. In the event Qwest does not meet the applicable performance standards, a total payment to affected CLECs will be determined in accordance with the high, medium, low designation for each performance measurement (see Attachment 1) and as described in section 8.0, except that CLEC aggregate volumes will be used. In the event the calculated total payment amount to CLECs is less than $5,000, a minimum payment of $5,000 shall be made. The resulting total payment amount to CLECs will be apportioned to the affected CLECs based upon each CLEC's relative share of the number of total service misses.

10.3 At the six (6)-month reviews, Qwest will consider adding to the above list of qualifying performance sub-measurements, new products disaggregation representing new modes of CLEC entry into developing markets.

11.0 Payment

11.1 Payments to CLEC, the State, or the Special Fund shall be made one month following the due date of the performance measurement report for the month for which payment is being made. Qwest will pay interest on any late payment and underpayment at the ~~prime~~**State of Utah post judgment interest** rate, as ~~reported~~**found** in ~~the Wall Street Journal~~**Utah Code Ann. § 15-1-4.** On any overpayment, Qwest is allowed to offset future payments by the amount of the overpayment plus interest at the ~~prime~~**Utah post judgment interest** rate.

11.2 Payment to CLEC shall be made via bill credits. Bill credits shall be identified on a summary format substantially similar to that distributed as a prototype to the CLECs and the Commissions. To the extent that a monthly payment owed to CLEC under this PAP exceeds the amount owed to Qwest by CLEC on a monthly bill, Qwest will issue a check or wire transfer to CLEC in the amount of the overage. Payment to the State shall be made via check or wire transfer.

11.3 ~~A Special~~**Upon the execution of a memorandum of understanding with the Utah Commission, a Utah Special Fund and a Utah Discretionary** Fund shall be created for the ~~purpose of (a) payment of an independent auditor and audit costs as specified~~**purposes and** in accordance with section ~~15.0, (b) payment of an independent arbitrator to resolve disputes arising out of the six-month review as described in section 16.0, and (c) payment of other expenses incurred by the participating Commissions in the regional administration of the PAP~~11.0. **The Utah Commission shall** appoint **a** person designated to administer and authorize disbursement of funds. All claims against the **funds** shall be presented to the **Commission's designate** and shall be the responsibility of the **Utah Commission**.

11.3.1 Qwest shall establish the **Utah** Special Fund **and the Utah Discretionary Fund** as ~~a~~**separate** interest bearing escrow ~~account upon the first FCC~~**accounts. Upon Qwest receiving effective** section 271 ~~approval of~~**authority from** the ~~PAP applicable to a participating~~ **FCC for the** state **of Utah, the** Commission~~, Qwest~~ shall ~~be authorized to withhold~~**determine** and **direct Qwest to** deposit into the **Utah** Special Fund **either 1)** one-fifth of all Tier 1 payments ~~to CLECs~~ that exceed the month 1 payment amounts in Table 2 and one-third of all Tier 2 payments **or 2) 50% of all Tier 2 payments**. **Qwest shall deposit any other Tier 2 payments into the Utah Discretionary Fund.** The ~~cost~~**costs** of the escrow ~~account~~**accounts** will be paid for from ~~account~~**the accounts'** funds.

11.3.2 ~~Commissions participating in the~~**The Utah** Special Fund shall ~~appoint~~ **be created to pay the** independent auditor and audit costs **for the purpose of** a ~~person designated to administer and authorize disbursement of funds. All claims against the fund shall be presented to the Commissions' designates and shall be the responsibility of the~~ **regional audit as specified in section 15.0-15.4 or audit costs associated with a state audit pursuant to section 15.5, and to pay** expenses incurred by the **Commission in** participating ~~Commissions~~**in any regional review of the PIDs**. Disbursements from the **Utah** Special Fund shall first be from Tier 2 funds and second from Tier 1 funds. Not less than every two years, Tier 1 funds that are not needed to meet the continuing obligations of the Special Fund shall be returned on a pro-rata basis to CLECs**, including any interest not used for fund administration. Other than the transfer of funds allowed in section 11.3.2.1, disbursements from the Utah Discretionary Fund shall be limited to Utah telecommunications initiatives. Any excess funds in the Utah Special Fund may be transferred to the Utah Discretionary Fund at the Commission's discretion.**

11.3.2.1 If the Utah Commission chooses not to participate in the regional audit pursuant to sections 15.0-15.4 and the account balance of the Utah Special Fund escrow account is less than $50,000 at the time of any annual audit described in section 15.5, a transfer of funds from the Utah Discretionary Fund to the Utah Special Fund shall be allowed in the amount necessary to bring the Utah Special Fund balance to $50,000.

11.3.3 **Notwithstanding the provisions herein,** Qwest shall advance **sufficient** funds **to any consolidated Special Fund established by participating states**, **set up for the purpose of a regional audit as specified in sections 15.0-15,4,** not to exceed $~~200,000,~~**200,000 (or $500,000 in the event 6 or more states participate in the regional audit) in order** to meet initial claims against ~~the Special~~**that** Fund to the extent **that contributions from** Tier 1 **and/or** Tier 2 ~~contributions~~ **payments** are insufficient. Qwest shall be allowed to recover any such advances plus interest at the rate that ~~the~~**such an** escrow account would have earned **from future Tier 2 payments**.

12.0 Cap on Tier 1 and Tier 2 Payments

12.1 There shall be ~~a cap~~**an initial procedural annual cap ('initial cap')** on the total payments made by Qwest for ~~a~~**any consecutive** 12 -month period beginning with the effective date of the PAP for the State of Utah **("plan year")**. The **amount of this initial** annual cap for the State of Utah shall be $~~46,000,000~~**31,000,000** (~~36~~24% of the 1999 **Utah** ARMIS Net Return)~~, subject to~~. **During** any ~~applicable adjustment permitted pursuant~~**given plan year, Qwest may be required** to **make payments in excess of the initial annual cap, as described in** section ~~12.2~~ **12.2, but in no event shall the annual payments exceed maximum cap of 44% of the 1999 ARMIS Utah Net Return, or $56,000,000.** CLEC agrees that ~~this amount constitutes~~**these provisions will result in** a maximum annual cap that shall apply to the aggregate total of Tier 1 liquidated damages, including any such damages paid pursuant to this Agreement, any other interconnection agreement, or any other payments made for the same underlying activity or omission under any other contract, ~~order or rule~~ and Tier 2 assessments or payments made by Qwest for the same underlying activity or omission under any other contract, order or rule.

~~12.2 The 36% annual cap may be increased to 44% or decreased to 30% of 1999 ARMIS Net Return as follows:~~

~~12.2.1 An increase in the~~ **12.2 If the initial procedural** cap ~~of a maximum of 4 percentage points and~~**described in 12.1, or** any ~~one time (i.e., first to 40 percent) shall occur upon order~~**subsequent cap established** by the Commission ~~if~~**pursuant to this section which is under the** ~~cap has been~~**44% maximum cap ('existing cap'),** is exceeded ~~for any consecutive period of 24 months by that same 4 percent or more, provided that: (a)~~ **or is projected to be exceeded, prior to the end of any plan year, Qwest may file a petition with the** Commission ~~has determined that~~ **seeking relief from making payments in excess of** the ~~preponderance~~**existing cap. Upon Qwest's filing, the Commission shall initiate an expedited proceeding to determine whether and to what extent Qwest should be required to make payments in excess of the existing cap (but not to exceed the 44% annual cap.) Qwest will not be required to make payments in excess** of the ~~evidence shows~~**existing cap pending the outcome of the proceeding before the Commission. The Commission shall use a public interest standard in deciding whether to raise the existing cap. Qwest will be required to make payments in excess of the existing cap only if the Commission finds, after the expedited proceeding, that the public interest requires the existing cap to be raised. In making its determination on whether the public interest requires such action, one of the Commission's primary considerations in raising or maintaining an existing cap shall be whether** Qwest could have remained ~~beneath the cap~~ **below the cap through** reasonable and prudent **efforts. In such a proceeding, Qwest shall have the burden of establishing that it could not have remained below the existing cap through the use of** reasonable and prudent effort~~, and (b) the Commission has made~~. **If the Commission determines that Qwest should make payments in excess of the existing cap, Qwest shall be required to make any and all payments** that ~~determination after having available to it on the record the results of audits and root cause analyses, and provided an~~

~~opportunity for Qwest to be heard.~~**were suspended with interest and continue to make payments pursuant to the new cap established by the Commission. If no petition is filed, Qwest shall be required to continue to make Tier 1 and Tier 2 payments under the plan for the remainder of the plan year up to an annual cap of 44% of 1999 ARMIS Utah Net Return.**

~~12.2.2 A decrease in the cap of a maximum of 4 percentage points at any one time shall occur upon order by the Commission after performance for any consecutive period of 24 months in which total payments are 8 or more percentage points below the cap amount, provided that: (a) the Commission has determined that the preponderance of the evidence shows the performance results underlying those payments results from an adequate Qwest commitment to meeting its responsibilities to provide adequate wholesale service and to keeping open its local markets and (b) the Commission shall have made that determination after providing all interested parties an opportunity to be heard.~~

~~12.2.3 The provisions of 12.2.1 and 12.2.2 shall be in effect for the next 24 month period commencing with the end of the 24 month period upon which the Commission's order is based.~~

12.3 If the annual cap is reached, each CLEC shall, as of the end of the **plan** year, be entitled to receive the same percentage of its total calculated Tier 1 payments. In order to preserve the operation of the annual cap, the percentage equalization shall take place as follows:

12.3.1 The amount by which any month's total year-to-date Tier 1 and Tier 2 payments exceeds the cumulative monthly cap (defined as 1/12th of the annual cap times the cumulative number of months to date) shall be calculated and apportioned between Tier 1 and Tier 2 according to the percentage that each bore of total payments for the year-to-date. The Tier 1 apportionment resulting of this calculation shall be known as the "Tracking Account."

12.3.2 The Tier 1 apportionment shall be debited against the monthly payment due to each CLEC, by applying to the year-to-date payments received by ~~eachthe~~**each the** percentage necessary to generate the required total Tier 1 amount.

12.3.3 The Tracking Amount shall be apportioned among all CLECs so as to provide each with payments equal in percentage of its total year to date Tier 1 payment calculations.

12.3.4 This calculation shall take place in the first month that the year-to-date total Tier 1 and Tier 2 payments are expected to exceed the cumulative monthly cap and for each month of that year thereafter. Qwest shall recover any debited amounts by reducing payments due to any CLEC for that month and any succeeding months, as necessary.

13.0 Limitations

13.1 The PAP shall not become available in the State unless and until Qwest receives effective section 271 authority from the FCC for that State.

13.2 Qwest will not be liable for Tier 1 payments to CLEC in an FCC approved state until the Commission has approved an interconnection agreement between CLEC and Qwest which adopts the provisions of this PAP.

13.3 Qwest shall not be obligated to make Tier 1 or Tier 2 payments for any measurement if and to the extent that non-conformance for that measurement was the result of any of the following: 1) with respect to performance measurements with a benchmark standard, a Force Majeure event as defined in section 5.7 of the SGAT. Qwest will provide notice of the occurrence of a Force Majeure event within 72 hours of the time Qwest learns of the event or within a reasonable time frame that Qwest should have learned of it; 2) an act or omission by a CLEC that is contrary to any of its obligations under its interconnection agreement with Qwest or under federal or state law; an act or omission by CLEC that is in bad faith. Examples of bad faith conduct include, but are not limited to: unreasonably holding service orders and/or applications, "dumping" orders or applications in unreasonably large batches, "dumping" orders or applications at or near the close of a business day, on a Friday evening or prior to a holiday, and failing to provide timely forecasts to Qwest for services or facilities when such forecasts are explicitly required by the SGAT; 3) problems associated with third-party systems or equipment, which could not have been avoided by Qwest in the exercise of reasonable diligence, *provided, however*, that this third party exclusion will not be raised in the State more than three times within a calendar year. If a Force Majeure event or other excusing event recognized in this section merely suspends Qwest's ability to timely perform an activity subject to a performance measurement that is an interval measure, the applicable time frame in which Qwest's compliance with the parity or benchmark criterion is measured will be extended on an hour-for-hour or day-for-day basis, as applicable, equal to the duration of the excusing event.

13.3.1 Qwest will not be excused from Tier 1 or Tier 2 payments for any reason except as described in Section 13.0. Qwest will have the burden of demonstrating that its non-conformance with the performance measurement was excused on one of the grounds described in this PAP. A party may petition the Commission to require Qwest to deposit disputed payments into an escrow account when the requesting party can show cause, such as grounds provided in the Uniform Commercial Code for cases of commercial uncertainty.

13.3.2 Notwithstanding any other provision of this PAP, it shall not excuse performance that Qwest could reasonably have been expected to deliver assuming that it had designed, implemented, staffed, provisioned, and otherwise provided for resources reasonably required to meet foreseeable volumes and patterns of demands upon its resources by CLECs.

13.4 Qwest's agreement to implement these enforcement terms, and specifically its agreement to pay any "liquidated damages" or "assessments" hereunder, will not be considered as an admission against interest or an admission of liability in any legal, regulatory, or other proceeding relating in whole or in part to the same performance.

13.4.1 CLEC may not use: 1) the existence of this enforcement plan; or 2) Qwest's payment of Tier -1 "liquidated damages" or Tier 2 "assessments" as evidence that Qwest has discriminated in the provision of any facilities or services under Sections 251 or 252, or has violated any state or federal law or regulation. Qwest's conduct underlying its performance measures, however are not made inadmissible by its terms.

13.4.2 By accepting this performance remedy plan, CLEC agrees that Qwest's performance with respect to this remedy plan may not be used as an admission of liability or culpability for a violation of any state or federal law or regulation. (Nothing herein is intended to preclude Qwest from introducing evidence of any Tier 1 "liquidated damages" under these provisions for the purpose of offsetting the payment against any other damages or payments a CLEC might recover.) The terms of this paragraph do not apply to any proceeding before the Commission or the FCC to determine whether Qwest has met or continues to meet the requirements of section 271 of the Act.

13.5 By incorporating these liquidated damages terms into the PAP, Qwest and CLEC accepting this PAP agree that proof of damages from any non-conforming performance measurement would be difficult to ascertain and, therefore, liquidated damages are a reasonable approximation of any contractual damages that may result from a non-conforming performance measurement. Qwest and CLEC further agree that Tier 1 payments made pursuant to this PAP are not intended to be a penalty. The application of the assessments and damages provided for herein is not intended to foreclose other noncontractual legal and non-contractual regulatory claims and remedies that may be available to a CLEC.

13.6 This PAP contains a comprehensive set of performance measurements, statistical methodologies, and payment mechanisms that are designed to function together, and only together, as an integrated whole. To elect the PAP, CLEC must adopt the PAP in its entirety~~,~~ in its interconnection agreement with Qwest~~. By electing~~ **in lieu of other alternative standards or relief. Where alternative standards or** remedies **for Qwest's wholesale performance are available** under ~~the PAP~~**rules, orders, or contracts, including interconnection agreements,** CLEC ~~waives any causes of action based on a contractual theory of liability,~~ **will be limited to either PAP standards** and ~~any right of recovery under any other~~ **remedies or the standards and remedies available under rules, orders or contracts and CLEC's choice of remedies shall be specified in its interconnection agreement.**

13.7 Qwest shall be entitled to seek an offset against any recovery by CLEC under any noncontractual theory of liability (including but not limited to ~~a regulatory rule or order~~**tort and antitrust claims**)~~-to the extent such recovery is related to harm compensable under a contractual theory of liability (even though it is sought through a noncontractual claim, theory, or cause of action).13.7 If for any reason CLEC agreeing to this PAP is awarded compensation for the same underlying activity or omission for which Tier 1 assessments are made under this PAP, Qwest may offset the award with amounts paid under this PAP or offset future payments due under the PAP by the amount of any such award. This section is not intended to permit offset of those portions of any damages allowed by noncontractual theories of liability that are not also recoverable under contractual theories of~~

~~liability~~. Nothing in this PAP shall be read as permitting an offset related to Qwest payments related to CLEC or third-party physical damage to property or personal injury.

13.8 ~~Qwest shall not be liable for both~~**To the extent Qwest believes that some** Tier 2 payments **required to be made** under ~~the~~**this PAP would duplicate payments that have been assessed by or on behalf of the Commission pursuant to any service quality rules or Commission orders, Qwest may make such Tier 2 payments to a special interest bearing escrow account** and ~~assessments, sanctions, or other~~**then dispute the** payments ~~for~~**before the Utah Commission. If Qwest can show that the payments relate to** the same underlying activity or omission~~pursuant to~~**, it may retain the Tier 2 payments and** any ~~Commission order or service quality rules~~**interest accrued on such payments**.

13.9 Whenever a Qwest Tier 1 payment to an individual CLEC exceeds $3 million in a month, Qwest may commence a proceeding to demonstrate why it should not be required to pay any amount in excess of the $3 million. Upon timely commencement of the proceeding, Qwest must pay the balance of payments owed in excess of $3 million into escrow, to be held by a third-party pending the outcome of the proceeding. To invoke these escrow provisions, Qwest must file, not later than the due date of the Tier 1 payments, its application. Qwest will have the burden of proof to demonstrate why, under the circumstances, it would be unjust to require it to make the payments in excess of $3 million. If Qwest reports non-conforming performance to CLEC for three consecutive months on 20% or more of the measurements reported to CLEC and has incurred no more than $1 million in liability to CLEC, then CLEC may commence a similar proceeding. In any such proceeding CLEC will have the burden of proof to demonstrate why, under the circumstances, justice requires Qwest to make payments in excess of the amount calculated pursuant to the terms of the PAP. The disputes identified in this section shall be resolved in a manner specified in the Dispute Resolution section of the SGAT with the CLEC.

14.0 Reporting

14.1 Upon receiving effective section 271 authority from the FCC for a state, Qwest will provide CLEC that has an approved interconnection agreement with Qwest, a monthly report of Qwest's performance for the measurements identified in the PAP by the last day of the month following the month for which performance results are being reported. However, Qwest shall have a grace period of five business days, so that Qwest shall not be deemed out of compliance with its reporting obligations before the expiration of the five business day grace period. Qwest will collect, analyze, and report performance data for the measurements listed on Attachment 1 in accordance with the most recent version of the PIDs. Upon CLEC's request, data files of the CLEC's raw data, or any subset thereof, will be transmitted, without charge, to CLEC in a mutually acceptable format, protocol, and transmission medium.

14.2 Qwest will also provide the Commission a monthly report of aggregate CLEC performance results pursuant to the PAP by the last day of the month following the month for which performance results are being reported. However, Qwest shall have a grace period of five business days, so that Qwest shall not be deemed out of compliance with its reporting obligations before the expiration of the five business day grace period. Individual CLEC reports of participating CLECs will also be available to the Commission upon request. By accepting this PAP, CLEC consents to Qwest providing CLEC's report and raw data to the State Commission. Pursuant to the terms of an order of the Commission, Qwest may provide CLEC-specific data that relates to the PAP, provided that Qwest shall first initiate any procedures necessary to protect the confidentiality and to prevent the public release of the information pending any applicable Commission procedures and further provided that Qwest provides such notice as the Commission directs to the CLEC involved, in order to allow it to prosecute such procedures to their completion. Data files of participating CLEC raw data, or any subset thereof, will be transmitted, without charge, to the Commission in a mutually acceptable format, protocol, and transmission form.

14.3 In the event Qwest does not provide CLEC and the Commission with a monthly report by the last day of the month following the month for which performance results are being reported, Qwest will pay to the State a total of $500 for each business day for which performance reports are 6 to 10 business days past the due date; $1,000 for each business day for which performance reports are 11 to 15 business days past the due date; and $2,000 for each business day for which performance results are more than 15 business days past the due date. If reports are on time but are missing performance results, Qwest will pay to the State a total of one-fifth of the late report amount for each missing performance measurement, subject to a cap of the full late report amount. These amounts represent the total payments for omitting performance measurements or missing any report deadlines, rather than a payment per report. Prior to the date of a payment for late reports, Qwest may file a request for a waiver of the payment, which states the reasons for the waiver. The Commission may grant the waiver, deny the waiver, or provide any other relief that may be appropriate.

14.4 To the extent that Qwest recalculates payments made under this PAP, such recalculation shall be limited to the preceding three years (measured from the later of the provision of a monthly credit statement or payment due date). Qwest shall retain sufficient records to demonstrate fully the basis for its calculations for long enough to meet this potential recalculation obligation. CLEC verification or recalculation efforts should be made reasonably contemporaneously with Qwest measurements. In any event, Qwest shall maintain the records in a readily useable format for one year. For the remaining two years, the records may be retained in archived format. Any payment adjustments shall be subject to the interest rate provisions of section 11.1.

15.0 Integrated Audit Program/Investigations of Performance Results

15.1 Audits of the PAP shall be conducted in a two-year cycle under the auspices of the participating Commissions in accordance with a detailed audit plan developed by an independent auditor retained for a two-year period. The participating Commissions shall select the independent auditor with input from Qwest and CLECs.

15.1.1 The participating Commissions shall form an oversight committee of Commissioners who will choose the independent auditor and approve the audit plan. Any disputes as to the choice of auditor or the scope of the audit shall be resolved through a vote of the chairs of the participating ~~commissions~~**Commissions** pursuant to Section 15.1.4.

15.1.2 The audit plan shall be conducted over two years. The audit plan will identify the specific performance measurements to be audited, the specific tests to be conducted, and the entity to conduct them. The audit plan will give priority to auditing the higher risk areas identified in the OSS report. The two-year cycle will examine risks likely to exist across that period and the past history of testing, in order to determine what combination of high and more moderate areas of risk should be examined during the two-year cycle. The first year of a two-year cycle will concentrate on areas most likely to require follow-up in the second year.

15.1.3 The audit plan shall be coordinated with other audit plans that may be conducted by other state commissions so as to avoid duplication, shall not impede Qwest's ability to comply with the other provisions of the PAP and should be of a nature and scope that **it** can be conducted ~~in accordance~~**consistent** with the reasonable course of Qwest's business operations.

15.1.4 Any dispute arising out of the audit plan, the conduct of the audit, or audit results shall be resolved by the oversight committee of Commissioners. Decisions of the oversight committee of Commissioners may be appealed to a committee of the chairs of the participating Commissions.

15.2 Qwest may make management processes more accurate or more efficient to perform without sacrificing accuracy. These changes are at Qwest's discretion but will be reported to the independent auditor in quarterly meetings in which the auditor may ask questions about changes made in the Qwest measurement regimen. The meetings, which will be limited to Qwest and the independent auditor, will permit an independent assessment of the materiality and propriety of any Qwest changes, including, where necessary, testing of the change details by the independent auditor. The information gathered by the independent auditor may be the basis for reports by the independent auditor to the participating Commissions and, where the ~~Commissions~~**commissions** deem it appropriate, to other participants.

15.3 In the event of a disagreement between Qwest and CLEC as to any issue regarding the accuracy or integrity of data collected, generated, and reported pursuant to the PAP, Qwest and the CLEC shall first consult with one another and attempt in good faith to resolve the issue. If an issue is not resolved within 45 days after a request for consultation, CLEC and Qwest may, upon a demonstration of good cause, (e.g., evidence of material errors or discrepancies) request an independent audit to be conducted, at the initiating party's expense. The independent auditor will assess the need for an audit based upon whether there exists a material deficiency in the data or whether there exists an issue not otherwise addressed by the audit plan for the current cycle. The dispute resolution provision of section 18.0 is available to any party questioning the independent auditor's decision to conduct or not conduct a CLEC requested audit and the audit findings, should such an audit be conducted. An audit may not proceed until dispute resolution is completed. Audit findings will include: (a) general applicability of findings and conclusions (i.e., relevance to CLECs or jurisdictions other than the ones causing ~~test~~**audit** initiation), (b) magnitude of any payment adjustments required and, (c) whether cost responsibility should be shifted based upon the materiality and clarity of any Qwest non-conformance with measurement requirements (no pre-determined variance is appropriate, but should be based on the auditor's professional judgment). CLEC may not request an audit of data more than three years from the later of the provision of a monthly credit statement or payment due date.

15.4 Expenses for the **regional** audit of the PAP and any other related expenses, except that which may be assigned under section 15.3, shall be paid first from the Tier 2 funds in the Special Fund. The remainder of ~~the~~ audit expenses will be paid one half from Tier 1 funds in the Special Fund and one half by Qwest.

15.5 If the Utah Commission chooses not to participate in the regional audit described in sections 15.0-15.4 it may conduct an audit with the monies contained in the Utah Special Fund pursuant to the following:

A. The audit shall be limited to (1) problem areas requiring further oversight as specifically identified in a previous audit; (2) any submeasurements changed or being changed from a manual to an electronic system; (3) any submeasurement responsible for at least 20% of the payments paid by Qwest over the prior year, and (4) whether Qwest is exercising due diligence in evaluating which, if any, performance data can be properly excluded from its performance measurements.

B. The first audit pursuant to this section 15.5 shall be conducted no sooner than twelve months after Qwest receives effective 271 authority from the FCC for the state of Utah and may be conducted every twelve months thereafter. Any audits conducted pursuant to this section 15.5 shall be conducted by the same auditor retained to conduct the regional audit unless the Commission, for good cause (i.e., conflict, price, integrity, or viability of the firm), finds the regional auditor is unacceptable.

C. No investigation or audit of any performance measurement shall be conducted within 12 months of any audit of the same performance measurement or submeasurement, including any audit conducted under the regional audit program or by another state or by a CLEC so long as the results of the other audits are made available to the Commission and the Division of Public Utilities and such audit is applicable to Utah specific data. If any audit has been conducted but does not include Utah specific data, the Commission may audit the performance measurement to the degree necessary to verify Utah specific results without duplicating relevant parts of the prior audit, unless the Commission finds the data produced by a performance measurement to be unreliable.

D. Any audit conducted pursuant to this section must be designed and conducted to specifically address the perceived problem or condition that triggers the audit.

~~15.5 Qwest will investigate any second consecutive Tier 2 miss to determine~~

E. **No audit or investigation requested pursuant to this section 15.5 shall be duplicative of any other audit. Any audit requested pursuant to this section shall be coordinated with other audits including audits planned or conducted by** the ~~cause of the miss~~**regional audit program or pursuant to any other PAP, shall be planned** and ~~to identify~~**conducted so as to avoid duplication and interference with Qwest's ability to comply with the other provisions of** the ~~action needed in order to meet~~**PAP, and shall be of a nature and scope that it can be conducted within** the ~~standard set forth in the~~**reasonable course of Qwest's business. Qwest shall not be required to audit more than three** performance measurements~~. To the extent an investigation determines that a CLEC was responsible in whole or in part for the Tier 2 misses, Qwest shall receive credit against future Tier 2 payments in an amount equal to the Tier 2 payments that should not have been made. The relevant portion of subsequent Tier 2 payments will not be owed until any responsible CLEC problems are corrected~~ **at the same time and Qwest's resources shall be allocated first to any ongoing regional audits.** ~~For the purposes of this sub-section, Tier 1 performance measurements that have not been designated as Tier 2 will be aggregated and the aggregate results will be investigated pursuant to the terms of this Agreement.~~

16.0 Reviews

16.1 Every six (6) months, beginning six months after the effective date of ~~the first~~ Section 271 approval by the FCC ~~of one of~~**for** the ~~states that participated in the multi-~~state ~~QPAP section 271 proceeding~~**of Utah**, Qwest, CLECs, **the Commission,** and the ~~Commissions~~**Utah Division** of ~~those~~**Public** ~~state~~**Utilities** shall participate in a ~~common~~ review of the performance measurements to determine whether measurements should be added, deleted, or modified; whether the applicable benchmark standards should be modified or replaced by parity standards; and whether to move a classification of a measurement to High, Medium, or Low~~ or~~, Tier 1 ~~to~~**or** Tier 2. The criterion for reclassification of a measurement shall be whether the actual volume of data points was less or greater than anticipated. Criteria for review of performance measurements, other than for possible reclassification, shall be whether there exists an omission or failure to capture intended performance, and whether there is duplication of another measurement. ~~The first six-month period will begin upon the FCC's approval~~**Any reclassification** of **performance measurements must be approved by** ~~Qwest's 271 application for that particular state~~. ~~Changes shall not be made without Qwest's agreement, except that~~**Any** disputes ~~as to whether new~~**regarding adding, deleting, or modifying** performance measurements ~~should be added~~ shall be resolved ~~by one arbitration proceeding conducted~~ pursuant to ~~section 5.18.3 of~~**a proceeding before** the ~~SGAT, which~~**Commission and subject to judicial review. No new performance measurements shall be added to this PAP that have not been subject to observation as diagnostic measurements for a period of 6 months. Any changes made at the six-month review pursuant to this section and as a result of a final non-appealable decision** shall ~~bind~~**upon**

finality apply to and modify this agreement between CLEC and Qwest ~~and all parties to~~
~~the arbitration and determine what new measures, if any, should be included in Exhibit K to~~
~~the SGAT. The administration expenses of the six month reviews and of an arbitrator shall be~~
~~paid from the Special Fund.~~.

Qwest shall not be liable for making any payments under the QPAP that result from changes made pursuant to the preceding paragraph and section 16.3, that exceed 10% of the monthly payments that Qwest would have made absent the effect of such changes as a whole. Such payment limitation shall be accomplished by factoring the payments resulting from the changes to ensure that such payments remain within 10% of the payments Qwest would have made absent such changes.

16.2. If at the time the Commission conducts any six-month review, Qwest is making Tier 1 sub-measurement payments that have reached the 6 month payment escalation level, as described in section 6.2 and Table 2 of this plan, the Commission may consider whether the Tier 1 payment for any such measurements should continue to escalate beyond the six month payment level identified in Table 2. The Commission shall base its decision on whether Qwest, through reasonable and prudent efforts, could have limited such payment and whether continued escalation is in the public interest. For those measures that the Commission decides payments should escalate beyond 6 months, any escalated payments beyond 12 months shall be deemed Tier 2 payments, payable to the state in accordance with section 7.5.

~~16.2 Two years after the effective date of the first FCC 271 approval of~~ the ~~PAP, the~~
16.3 If the Commission determines that the payment levels for ~~a independent third party to~~
~~participating Commissions may conduct a joint review by~~ ~~examine the continuing effectiveness of the PAP as a means of inducing compliant~~specified
performance~~. This review~~ measurements should continue to escalate, based on the
criterion in section 16.2, Qwest shall ~~not be used~~add $100 per month to ~~open~~the 6 month
Tier 1 payment levels in Table 2 for each consecutive month of non-conforming
performance. For payment levels that have escalated beyond 6 months there shall be an
accelerated payment de-escalation process based on consecutive months of conforming
performance, as follows: For payment levels that have escalated 9 months or more, 3
consecutive months of conforming performance will reduce the payments to the 6-month
level. After 3 more consecutive months of conforming performance, the ~~PAP generally to~~
~~amendment, but would serve~~payment level will reduce to ~~assist Commissions in determining~~ ~~the continuing adequacy of~~ base amount.
~~existing conditions and reporting to~~ the ~~FCC on the continuing adequacy of~~ ~~The expense~~
Except as specifically provided by the ~~PAP to serve its intended functions.~~
~~of~~accelerated payment de-escalation process in this section, payment de-escalation shall
occur in accordance with the ~~reviews shall be paid from~~'step down' provision described in
section 6.2.1. Performance measurements that have been subject to escalation beyond 6
months, in accordance with this section, but which subsequently de-escalate below the
~~Special Fund.~~6 month payment level, would only be subject to further escalation beyond
6 months if decided by the Commission in a subsequent 6 month review in accordance
with this section 16.3 and section 16.2.

~~16.3 Qwest will make the PAP available for CLEC interconnection agreements until such time as Qwest eliminates its Section 272 affiliate. At that time, the Commission and Qwest~~
16.4 Any changes made pursuant to sections 16.2 and 16.3 shall ~~review the appropriateness of the PAP~~**be subject to** and ~~whether its continuation is necessary. However,~~**included** in the ~~event Qwest exits the interLATA market, that State PAP shall be rescinded immediately.~~**calculation and application of the 10% payment collar identified in section 16.1.**

17.0 Voluntary Performance Assurance Plan

This PAP represents Qwest's voluntary offer to provide performance assurance. Nothing in the PAP or in any conclusion of non-conformance of Qwest's service performance with the standards defined in the PAP shall be construed to be, of itself, non-conformance with the Act. **Except for those changes expressly provided in sections 12.2, 9.1.3 and 16.1, no changes shall be made to this QPAP**.

18.0 Dispute Resolution

For the purpose of resolving disputes over the meaning of the provisions of the PAP and how they should be applied, the dispute resolution provisions of the SGAT, section 5.18, shall apply whether the CLEC uses the SGAT in its entirety or elects to make the PAP part of its interconnection agreements (i.e., the unique dispute resolution provisions of interconnection agreements should not apply).

Attachment 1: Tier 1 and Tier 2 Performance Measurements Subject to Per Occurrence Payment

Performance Measurement		Tier 1 Payments			Tier 2 Payments		
		Low	Med	High	Low	Med	High
GATEWAY							
Timely Outage Resolution	GA-7						X
PRE-ORDER/ORDERS							
LSR Rejection Notice Interval	PO-3[a]	X					
Firm Order Confirmations On Time	PO-5	X				X	
Work Completion Notification Timeliness	PO-6[b]	X					
Billing Completion Notification Timeliness	PO-7[b]	X					
Jeopardy Notice Interval	PO-8	X					
Timely Jeopardy Notices	PO-9	X					
Release Notifications	PO-16						
ORDERING AND PROVISIONING							
Installation Commitments Met	OP-3[c]			X		X	
Installation Intervals	OP-4[d]			X		X	
New Service Installation Quality	OP-5			X		X	
Delayed Days	OP-6[e]			X		X	
Number Portability Timeliness	OP-8			X		X	
Coordinated Cuts On Time – Unbundled Loops	OP-13a			X		X	
LNP Disconnect Timeliness	OP-17			X		X	
MAINTENANCE AND REPAIR							
Out of Service Cleared within 24 hours	MR-3			X			
All Troubles Cleared within 4 hours	MR-5			X			
Mean time to Restore	MR-6a,b,c			X			
Repair Repeat Report Rate	MR-7			X		X	
Trouble Rate	MR-8			X		X	
LNP Trouble Reports Cleared within 24 Hours	MR-11			X		X	
LNP Trouble Reports—Mean Time to Restore	MR-12			X		X	
BILLING							
Time to Provide Recorded Usage Records	BI-1		X				
Billing Accuracy-Adjustments for Errors	BI-3		X				
Billing Completeness	BI-4		X			X	
NETWORK PERFORMANCE							
Trunk Blocking	NI-1			X			
NXX Code Activation	NP-1			X			

~~November 15, 2001~~

March 29, 2002

a. PO-3 is limited to PO-3a-1, PO-3b-1, and PO-3c.

b. PO-6 is included with PO-7 as two "families:" PO-6a/PO-7a and PO-6b/PO-7b. Measurements within each family share a single payment opportunity with only the measurements with the highest payment being paid.

c. OP-4 is included with OP-6 as five "families:" OP-4a/OP-6-1, OP-4b/OP-6-2, OP-4c/OP-6-3, OP-4d/OP-6-4, and OP-4e/OP-6-5. Measurements within each family share a single payment opportunity with only the measurement with the highest payment being paid.

d. For purposes of the PAP, OP-6a and OP-6b will be combined and treated as one. The combined OP-6 breaks down to OP-6-1 (within MSA), OP-6-2 (outside MSA), OP-6-3 (no dispatch), OP-6-4 (zone 1), and OP-6-5 (zone 2).

Billing

Time to Provide Recorded Usage Records – BI-1 (Tier 1/Tier 2)
Billing Accuracy – Adjustments for Errors – BI-3 (Tier 1)
Billing Completeness – BI-4 (Tier 1/Tier 2)

Document comparison done by DeltaView on Friday, March 29, 2002 16:02:44

Input:	
Document 1	iManageDeskSite://172.16.1.203/SaltLake/169618/1
Document 2	iManageDeskSite://172.16.1.203/SaltLake/169618/2
Rendering set	Unsaved rendering set

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	154
Deletions	116
Moved from	7
Moved to	7
Format changed	0
Total changes	284

Qwest's

Exhibit 80

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5/13/02