

Supplemental
Prefiled Testimony
of W. Tom Simms
to AT:Ts Response
to Qwest's Requests
for Information

4/25/02

and Midcontinent;

03/25/02 - Corrected Page 1 to Qwest's Brief;

03/25/02 - Qwest's Data Requests to Black Hills FiberCom, Midcontinent and AT&T;

03/27/02 - Black Hills FiberCom's Reply Brief Re: Track A Proceedings;

03/27/02 - Reply to Qwest's Response to Motions filed by Black Hills FiberCom and Midcontinent Regarding Qwest's Section 271 Application;

03/28/02 - Order Admitting Nonresident Attorney (Jonathan Frankel);

04/03/02 - Rebuttal Affidavit of Larry B. Brotherson;

04/03/02 - Seven Rebuttal Affidavits of Margaret S. Bumgarner and Request for Confidential Treatment of Information;

04/03/02 - Three Rebuttal Affidavits of Thomas R. Freeberg;

04/03/02 - Affidavit of Mary Ferguson LaFave;

04/03/02 - Rebuttal Affidavit of Jean M. Liston;

04/03/02 - Rebuttal Affidavit of Lynn M. V. Notarianni;

04/03/02 - Rebuttal Affidavit of Mark S. Reynolds;

04/03/02 - Affidavit of Judith M. Schultz;

04/03/02 - Rebuttal Affidavit of Marie E. Schwartz;

04/03/02 - Four Rebuttal Affidavits of Lori A. Simpson;

04/03/02 - Two Rebuttal Affidavits of Karen A. Stewart;

04/03/02 - Pre-Filed Testimony and Data Reconciliation Reports of Robert L. Stright;

04/03/02 - Rebuttal Affidavit of David L. Teitzel;

04/03/02 - Reply Affidavit of Michael G. Williams;

04/04/02 - Order Granting Motions; Order Amending Procedural Schedule and Extending Hearing Dates;

04/04/02 - AT&T's Procedural Motion Regarding the Section 271 Process;

04/10/02 - Errata to the Affidavit of Kenneth L. Wilson;

04/12/02 - Statement of Supplemental Authority Regarding Qwest's Performance Assurance Plan;

04/15/02 - Qwest's Proposed Order of Witnesses;

04/16/02 - AT&T's Motion for Extraordinary Protective Order;

04/16/02 - Midcontinent's Request for Confidential Treatment of Information;

04/16/02 - Midcontinent's Response to Qwest's Data Requests of March 22, 2002;

04/17/02 - Supplemental Prefiled Testimony of W. Tom Simmons;

04/19/02 - Orders Admitting Nonresident Attorney (Lynn Stang, Robert Cattanaach, John Devaney, Kara M. Sacilotto, Mary Rose Hughes, Shannon Heim, William Richardson, Charles Steese, Blair Rosenthal and Andrew Crain);

04/19/02 - Black Hills' Responses to Qwest's Data Requests for Black Hills;

04/22/02 - Revised Order of Witnesses;

04/22/02 - Affidavits of Barbara Brohl and Dennis Pappas;

04/22/02 - Supplemental Affidavit of Karen A. Stewart;

04/22/02 - Response to AT&T's Motion for Extraordinary Protective Order;

04/22/02 - Order Admitting Nonresident Attorney to Practice (Steven H. Weigler);

04/22/02 - Motion to Strike Supplemental Testimony, Public Exhibits and Confidential Exhibits of W. Thomas Simmons Received April 18, 2002;

04/22/02 - Motion Regarding Proceeding on Third Party Testing of Qwest's OSS;

04/22/02 - Supplemental Affidavit of Larry B. Brotherson;

04/24/02 - Additional Statement of Supplemental Authority Regarding Qwest's Performance Assurance Plan;

04/25/02 - AT&T's Request for Confidential Treatment of Information;

04/25/02 - AT&T's Responses to Qwest's Requests for Information;

04/29/02 - Qwest's Submission of Alternative QPAP Proposals;

04/29/02 - QPAP Approved as Amended;

04/29/02 - Qwest's Motion to Enter AT&T's Track A Data Request Response into Evidence;

05/01/02 - Qwest's November 2001 through February 2002 Performance Data as

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April 17, 2002

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Debra Elofson
Executive Secretary
Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

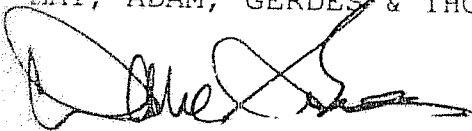
RE: MIDCONTINENT COMMUNICATIONS; QWEST'S 271 APPLICATION
Docket TC01-165
Our file: 0053

Dear Debra:

Enclosed are original and ten copies of Supplemental Testimony of Tom Simmons, which please file. I have forwarded this document to counsel of record, together with the exhibits to which it relates. It is my plan to produce the exhibits at hearing to be introduced in the usual fashion.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP


DAVID A. GERDES

DAG:mw

Enclosures

Supplemental Pre-filed Testimony
Mr. W. Tom Simmons

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APR 17 2002

Before the Public Utilities Commission
State of South Dakota

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

In the Matter of the Analysis of
Qwest Corporation's Compliance
With Section 271(c) of the
Telecommunications Act of 1996

Docket No. TC01-165

April 17, 2002

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE ANALYSIS	)	TC01-165
INTO QWEST CORPORATION'S	)	
COMPLIANCE WITH SECTION 271(C)	)	
OF THE TELECOMMUNICATIONS ACT	)	
OF 1996	)	

Midcontinent Communications' Supplemental Testimony to Docket TC01-165

1 Q. Please state your name, business address, and position with Midcontinent
2 Communications, which we will shorten up to just Midcontinent.

3 A. My name is W. Thomas Simmons. I am employed by Midcontinent
4 Communications, 5001 West 41st Street, Sioux Falls, South Dakota, 57106, as the
5 Vice President of Telephone and Network Services.

6 Q. Why do you seek to offer supplemental testimony?

7 A. When I prepared my initial testimony, all exhibits to substantiate that testimony
8 were not available. We needed time to identify, collect and organize exhibits that
9 would best substantiate the points I wished to make. We are a small company.
10 One person, who has many operational responsibilities within the company, has
11 the ability to collect the information. Thus, it has only been recently that all
12 exhibits became available.

13 Q. And what is the purpose of your supplemental testimony?

1 A. It is solely to provide identification and foundation for exhibits that will
2 substantiate my initial testimony. I do not intend to expand upon the issues raised
3 in my initial testimony.

4 Q. Please provide your testimony on the exhibits as they relate to the issues raised in
5 your initial testimony.

Issue: 14	Checklist # 8, White Pages Directory Listings	Description: Parity of Treatment for CLEC Listings
-----------	--	--

6
7 We have shortened Midcontinent to Midco and identified the exhibits as Midco 1,
8 Midco 2, and so on. Midco 1 is a confidential exhibit which lists 68 accounts
9 showing an error with the residential listing being entered with a semicolon (;)
10 rather than a comma (,). The semicolon (;) placed the listing into the business
11 section of the white pages rather than the residential section where they should
12 have appeared. Midco 2 is a confidential file that shows 23 residential listings
13 with other errors such as misspelled names, request for non-published listing that
14 did not get processed, request for non-listed treatment, which did not get
15 processed, and request for an address omission, which was not processed.
16 Additionally, there are four examples of business directory listing errors
17 (identified with a B in the margin) where spelling errors occurred or the order was
18 otherwise not completed as specified. Midco 3 is a confidential exhibit. It is a
19 copy of a BID file showing a customer who requested a non-published listing and
20 who ended up in the McLeod telephone book, contrary to the order. While we
21 were able to catch the mistake and keep it out of the Qwest telephone book,
22 Qwest had sold its listing to McLeod who had already published the listing in

error. Midco 4 is a confidential document. This document describes the situation mentioned in my initial testimony involving a business customer who was left out of the August 2002 directory resulting in a threatened suit for damages.

Issue: 15	Checklist # 1, 11, 13, 14 Lack of Available Facilities	Description: Collocation delays due to lack of Qwest facilities, particularly DC power.
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Midco 5 is a confidential document. The exhibit contains the collocation price quote and payment for the installation in full. Midco 6, a confidential document, shows billing for 120 amps of power. Midco 7 is an electrical schematic of the installation as installed which makes only 60 amps of power supplied usable, but Midcontinent is being billed for 120 amps. Midcontinent ordered one 60 amp A and B power feed. The feeds are fused at 133%, explaining why F1 and F2 are shown at 80 amps each. The A and B power feeds operate in a load sharing arrangement meaning that each feed can only be loaded to 50%, or 30 amps, so if either F1 or F2 would happen to fail the remaining fuse can support the entire 60 amp load.

Issue: 52	Checklist # 11, Number Porting	Description: Qwest's Ability and Willingness to Port Numbers.
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Midco 8 is a confidential exhibit. It is a copy of a trouble ticket where Qwest began the porting process too early.

Issue: 68	Checklist # 2, Subloop Unbundling	Description: Determining Ownership of Inside Wire
-----------	-----------------------------------	---

1 Midco 9 is a copy of the relevant portions of Qwest's statement of generally
2 available terms relevant to my testimony on this subject. The exhibit shows
3 Qwest's intent to charge CLECs for inventorying its own facilities. Midco 10 is a
4 copy of Qwest's wholesale product catalog also supporting my testimony on this
5 issue.

Issue: 90	Checklist # 4, Access to Unbundled Loops	Description: Reciprocity of Trouble Isolation Charges
-----------	--	---

6
7 Midco 11 is a confidential exhibit. It contains examples of instances where
8 Midcontinent customers' problems were found to be in Qwest's network.

Issue: 139	General Terms and Conditions	Description: Comparability of Terms for New Products or Services
------------	------------------------------	--

9
10 Midco 12 is a summary of that which is reflected in Midco 12-A, a confidential
11 exhibit. Essentially, both exhibits provide further detail concerning the problems
12 outlined in my testimony with timing of the availability of Qwest products.
13 Midcontinent encountered considerable difficulty with a Qwest product,
14 Smart-Pak, which was offered and sold by Qwest before it was known to
15 Midcontinent, and when Midcontinent made the product available to its customers
16 it did not work properly.
17

Issue: 147	General Terms and Conditions	Description: Responsibility for Retail Service Quality Assessment Against CLECs
------------	------------------------------	---

1 Midco 13 reflects the Liberty Consulting Group recommendation for
2 responsibility for retail service quality assessments against CLECs. Essentially, it
3 supports my testimony that the wholesale service provider bear responsibility for
4 sanctions occasioned by failure of the wholesale provider to competently provide
5 service to its retail customers. Midco 14 is a confidential exhibit. It is an issues
6 list from the monthly issues meetings that occur between Qwest and Midco. It is
7 representative of the issues that develop CLECs and Qwest, and the need for
8 Qwest to assume responsibility for substandard provisioning of service.

Issue: 150	General Terms and Conditions	Description: Misuse of Competitive Information
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9
10 Midco 15 is representative of several marketing mailings made by Qwest to "win
11 back" its customers. A copy of one of these mailings was given to Larry Toll,
12 Qwest's South Dakota Manager, at a luncheon with me. Midco 16 is a copy of
13 the Liberty Consulting Group report discussing the issue of misuse of competitive
14 information. It substantiates the point I made in my testimony that it is improper
15 for sales and marketing personnel to have access to confidential marketing
16 information. Midco 17 is a confidential document. It shows a situation where
17 Qwest appeared to improperly use competitive information, advising a new
18 Midcontinent customer that she could not get her line installed from Midcontinent
19 but needed to order it from Qwest.

Issue: 166	Section 272:	Description: Internal Controls
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1 Midco 18 is a confidential document. It substantiates my testimony beginning on
2 page 14, line 4, involving a customer with a "hunting" problem. This issue took
3 nearly a year to resolve. The first three pages of the exhibit are a summary of the
4 backup documentation that follows in the exhibit. Midco 19 is a confidential
5 exhibit, documenting the improper rate cataloging issue mentioned at page 14 of
6 my testimony, line 10. The first two pages show that the issue was raised on
7 November 6, 2000. It was still an issue on Midcontinent's outstanding issues
8 sheet on May 23, 2001. Midco 20, a confidential exhibit, provides backup to
9 billing problems encountered by Midcontinent concerning Smart-Pak features.
10 This has to do with my testimony on page 14, line 17.

Issue: 176	Section 272	Description: Posting Billing Detail
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11
12 Midco 21 is a confidential document. It is a Midcontinent service issues
13 document, and at issue 21 discusses re-rating to cure the initial billing problem.
14 Midcontinent 22, another confidential document, substantiates my statement at
15 page 15, line 21, that Qwest had permitted the billing discrepancy to accumulate
16 to an amount in excess of \$200,000.

Issue: 198	Public Interest	Description: Meaningful and Significant Incentive Magnitude of QPAP Pay-out Levels
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17
18 Midco 23 is an excerpt from the Liberty Consulting Group Report on QPAP,
19 dated October 22, 2001. It is the report referred to at page 16 of my testimony,
20 line 10.

Issue: 199	Public Interest	Description: Relevance of Compensation as a QPAP Goal
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Exhibit Midco 24 is the Liberty Consulting Group QPAP Report except referred to in my testimony on page 17, line 2.

Issue: 202	Public Interest	Description: Indemnity for CLEC Payments Under State Service Quality Standards
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Midco 25 is the Liberty Consulting Group QPAP Report discussing CLEC payments under service quality standards, supporting my testimony in this category. Midco 26 is a copy of the Midcontinent Service Issues statement for November 6 which shows a constant problem with Qwest's departure from service quality standards.

Issue: 223	Public Interest	Description: LIS Trunks Weighting
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Midco 27 is an excerpt from the Liberty Consulting Group QPAP Report discussing the relative importance of local interconnect service (LIS) trunks. While the weight to be given the delivery of LIS trunks can be debated, clearly they are important to CLECs and merit treatment in the QPAP payment structure.

Issue: 227	Public Interest	Description: Clearly Articulated and Pre-determined Measures Low Volume CLECs
------------	-----------------	---

1 Midco 28 is an excerpt from the Liberty Consulting Group QPAP Report dealing
2 with low volume CLECs. The report essentially agrees that rounding out
3 averages would allow Qwest too much leeway.

Issue: 228	Public Interest	Description: Summary to Detect and Sanction Poor Performance as it Occurs -- 6 Month Plan Review Limitations
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4
5 Midco 29 incorporates the QPAP Report discussion of the six-month plan reviews.
6 The report essentially supports the concept of regulatory approval of plan changes
7 as distinguished from Qwest approval.

Issue: 240	Public Interest	Description: Initial Effective Date
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8
9 Midco 30 is that portion of the QPAP Report dealing with its initial effective date.
10 Midcontinent believes it supports my testimony on this issue.

Issue: 253	Public Interest	Description: LNH Prices
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11
12 Midco 31 is the Liberty Consulting Group Public Interest Report, page 3, on LNH
13 prices. While the consultant leaves the decision to the state commissioners to
14 another day, Midcontinent believes that the CLECs position is closer to the mark.
15 Midco 32 is a confidential exhibit identifying comparative costs of LNH, LNH 2,
16 residential resold and commercial resold. Clearly, it shows that LNH prices are
17 overstated when compared to residential resold prices.

Issue: 254	Public Interest	Description: Interstate Access Charge
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1 Midco 33 is the Liberty Consulting Group Report on Intrastate access charges.

2 relevant to my testimony on that subject.

Issue: Additional	Public Interest	Description: Carrier Access Billing Issues with Termination of Qwest toll calls on Midcontinent Network
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3
4 Midco 34 and Midco 35 are representative of correspondence between

5 Midcontinent and Qwest on carrier access issues. Midco 36 shows that AT&T
6 has the same problem.

7
8 This concludes my testimony concerning the foundation for Midcontinent's
9 exhibits.

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE ANALYSIS
INTO QWEST CORPORATION'S
COMPLIANCE WITH SECTION 371(c)
OF THE TELECOMMUNICATIONS ACT
OF 1996

TC01-103

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APR 17 2002

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

CERTIFICATE OF SERVICE

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 17th day of April, 2002, he hand delivered two true and correct copies of the Supplemental Testimony, Public Exhibits and Confidential Exhibits of Midcontinent Communications in the above-captioned action to the following at her last known address, to-wit:

Karen Cremer
Staff Attorney
Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

He also certifies that on that same date he sent via Federal Express two true and correct copies of the same in the above-captioned action to the following at their last known addresses, to-wit:

Gregory J. Bernard
Attorney at Law
Morrill, Thomas, Hooney & Brann
8th Floor, 625 Ninth Street
Rapid City, SD 57701
(not the confidential exhibits)

Mary E. Hansen
Attorney at Law
Steel River LLP
101 South Capitol Blvd. Suite 2000
Sioux Falls, SD 57102-1000

Steven M. Volgier
Attorney at Law
AT&T Communications of the
Midwest, Inc.
1875 Lawrence Street Suite 1000
Denver, CO 80202


David A. Gerdes

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE 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 No. TC 01-165

ORDER ADMITTING NON-RESIDENT
ATTORNEY

It is hereby

Long
ORDERED that the Motion for Admission for *Long* ~~Long~~ *Long*, a non-resident attorney, to
appear on behalf of Qwest Corporation before the Public Utilities Commission for the State of
South Dakota relating to this matter is granted.

Dated this 19th day of April, 2002.

BY THE COURT:

[Signature]
Circuit Court Judge
Sixth Judicial District

ATTEST:

Christal L. Espeland, Clerk

By: *[Signature]*
Deputy
(SEAL)

State of South Dakota } ss
County of Hughes }

I hereby certify that the foregoing
instrument is a true and correct
copy of the original on file in my
office.

Dated this 19th day of Apr, 2002
CHRISTAL L. ESPELAND, Clerk of Courts

By: *[Signature]*
Clerk of Courts/Deputy

FILED

APR 18 2002

[Signature]

By: *[Signature]*

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE 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 No. TC 01-165

ORDER ADMITTING NON-RESIDENT
ATTORNEY

It is hereby

ORDERED that the Motion for Admission for Robert Cattarack, a non-resident attorney, to appear on behalf of Qwest Corporation before the Public Utilities Commission for the State of South Dakota relating to this matter is granted.

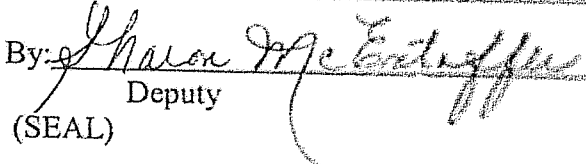
Dated this 19th day of April, 2002.

BY THE COURT:


Circuit Court Judge
Sixth Judicial District

ATTEST:

Christal Espeland, Clerk

By: 
Deputy
(SEAL)

STATE OF SOUTH DAKOTA
COURT CLERK

FILED

APR 18 2002

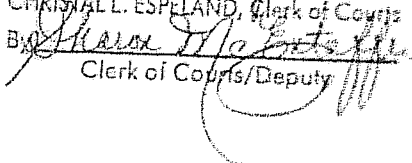
Christal L. Espeland, CLERK

By: _____

State of South Dakota } ss
County of Hughes }

I hereby certify that the foregoing
instrument is a true and correct
copy of the original on file in my
office.

Dated this 19th day of Apr., 2002.
CHRISTAL L. ESPELAND, Clerk of Courts

By: 
Clerk of Courts/Deputy

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APR 19 2002

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE 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 No. TC 01-165

ORDER ADMITTING NON-RESIDENT
ATTORNEY

It is hereby

ORDERED that the Motion for Admission for John Devaney, a non-resident attorney, to
appear on behalf of Qwest Corporation before the Public Utilities Commission for the State of
South Dakota relating to this matter is granted.

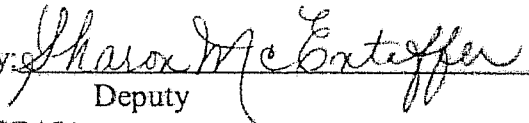
Dated this 19th, day of April, 2002.

BY THE COURT:


Circuit Court Judge
Sixth Judicial District

ATTEST:

Christal L. Espeland, Clerk

By: 
Deputy
(SEAL)

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HUGHES CO.

FILED

APR 18 2002

Christal L. Espeland, CLERK

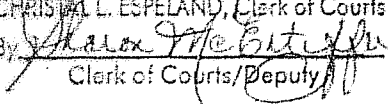
By: _____ Deputy

State of South Dakota } ss
County of Hughes }

I hereby certify that the foregoing
instrument is a true and correct
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office.

Dated this 19th day of Apr., 2002

CHRISTAL L. ESPELAND, Clerk of Courts

By: 
Clerk of Courts/Deputy

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
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IN THE MATTER OF THE
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Docket No. TC 01-165

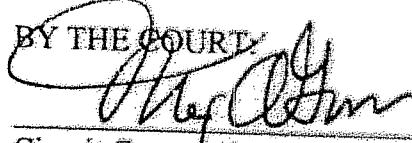
ORDER ADMITTING NON-RESIDENT
ATTORNEY

It is hereby

ORDERED that the Motion for Admission for Kara M. Sacilotto, a non-resident attorney, to appear on behalf of Qwest Corporation before the Public Utilities Commission for the State of South Dakota relating to this matter is granted.

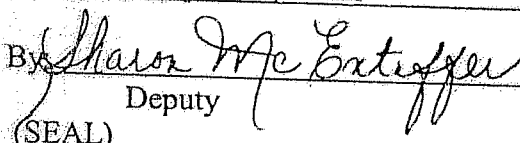
Dated this 19th, day of April, 2002.

BY THE COURT


Circuit Court Judge
Sixth Judicial District

ATTEST:

Christal L. Espeland, Clerk

By 
Deputy
(SEAL)

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HUGHES CO.

FILED

APR 18 2002

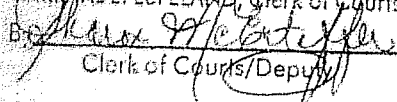
Christal L. Espeland, CLERK

By _____ Deputy

State of South Dakota } ss
County of Hughes }

I hereby certify that the foregoing
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Dated this 19th day of Apr., 2002
CHRISTAL L. ESPELAND, Clerk of Courts

By 
Clerk of Courts/Deputy

RECEIVED

APR 18 2002

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
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IN THE MATTER OF THE
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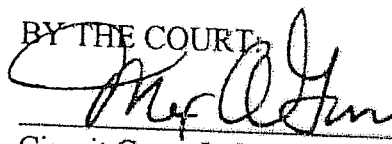
ORDER ADMITTING NON-RESIDENT
ATTORNEY

It is hereby

ORDERED that the Motion for Admission for Mary Rose Hughes, a non-resident attorney, to appear on behalf of Qwest Corporation before the Public Utilities Commission for the State of South Dakota relating to this matter is granted.

Dated this 19th, day of April, 2002.

BY THE COURT,



Circuit Court Judge
Sixth Judicial District

ATTEST:

Christal L. Espeland, Clerk

By: Sharon McEntaffer
Deputy
(SEAL)

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HUGHES CO.

FILED

APR 18 2002

Christal L. Espeland CLERK

By _____ Deputy

State of South Dakota } ss
County of Hughes }

I hereby certify that the foregoing
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Dated this 19th day of Apr., 2002.
CHRISTAL L. ESPELAND, Clerk of Courts

By: Sharon McEntaffer
Clerk of Courts/Deputy

RECEIVED

APR 19 2002

SOUTH DAKOTA PUBLIC
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BEFORE THE PUBLIC UTILITIES COMMISSION
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IN THE MATTER OF THE
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CORPORATION'S COMPLIANCE WITH
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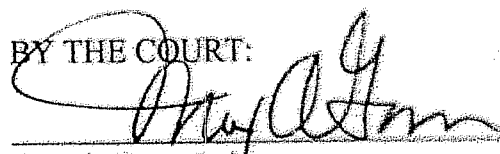
ORDER ADMITTING NON-RESIDENT
ATTORNEY

It is hereby

ORDERED that the Motion for Admission for Shannon Heim, a non-resident attorney,
to appear on behalf of Qwest Corporation before the Public Utilities Commission for the State of
South Dakota relating to this matter is granted.

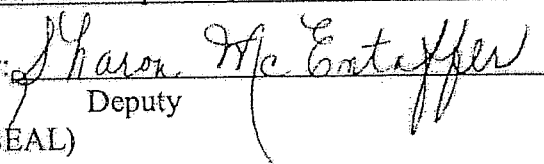
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BY THE COURT:


Circuit Court Judge
Sixth Judicial District

ATTEST:

Christal L. Espeland, Clerk

By: 

Deputy

(SEAL)

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HUGHES CO.

FILED

APR 18 2002

Christal L. Espeland, CLERK

By: _____ Deputy

State of South Dakota } ss
County of Hughes }

I hereby certify that the foregoing
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copy of the original on file in my
office.

Dated this 19th day of Apr., 2002
CHRISTAL L. ESPELAND, Clerk of Courts

By: 
Clerk of Courts/Deputy

RECEIVED

APR 18 2002

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE 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 No. TC 01-165

ORDER ADMITTING NON-RESIDENT
ATTORNEY

It is hereby

ORDERED that the Motion for Admission for William Richardson, a non-resident attorney, to appear on behalf of Qwest Corporation before the Public Utilities Commission for the State of South Dakota relating to this matter is granted.

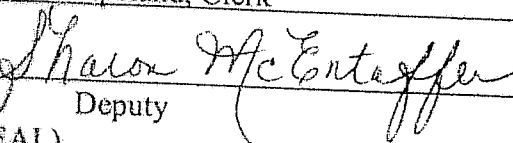
Dated this 19th, day of April, 2001.

BY THE COURT:


Circuit Court Judge
Sixth Judicial District

ATTEST:

Christal Espeland, Clerk

By: 
Deputy
(SEAL)

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HUGHES CO.

FILED

APR 18 2002

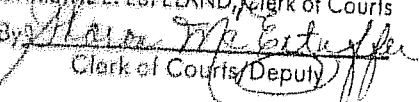
Christal L. Espeland, CLERK

By: _____ Deputy

State of South Dakota } ss
County of Hughes }

I hereby certify that the foregoing
instrument is a true and correct
copy of the original on file in my
office.

Dated this 19th day of Apr, 2002
CHRISTAL L. ESPELAND, Clerk of Courts

By: 
Clark of Courts/Deputy

RECEIVED

APR 18 2002

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE 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 No. TC 01-165

ORDER ADMITTING NON-RESIDENT
ATTORNEY

It is hereby

ORDERED that the Motion for Admission for Charles Steese, a non-resident attorney, to
appear on behalf of Qwest Corporation before the Public Utilities Commission for the State of
South Dakota relating to this matter is granted.

Dated this 19th, day of April, 2002.

BY THE COURT:


Circuit Court Judge
Sixth Judicial District

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HUGHES CO.

FILED

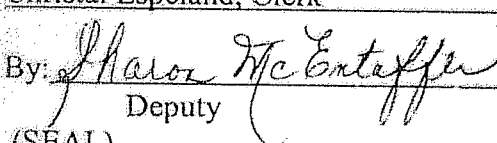
APR 18 2002

Christal L. Espeland, Clerk

By: _____ Deputy

ATTEST:

Christal Espeland, Clerk

By: 
Deputy

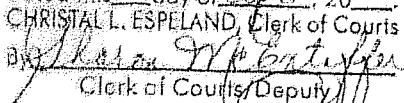
(SEAL)

State of South Dakota } ss
County of Hughes }

I hereby certify that the foregoing
instrument is a true and correct
copy of the original on file in my
office.

Dated this 19th day of Apr., 2002

CHRISTAL L. ESPELAND, Clerk of Courts

By: 
Clerk of Courts/Deputy

RECEIVED

APR 19 2002

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE 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 No. TC 01-165

ORDER ADMITTING NON-RESIDENT
ATTORNEY

It is hereby

ORDERED that the Motion for Admission for Blair Rosenthal, a non-resident attorney,
to appear on behalf of Qwest Corporation before the Public Utilities Commission for the State of
South Dakota relating to this matter is granted.

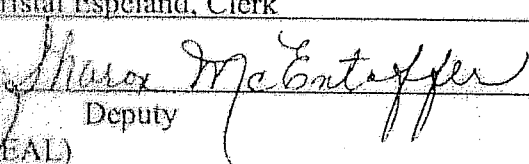
Dated this 19th, day of April, 2002.

BY THE COURT:


Circuit Court Judge
Sixth Judicial District

ATTEST:

Christal Espeland, Clerk

By 

Deputy

(SEAL)

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HUGHES CO.

FILED

APR 18 2002

Christal A. Espeland CLERK

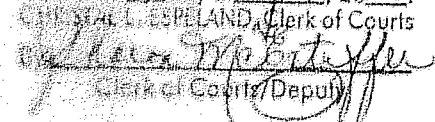
By _____ Deputy

State of South Dakota } ss
County of Hughes }

I hereby certify that the foregoing
instrument is a true and correct
copy of the original on file in my
office.

Dated this 19th day of Apr., 2002

CHRISTAL L. ESPELAND, Clerk of Courts



Clerk of Courts/Deputy

RECEIVED

APR 19 2002

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE 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 No. TC 01-165

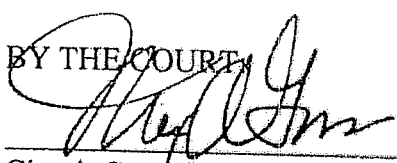
ORDER ADMITTING NON-RESIDENT
ATTORNEY

It is hereby

ORDERED that the Motion for Admission for Andrew Crain, a non-resident attorney, to
appear on behalf of Qwest Corporation before the Public Utilities Commission for the State of
South Dakota relating to this matter is granted.

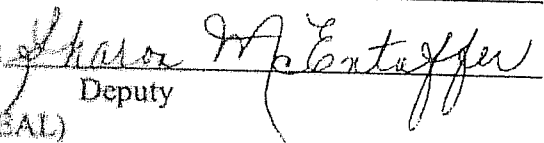
Dated this 19th, day of April, 2002.

BY THE COURT


Circuit Court Judge
Sixth Judicial District

ATTEST:

Christal Espeland, Clerk

By: 

Deputy

(SEAL)

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HUGHES CO.

FILED

APR 18 2002

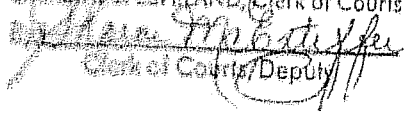
Christal E. Espeland CLERK

By _____ Deputy

State of South Dakota } ss
County of Hughes }

I hereby certify that the foregoing
instrument is a true and correct
copy of the original on file in my
office.

Dated this 19th day of Apr., 2002
ORIGINAL L. ESPELAND, Clerk of Courts


Clerk of Courts/Deputy

RECEIVED

APR 19 2002

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

LAW OFFICES
MORRILL THOMAS NOONEY & BRAUN, LLP
625 NINTH STREET - 8TH FLOOR
P.O. Box 8108
RAPID CITY, SOUTH DAKOTA 57709-8108
TELEPHONE (605) 348-7516
FAX (605) 348-5852

RECEIVED

APR 22 2002

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

TIMOTHY L. THOMAS*
JOHN A. NOONEY*
JOHN H. BRAUN*
KURT E. BOLAY
GREGORY J. BERNARD
*ATTORNEYS LICENSED IN WYOMING
*ATTORNEYS LICENSED IN NEBRASKA

OF COUNSEL
DAVID E. MORRILL

April 19, 2002

[e-mail: gjbernard@mtnlaw.com]

FAX Received APR 19 2002

Via Facsimile & U.S. Mail
Ms. Debra Elofson
Executive Director
Public Utilities Commission
State Capitol Building
500 East Capitol Avenue
Pierre, SD 57501

RE: Black Hills FiberCom/US West 271 Application
TC01-165
Our File No. BH-1231

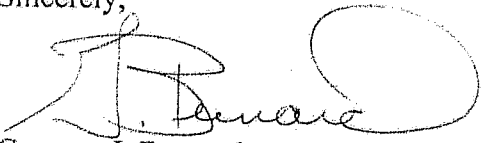
Dear Ms. Elofson:

Please find enclosed for filing the original and ten (10) copies of Black Hills FiberCom, LLC's Responses to Qwest Corporation's Data Requests for Black Hills FiberCom with regard to the above-referenced matter.

By copy of this correspondence to opposing counsel, I am providing them with a copy of the same which is intended as service upon them via e-mail and first class mail.

Please call if you have any questions.

Sincerely,


Gregory J. Bernard

Client
Enclosures
cc: Clients
Service List

BEFORE THE
PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

RECEIVED

APR 22 2002

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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
)
)
)

FAX Received APR 19 2002

**BLACK HILLS FIBERCOM, L.L.C.'S RESPONSES TO QWEST CORPORATION'S
DATA REQUESTS FOR BLACK HILLS FIBERCOM**

COMES NOW, Ron Schaible, of Black Hills FiberCom, L.L.C., and answers Qwest Corporation's Data Requests for Black Hills FiberCom as follows:

REQUESTS FOR INFORMATION/PRODUCTION OF DOCUMENTS

Request No. 1: Please provide the number of end user residential lines you currently serve in Qwest service territory in South Dakota through facilities entirely owned by you. For purposes of this Request, the term "facilities" includes, but is not limited to copper, coaxial, or fiber facilities.

NOTE: this Request does not seek information regarding access lines served via unbundled network elements (UNEs).

Response: 26,035

Request No. 2: Please provide the number of end user business lines you currently serve in Qwest service territory in South Dakota through facilities entirely owned by you. For purposes of this Request, the term "facilities" includes, but is not limited to copper, coaxial, or fiber facilities.

NOTE: this Request does not seek information regarding access lines served via unbundled network elements (UNEs).

Response: 13,412

Request No. 3: Please provide the number of end user residential lines you serve in Qwest service territory in South Dakota using services purchased from Qwest services for resale.

Response: 0

Request No. 4: Please provide the number of end user business lines you serve in Qwest service territory in South Dakota using services purchased from Qwest services for resale.

Response: 0

Request No. 5: Please provide the number of end user residential lines you serve in Qwest service territory in South Dakota using stand-alone unbundled loops purchased from Qwest. For purposes of this Request, the term "stand-alone unbundled loops" does not include UNE-Platform services.

Response: 5

Request No. 6: Please provide the number of end user business lines you serve in Qwest service territory in South Dakota using stand-alone unbundled loops purchased from Qwest. For purposes of this Request, the term "stand-alone unbundled loops" does not include UNE-Platform services.

Response: 225

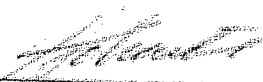
Request No. 7: Please provide the number of end user residential lines you serve in Qwest service territory in South Dakota using a finished package of unbundled network elements (often identified as "UNE-Platform" or "UNE-P") purchased from Qwest.

Response: 0

Request No. 8: Please provide the number of end user business lines you serve in Qwest service territory in South Dakota using a finished package of unbundled network elements (often identified as "UNE-Platform" or "UNE-P") purchased from Qwest.

Response: 0

Dated this 19th day of April, 2002.



Ron Schaible

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF PENNINGTON)

On the 19th day of April, 2002, before me, the undersigned officer, personally appeared Ron Schaible, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)



Notary Public, South Dakota

My Commission Expires: 6-01-2003

I, Gregory J. Bernard, attorney for Black Hills FiberCom, L.L.C. in the above-entitled matter, do hereby certify that a true and correct copy of Black Hills Fibercom, L.L.C.'s Responses to Qwest's Data Requests to Black Hills FiberCom was mailed by first-class mail, postage prepaid thereon, to the following:

Ms. Colleen Sevoid
Qwest Corporation
125 South Dakota Avenue, 8th Floor
Sioux Falls, SD 57194

Mr. Harlan Best
Staff Analyst
Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

David A. Gerdes, Esq.
May Adam Gerdes & Thompson
PO Box 160
Pierre, SD 57501-0160

Ms. Mary S. Hobson
Stoel Rives LLP
101 South Capitol Blvd, Suite 1900
Boise ID 83702-5958

Mr. Ted Smith
Qwest Corporation
One Utah Center, Suite 1100
201 South Main Street
Salt Lake City UT 84111

Mr. Warren R. Fischer
Senior Consultant
QSI Consulting
3333 East Bayaud Avenue, Suite 820
Denver CO 80209-2945

Mr. Mark Stacy
QSI Consulting
5300 Meadowbrook Drive
Cheyenne WY 82009

Mr. John L. Munn
Qwest Corporation
1801 California Street, Suite 4900
Denver CO 80202

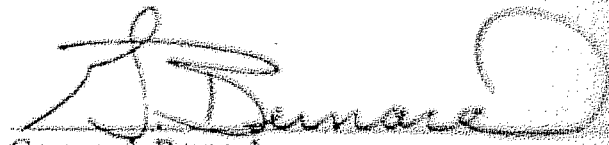
Marlon "Buster" Griffing Ph.D.
Senior Consultant
QSI Consulting
1735 Crestline Drive
Lincoln NE 68506

Thomas J. Welk, Esq.
Boyce, Murphy, McDowell & Greenfield
PO Box 5015
Sioux Falls, SD 57117-5015

Karen Cremer, Esq.
Staff Attorney
Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

Mr. Steve H. Weigler
Ms. Mary B. Fribby
AT&T Communications of the Midwest
1875 Lawrence Street, Suite 1524
Denver, CO 80202

by depositing the same in the United States Mail at Rapid City, South Dakota, this 19th day of April, 2002.



Gregory J. Bernard

APR 22 2002

REVISED ORDER OF WITNESSES

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

WITNESS

TOPIC

APPROX. DATE

** Connotes appearance order of witness "flexible"

- | | | |
|------------------------------|--|-----------|
| 1. Teitzel (Frankel) | Public Interest/Track A | 4/22 |
| 2. Brohl (Crain) | OSS ¹ /SATE | 4/22 |
| 3. Schultz (Crain) | CMP ² | 4/22 |
| 4. Freeberg (Devaney) | | |
| Devaney | CI#1 Interconnection | 4/22-4/23 |
| Devaney | CI#13 Reciprocal Compensation | |
| Sacilotto | CI#3 Poles, Ducts, ROW | |
| 5. Brohl (Sacilotto) | adopting that portion of the Jean Liston
CI# 4 testimony dealing with loop
qualification | 4/23 |
| 6. Bumgarner (Cattanach) | | 4/23-4/24 |
| Cattanach | CI#1 Collocation | |
| Sacilotto | CI#7 911 | |
| Hobson | CI#9 Numbering Admin (Not Challenged) | |
| Cattanach | CI#10 Signaling/ Databases | |
| Cattanach | CI#11 Number Portability | |
| Hobson | CI# 12 Local Dialing Parity (Not Challenged) | |
| 7. Dennis Pappas (Sacilotto) | CI#4 Unbundled Local Loops
(selected portions) ¹ | 4/23-4/24 |
| 8. Simpson (Cattanach) | | 4/24 |
| Hobson | CI#6 Unbundled Local Switching | |
| Sacilotto | CI#7 DA, Operator Svcs | |
| MRHughes | CI#8 White Pages Listings | |
| Cattanach | CI#14 Resale | |

¹ Ms. Brohl is adopting the testimony provided in the direct and rebuttal affidavits of Lynn Notarianni, with the exception of the discussion at pages 35-45 of Ms. Notarianni's direct affidavit, which is the subject of a Motion filed April 19, 2002 by Qwest.

² SATE was mistakenly listed as a subject covered by Ms. Schultz in the previous list. The prefiled testimony on this subject was contained in the affidavit of Ms. Notarianni now being adopted by Ms. Brohl.

³ See the preceding note.

9. Brotherson (MRHughes) General Terms

4/24

Note: Due to scheduling conflicts with Qwest attorney Chuck Steese, Qwest will not be able to put witnesses 10-13 on the stand before the morning of 4/25.

10. Stewart (Steese)

MRHughes

CI#2 Access to UNEs

4/25

Steese

CI#2 Emerging Services/EELS

Hobson

CI#5 Unbundled Local Transport

Sacilotto

CI#4 NIDs; linesplitting

11. LaFave (Steese)

CI#5 Unbundled Local Transport

4/25

12. Williams (Steese)

PIDs/Data Actuals

4/25

13. Stright (Steese)

Data Reconciliation

4/25

14. Reynolds (Stang)

PAP

4/26

15. Brunsting (Hobson)

Section 272

4/26

16. Schwartz (Hobson)

Section 272

4/26

17. Toll (Hobson)**

Public Interest/Overview

fill-in where needed

Note: Qwest understands that one of AT&T's witnesses, Mr. Finnegan, is only available on Monday the 29th. AT&T and Qwest have agreed that Mr. Finnegan may go on the morning of the 29th regardless of whether Qwest has completed its witness list. However, if Qwest has not concluded its direct case by the morning of the 29th, Qwest will continue and complete its case after Mr. Finnegan has testified. AT&T's Ken Wilson will follow Mr. Finnegan if Qwest has completed its case, or he will follow the Qwest witnesses.

Qwest
1801 California Street, Suite 4000
Denver, Colorado 80202
Phone 303 672-5823
Facsimile 303 295-7069

RECEIVED

John L. Munn
Senior Attorney

APR 22 2002

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

April 19, 2002

Debra Elofson, Executive Director
SD Public Utilities Commission
500 East Capitol
Pierre, SD 57501

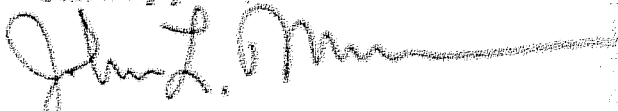
Re: IN THE MATTER OF THE ANALYSIS OF QWEST
CORPORATION'S COMPLIANCE WITH SECTION 271(c) OF THE
TELECOMMUNICATIONS ACT OF 1996 --- Docket No. TC01-165

Dear Ms. Elofson:

Enclosed please find an original and ten copies of the Affidavits of Barbara Brohl,
Dennis Pappas, and Karen Stewart adopting the testimony and exhibits of Jean Liston and Lynn
Notarianni on behalf of Qwest Corporation.

Thank you for your consideration of this matter.

Sincerely yours,



John L. Munn

Enclosures

Cc: Steven Weigler
David A. Gerdes
Gregory J. Bernard
Colleen Sevold
Tom Welk

RECEIVED

APR 22 2002

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE ANALYSIS OF
QWEST CORPORATION'S COMPLIANCE
WITH SECTION 271 (c) OF THE
TELECOMMUNICATIONS ACT OF 1996

)
)
) Docket No. TC01-165
)
) CERTIFICATE OF SERVICE
)

I, John L. Munn, do hereby certify that I am an attorney for Qwest Corporation, and on this 19th day of April, 2002, true and corrected copies of the Affidavits of Barbara Brohl, Dennis Pappas, and Karen Stewart on behalf of Qwest Corporation, that was filed with the South Dakota Public Utilities Commission on April 19, 2002, were sent to the following intervenors:

Steven H. Weigler
AT&T Communications of the Midwest
1875 Lawrence Street
Denver, CO
Email: weigler@lga.att.com

via E-Mail and Overnight Delivery

Black Hills Fiber Com
Gregory J. Bernard
Morrill, Thomas, Nooney & Braun
PO Box 8108
Rapid City, SD 57709

via E-Mail and Overnight Delivery

Midcontinent Communications
David A. Gerdes
May, Adam, Gerdes & Thompson LLP
503 S. Pierre St.
Pierre, SD 57501-0160

via E-Mail and Overnight Delivery

Harlan Best, Staff Analyst
Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

via Overnight Delivery

Karen Cremer, Staff Attorney
Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

via Overnight Delivery


John L. Munn
Attorney for Qwest Corporation



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APR 22 2002

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Mr. Tolson
Mr. Ladd
Mr. Nichols
Mr. Belmont
Mr. Mohr
Mr. DeLoach
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Tele. Room
Miss Holmes
Miss Gandy

April 19, 2002

MARY S. HOBSON
Direct Mail
Class 355-4275
email mhobson@stol.com

Debra Elofson, Executive Director
SD Public Utilities Commission
500 East Capitol
Pierre, SD 57501

Re: IN THE MATTER OF THE ANALYSIS OF QWEST
CORPORATION'S COMPLIANCE WITH SECTION 271(c) OF THE
TELECOMMUNICATIONS ACT OF 1996 --- Docket No. TC01-165

Dear Ms. Elofson:

Enclosed please find an original and ten copies of the Supplemental Affidavit of Karen
A. Stewart filed on behalf of Qwest Corporation.

Thank you for your consideration of this matter.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Mary S. Hobson".
Mary S. Hobson

Enclosures

Cc: Steven Weigler
David A. Gerdes
Gregory J. Bernard
Colleen Sevold
Tom Welk

RECEIVED

APR 22 2002

BEFORE THE
PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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 CORPORATION'S

AFFIDAVIT

OF

BARBARA BROHL

CHECKLIST ITEM 2: OPERATIONS SUPPORT SYSTEMS (OSS)

APRIL 19, 2002

I.	IDENTIFICATION OF AFFIDAVIT	1
II.	PURPOSE OF AFFIDAVIT	2
III.	IDENTIFICATION OF AFFIDAVIT PORTIONS ADOPTED	2

I. IDENTIFICATION OF AFFIDAVIT

Barbara Brohl states as follows:

My name is Barbara Brohl. I am employed by Qwest Information Technologies, Inc. as a Director – Legal Issues in the Information Technologies (IT) Wholesale Systems Organization. My business address is 930 15th Street, 10th Floor, Denver, Colorado.

Currently, my responsibilities include identifying and managing regulatory issues surrounding Operations Support Systems, as a result of the Telecommunications Act of 1996, FCC orders, state commission decisions, and other legal and regulatory matters. I have testified before federal and state regulatory bodies in arbitration cases, rulemakings and complaint proceedings concerning conformance with state and federal telecommunications laws and regulations. Prior to my current position, I managed the Information Technologies department's compliance with the restrictions of the Modification of Final Judgment and the requirements of Open Network Architecture. During that time, I became certified by the Institute for Certification of Computing Professionals (ICCP) as a Certified Computing Professional (CCP), and then received a Bachelor of Science degree in Business/ Computer Science from Regis University in 1991. In 1995, I received a Juris Doctorate degree from the University of Denver, School of Law. I then left U S WEST, now Qwest, for approximately two years to work as a judicial law clerk for the Colorado Supreme Court. Since my return, my work has focused on providing regulatory support to the Wholesale Markets organization.

CONTINUATION

[1]

II. PURPOSE OF AFFIDAVIT

The purpose of this affidavit is to inform the South Dakota Public Utilities Commission and the parties in this docket that for the hearing beginning on April 22, 2002, I will be adopting the affidavits of Lynn M. V. Notarianni.

III. IDENTIFICATION OF AFFIDAVIT PORTIONS ADOPTED

I have read Lynn Notarianni's Direct and Rebuttal affidavits. I am adopting the portions of each affidavit that address pre-order loop qualification. Based on my professional experience, personal knowledge, and information available to me in the normal course of my duties, I will be prepared to present Qwest's compliance with the portion of Checklist Item 2 covering OSS.

This concludes my Affidavit.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE 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 No. TC01-165

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.

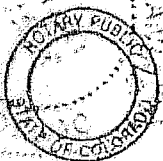
Executed this 19th day of April, 2002.

Debra B. Burke

STATE OF COLORADO)
)ss.
CITY & COUNTY OF DENVER)

Subscribed and sworn before me this 19th day of April, 2002.

Pamela L. Laning
Notary Public



PAMELA L. LANING
Notary Public
State of Colorado
My Commission Expires
06-20-2002

RECEIVED

APR 22 2002

BEFORE THE
PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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 CORPORATION'S

AFFIDAVIT

OF

BARBARA BROHL

CHECKLIST ITEM 4: PRE-ORDER LOOP QUALIFICATION

APRIL 19, 2002

I. IDENTIFICATION OF AFFIDAVIT	1
II. PURPOSE OF AFFIDAVIT	2
III. IDENTIFICATION OF AFFIDAVIT PORTIONS ADOPTED	2

I. IDENTIFICATION OF AFFIDAVIT

Barbara Brohl states as follows:

My name is Barbara Brohl. I am employed by Qwest Information Technologies, Inc. as a Director – Legal Issues in the Information Technologies (IT) Wholesale Systems Organization. My business address is 930 15th Street, 10th Floor, Denver, Colorado.

Currently, my responsibilities include identifying and managing regulatory issues surrounding Operations Support Systems, as a result of the Telecommunications Act of 1996, FCC orders, state commission decisions, and other legal and regulatory matters. I have testified before federal and state regulatory bodies in arbitration cases, rulemakings and complaint proceedings concerning conformance with state and federal telecommunications laws and regulations. Prior to my current position, I managed the Information Technologies department's compliance with the restrictions of the Modification of Final Judgment and the requirements of Open Network Architecture. During that time, I became certified by the Institute for Certification of Computing Professionals (ICCP) as a Certified Computing Professional (CCP), and then received a Bachelor of Science degree in Business/ Computer Science from Regis University in 1991. In 1995, I received a Juris Doctorate degree from the University of Denver, School of Law. I then left U S WEST, now Qwest, for approximately two years to work as a judicial law clerk for the Colorado Supreme Court. Since my return, my work has focused on providing regulatory support to the Wholesale Markets organization.

II. PURPOSE OF AFFIDAVIT

The purpose of this affidavit is to inform the South Dakota Public Utilities Commission and the parties in this docket that for the hearing beginning on April 22, 2002, I will be adopting portions of the affidavits of Jean M. Liston.

III. IDENTIFICATION OF AFFIDAVIT PORTIONS ADOPTED

I have read Jean Liston's Direct and Rebuttal affidavits. I am adopting the portions of each affidavit that address pre-order loop qualification. Based on my professional experience, personal knowledge, and information available to me in the normal course of my duties, I will be prepared to present Qwest's compliance with the portion of Checklist Item 4 covering pre-order loop qualification. I will be prepared to receive any cross-examination appropriate to pre-order loop qualification.

Specifically, I adopt the following portions of "QWEST CORPORATION'S AFFIDAVIT OF JEAN M. LISTON CHECKLIST ITEM 4 – UNBUNDLED LOOPS, LINE SPLITTING AND NIDS" dated October 24, 2001:

Section I, "Executive Summary" as it relates to pre-order loop qualification;

Section II.B.1.a. "Pre-Order xDSL Qualification Tools," beginning on page 14, line 11 and ending on page 17, line 22;

Exhibit JML-LOOP-2; and

Exhibit JML-LOOP-3.

I have reviewed and specifically adopt the following portions of "QWEST CORPORATION'S REBUTTAL AFFIDAVIT OF JEAN M. LISTON CHECKLIST ITEM 4 – UNBUNDLED LOOPS, LINE SPLITTING AND NIDS" dated April 2, 2002:

1. Section I. "Executive Summary" as it relates to pre-order loop qualification;
2. Section III.h. "Access to Unbundled Loops: Pre-Order Mechanized Loop Testing" beginning on page 18, line 4, and ending on page 22, line 12;
3. Section III.i. "Access to Unbundled Loops: Access to Loop Facilities Assignment Control System (LFACS)," beginning on page 22, line 14, and ending page 40, line 10;
4. Exhibit JML-LOOP-2;
5. Exhibit JML-LOOP-3; and
6. Exhibit JML-LOOP-4.

In addition, I recently learned that the Facility Check tool contained a link to a database, which had loop information. This tool was the precursor to the Qwest "Megabit" tool and is currently not in active use. Although the Qwest Methods & Procedures and training contained no reference to this tool, the access button was mistakenly not disabled. Within one week of my learning of its capabilities, the link from Facility Check was disabled.

This concludes my Affidavit.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
SOUTH DAKOTA

RECEIVED

APR 22 2002

SOUTH DAKOTA PUBL
UTILITIES COMMISSIO

In the Matter of the Investigation)
into Qwest Corporation's)
Compliance with Section 271(c) of the)
Telecommunications Act of 1996)
_____)

Docket No. TC01-165

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.

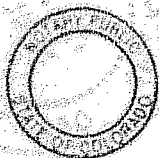
Executed this 19th day of April, 2002.

Barbara Broke

STATE OF COLORADO)
)ss.
CITY & COUNTY OF DENVER)

Subscribed and sworn before me this 19th day of April, 2002.

Pamela L. Laning
Notary Public



PAMELA L. LANING
Notary Public
State of Colorado
My Commission Expires
06-29-2002

RECEIVED

APR 22 2002

BEFORE THE
PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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 CORPORATION'S

AFFIDAVIT

OF

DENNIS PAPPAS

CHECKLIST ITEM 4: UNBUNDLED LOOPS

APRIL 19, 2002

I. IDENTIFICATION OF AFFIDAVIT	1
II. PURPOSE OF AFFIDAVIT	3
III. IDENTIFICATION OF AFFIDAVIT PORTIONS ADOPTED	3

I. IDENTIFICATION OF AFFIDAVIT

Dennis Pappas states as follows:

My name is Dennis Pappas. I am employed by Qwest Communications International ("Qwest") as a Director in the Technical Regulatory Group, Local Network Organization. My business address is 700 Mineral Ave, Room MNH 19.15, Littleton, CO 80120. I have held this position since December 2001. My involvement in the Wholesale organization, focusing mainly on interconnection, began in 1997 for U S WEST, Inc., prior to the merger between Qwest and U S WEST. In 1996 I became the first State Interconnection Manager for Colorado and Wyoming and was responsible for all collocation activity within those states. In 1997 I joined the Wholesale Product Marketing team and led the Unbundled Loop product team as group manager. During that assignment, the team developed many of the Unbundled Loop products that we will discuss in this proceeding. In 1998 I assumed the role as group lead for the collocation team and then in 1999 was promoted to Director of the Wholesale Product Marketing Team. In 2000 I accepted a General Manager's position in U S WEST's Wholesale Emerging and Diversified Markets and had account teams with responsibilities for approximately 75 CLEC accounts within Qwest' central region. I briefly left Qwest in late 2000 after accepting a position of Vice President of Services and subsequently President at TESS Communications until the time when the company filed for bankruptcy. TESS Communications was a facility based CLEC providing Voice, Video, Data and Long Distance to a subscriber base of approximately 1,300 end users in the states of Colorado and Arizona. During my brief stay at TESS, we ordered a number of

unbundled services from Qwest Communications as a means of complimenting the services we were offering to our end users. In August 2001, I rejoined the Wholesale Product Marketing team in a dual role – assisting the Unbundled Loop team in the life cycle management of the product line while supporting Qwest's 271 efforts from a product standpoint. In December of the same year I was promoted to my current position.

I have held numerous management and craft positions with Qwest and U S WEST since June 1978 including Operator Services, Outside Plant Technician, Installation and Repair technician responsible for the installation of POTS and Special Services. I have also performed cable maintenance and splicing activities when the need arose. In 1992 I was promoted into management as a Staff Manager/Service Manager as liaison for the Department of Agriculture and a number of other Government organization including NIST, NCAR, NREL and Rocky Flats. I also supported Network Staff by establishing and implementing best practices within the Local Network Organization. In addition to these positions, I have extensive Wholesale marketing and general telecommunications experience, including the development of written methods and procedures for a number of the interconnection applications and products.

My formal education includes a Bachelor of Science degree in business administration and a Masters in Telecommunications from the University of Denver.

I have not previously filed testimony in this proceeding in the state of South Dakota.

II. PURPOSE OF AFFIDAVIT

The purpose of this affidavit is to inform the South Dakota Public Utilities Commission and the parties in this docket that for the hearing beginning on April 22, 2002, I will be adopting portions of the affidavits of Jean M. Liston.

III. IDENTIFICATION OF AFFIDAVIT PORTIONS ADOPTED

I have read Jean Liston's Direct and Rebuttal affidavits. I am adopting the portions of each affidavit that address unbundled loops. Barbara Brohl is adopting those portions of Ms. Liston's affidavits addressing pre-order loop qualification, and Karen A. Stewart is adopting those portions of Ms. Liston's affidavit addressing Network Interface Devices ("NIDs") and Line splitting. Based on my professional experience, personal knowledge, and information available to me in the normal course of my duties, I will be prepared to present Qwest's compliance with the portion of Checklist Item 4 covering unbundled loops. I will be prepared to receive any cross-examination appropriate to the portions of the affidavits on unbundled loops that I am adopting.

Specifically, I adopt the following portions of "QWEST CORPORATION'S AFFIDAVIT OF JEAN M. LISTON CHECKLIST ITEM 4 - UNBUNDLED LOOPS, LINE SPLITTING AND NIDS" dated October 24, 2001:

Section I. "Executive Summary" as it relates to unbundled loops:

Section II. "Qwest Complies with the FCC's Unbundled Loop Requirements," beginning on page 4, line 12 and ending on page 14, line 10. I also adopt the portion of this section beginning on page 18, line 1, and ending on page 46, line 10;

Exhibit JML-LOOP-4;
Exhibit JML-LOOP-5;
Exhibit JML-LOOP-6;
Exhibit JML-LOOP-7;
Exhibit JML-LOOP-8;
Exhibit JML-LOOP-9;
Exhibit JML-LOOP-10;
Exhibit JML-LOOP-11;
Exhibit JML-LOOP-12;
Exhibit JML-LOOP-13;
Exhibit JML-LOOP-14;
Exhibit JML-LOOP-15; and
Exhibit JML-LOOP-16.

I have reviewed and specifically adopt the following portions of QWEST CORPORATION'S REBUTTAL AFFIDAVIT OF JEAN M. LISTON CHECKLIST ITEM 4 – UNBUNDLED LOOPS, LINE SPLITTING AND NIDS[®] dated April 2, 2002:

1. Section I. "Executive Summary" as it relates to unbundled loops;
2. Section II. "Incorporation of SGAT Changes," beginning on page 2, line 13 and ending on page 2, line 21.

3. Section III. "Access to Unbundled Loops," beginning on page 3, line 1, and ending on page 18, line 4; and page 40, line 12, through page 53, line 13.
4. Exhibit JML-LOOP-1.

This concludes my Affidavit.

Being first duly sworn upon oath, I, Dennis Pappas 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.

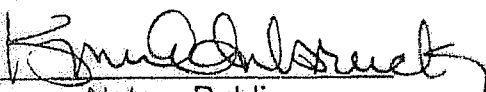
Executed on this 19th day of April 2002.


Dennis Pappas

STATE OF COLORADO

COUNTY OF LARIMER

Subscribed and sworn to before me this 19th day of April 2002.


Notary Public

My Commission Expires:

My Commission Expires 06/20/2004

RECEIVED

APR 21 2002

BEFORE THE
PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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 CORPORATION'S
SUPPLEMENTAL AFFIDAVIT
OF

KAREN A. STEWART

CHECKLIST ITEM 4: NIDS AND LINE SPLITTING

APRIL 19, 2002

- I. IDENTIFICATION OF AFFIDAVIT 1
- II. PURPOSE OF AFFIDAVIT 1
- III. IDENTIFICATION OF AFFIDAVIT PORTIONS ADOPTED 1

I. IDENTIFICATION OF AFFIDAVIT

My name is Karen A. Stewart. I am a Senior Staff Advocate in the Qwest Services Corporation (Qwest) Policy and Law organization. My office is located at 421 SW Oak Street, Portland, Oregon. I filed Direct and Rebuttal Affidavits regarding Qwest's compliance with FCC requirements for Checklist Items 2, 5 and Emerging Services in Docket No. TC 01-165 on October 24, 2001 and April 2, 2002. My previous affidavits describe my background and qualifications.

II. PURPOSE OF AFFIDAVIT

The purpose of this affidavit is to inform the South Dakota Public Utilities Commission and the parties in this docket that for the hearing beginning on April 22, 2002, I will be adopting portions of the affidavits of Jean M. Liston.

III. IDENTIFICATION OF AFFIDAVIT PORTIONS ADOPTED

I have read Jean Liston's Direct and Rebuttal affidavits. I am adopting the line splitting and NIDs portion of each affidavit. Based on my professional experience, personal knowledge, and information available to me in the normal course of my duties, I will be prepared to present Qwest's compliance with the portion of Checklist Item 4 covering NIDs and line splitting. I will be prepared to receive any cross-examination appropriate to NIDs and line splitting.

Specifically, I adopt the following portions of "QWEST CORPORATION'S AFFIDAVIT OF JEAN M. LISTON CHECKLIST ITEM 4 - UNBUNDLED LOOPS, LINE SPLITTING AND NIDS" dated October 24, 2001:

1. Section I. "Executive Summary" as it relates to Qwest complying with the FCC's requirements regarding access to NIDs and line splitting;
2. Section IV. "Qwest Complies with FCC NID Requirements" in its entirety, beginning on page 46 and ending on page 51;
3. Section V "Qwest provides Line Splitting and Loop Splitting in Compliance with the FCC Rules" in its entirety, beginning on page 51 and ending on page 59;
4. Exhibit JML-LOOP-17 Network Diagram of Loop Splitting;
5. Exhibit JML-LOOP-18 Line Splitting Scenarios; and
6. Exhibit JML-LOOP-19 Loop Splitting Scenarios.

I have reviewed and specifically adopt the following portions of "QWEST CORPORATION'S REBUTTAL AFFIDAVIT OF JEAN M. LISTON CHECKLIST ITEM 4 – UNBUNDLED LOOPS, LINE SPLITTING AND NIDS" dated April 2, 2002:

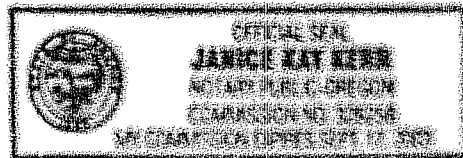
1. Section I. "Executive Summary" as it relates to Qwest complying with the FCC's requirements regarding access to NIDs and line splitting;
2. Section IV "Access to Line Splitting" in its entirety, beginning on page 53 and ending on page 60;
3. Section V. "Access to NID" in its entirety, beginning on page 61 and ending page 65;
4. Exhibit JML-LOOP-5 Ms LaFave's Supplemental Filing;
5. Exhibit JML-LOOP-6 Line Partitioning CR Response; and
6. Exhibit JML-LOOP-7 Line Partitioning SGAT Language.

This concludes this Supplemental Affidavit.

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 18 day of April, 2002.

Karen A. Stewart
Karen A. Stewart



STATE OF Oregon

COUNTY OF Multnomah

Subscribed and sworn to before me this 18 day of April, 2002.

Janice Kay Kew
Notary Public

RECEIVED

APR 22 2002

BEFORE THE PUBLIC UTILITIES COMMISSION SOUTH DAKOTA PUBLIC
OF THE STATE OF SOUTH DAKOTA UTILITIES COMMISSION

IN THE MATTER OF THE ANALYSIS OF
QWEST CORPORATION'S COMPLIANCE
WITH SECTION 271 (c) OF THE
TELECOMMUNICATIONS ACT OF 1996

)
)
) Docket No. TC01-165
)
) CERTIFICATE OF SERVICE
)

I, Mary S. Hobson, do hereby certify that I am an attorney for Qwest Corporation, and on this 19th day of April, 2002, true and corrected copies of the Supplemental Affidavit of Karen A. Stewart on behalf of Qwest Corporation, that was filed with the South Dakota Public Utilities Commission on April 19, 2002, were sent to the following intervenors:

Steven H. Weigler
AT&T Communications of the Midwest
1875 Lawrence Street
Denver, CO
Email: weigler@lga.att.com

via E-Mail and Overnight Delivery

Black Hills Fiber Com
Gregory J. Bernard
Morrill, Thomas, Nooney & Braun
PO Box 8108
Rapid City, SD 57709

via E-Mail and Overnight Delivery

Midcontinent Communications
David A. Gerdes
May, Adam, Gerdes & Thompson LLP
503 S. Pierre St.
Pierre, SD 57501-0160

via E-Mail and Overnight Delivery

Harlan Best, Staff Analyst
Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

via Overnight Delivery

Karen Cremer, Staff Attorney
Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

via Overnight Delivery


Mary S. Hobson
Attorney for Qwest Corporation

WILMER, CUTLER & PICKERING

2445 M STREET, NW

WASHINGTON, D.C. 20037-1420

TELEPHONE (202) 663-6000

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JONATHAN J. FRANKEL

DIRECT LINE (202)

663-6113

INTERNET JFRANKEL@WILMER.COM

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FACSIMILE (020) 7556 4005
TELEPHONE (020) 7556 4006
FACSIMILE (020) 7556 4007
TELEPHONE (020) 7556 4008
FACSIMILE (020) 7556 4009
TELEPHONE (020) 7556 4010
FACSIMILE (020) 7556 4011

April 19, 2002

RECEIVED

APR 22 2002

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Debra Elofson, Executive Director
SD Public Utilities Commission
500 East Capitol
Pierre, SD 57501

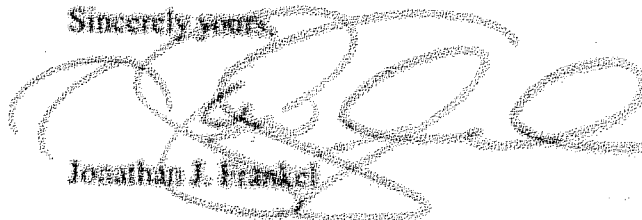
Re: APPLICATION FOR interLATA RELIEF OF U.S. WEST COMMUNICATIONS
INC. PURSUANT TO SECTION 271 OF THE TELECOMMUNICATIONS
ACT OF 1996 --- Docket No. TC01-165

Dear Ms. Elofson:

Enclosed please find an original and ten copies of the Response to AT&T's Motion for
Extraordinary Protective Order.

Thank you for your consideration of this matter.

Sincerely yours,



Jonathan J. Frankel

Enclosures

Cc: Steven Weigler
David A. Gerdes
Gregory J. Bernard
Colleen Sebold
Tom Welk

RECEIVED

APR 22 2002

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE ANALYSIS INTO QWEST
CORPORATION'S COMPLIANCE WITH SECTION
271(C) OF THE TELECOMMUNICATIONS ACT OF
1996

Docket No. TC01-165

RESPONSE TO AT&T'S MOTION FOR EXTRAORDINARY PROTECTIVE ORDER

Qwest Corporation ("Qwest") hereby responds to the Motion for Extraordinary Protective Order filed by AT&T Communications of the Midwest, Inc. ("AT&T") on April 15, 2002. On April 17, 2002, Jonathan J. Frankel, on behalf of Qwest, spoke by telephone with Gary B. Witz of AT&T, and is authorized to report that the two parties have negotiated and are in the process of executing a special protective agreement to permit Mr. Frankel and David L. Tietzel, Qwest's Track A witness, and no other representative of Qwest, to review the data request responses at issue in AT&T's motion. Qwest is executing this agreement in the interests of compromise and the imminent start of the Commission's April 22, 2002 hearing, and does not thereby concede that the information at issue is legally entitled to the protections that AT&T has requested.

In light of this development, Qwest believes that AT&T's motion can be withdrawn.

Dated this 19th day of April, 2002.

By:



Jonathan J. Frankel
Wilmer, Cutler & Pickering
2445 M St., N.W.
Washington, DC 20037
Telephone: (202) 663-6113

Thomas J. Welk
Boyce, Murphy, McDowell & Greenfield LLP
P.O. Box 5015
Sioux Falls, SD 57117

John L. Munn
1801 California Street, Suite 4000
Denver, CO 80202
(303) 672-5823

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, Jonathan J. Frankel, do hereby certify that I am a member of the law firm of Wilmer, Cutler & Pickering, and that on this 19th day of April, 2002, true and correct copies of the Response to AT&T's Motion for Extraordinary Protective Order to be filed with the South Dakota Public Utilities Commission on April 22, 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

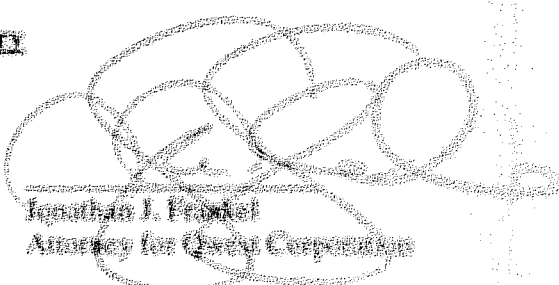
Karen Cremer, Staff Attorney

via Overnight Delivery

Public Utilities Commission

500 East Capitol Avenue

Pierre, SD 57501


Jonathan J. Frankel

Attorney for Qwest Corporation

STATE OF SOUTH DAKOTA)
SS
COUNTY OF HUGHES)

IN CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

RECEIVED

APR 21 2002

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE ANALYSIS INTO QWEST) DOCKET NO. TC01-105
CORPORATION'S COMPLIANCE WITH SECTION)
271(C) OF THE TELECOMMUNICATIONS ACT OF) ORDER ADMITTING
1996) NON-RESIDENT
) ATTORNEY TO PRACTICE
)

The non-resident attorney in the above-entitled action, namely, Steven H. Weigler of AT&T Room 1524, 1875 Lawrence Street, Denver, Colorado 80202, having moved the Court pursuant to SDCL §16-18-2 to be allowed to practice before this Court in the above-entitled matter, and said motion being supported by the Motion of John S. Lovald of Pierre, South Dakota, an attorney licensed to practice in the State Courts of South Dakota, and the Court having examined the motions and being fully advised in the premises, now, therefore, it is

ORDERED that Steven H. Weigler's Motion for Admission to Practice before this Court, and in the above captioned Public Utilities Commission Docket be and it is granted.

DATED at the Pierre, South Dakota, this day of April, 2002.

BY THE COURT

Circuit Court Judge

ATTEST:

Christal L. Espeland

Clerk of Courts
(SEAL)

By Sharon McEntaffer
Deputy

STATE OF SOUTH DAKOTA
CIRCUIT COURT HUGHES CO.

FILED

APR 18 2002

State of South Dakota) ss
County of Hughes)

I hereby certify that the foregoing instrument is a true and correct copy of the original on file in my office. By Christal L. Espeland Deputy

Dated this 18 day of Apr, 2002
CHRISTAL L. ESPELAND, Clerk of Courts

By Sharon McEntaffer
Clerk of Courts Deputy



RECEIVED

APR 22 2002

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

April 19, 2002

MARY S. HOBSON
Executive Director
(605) 773-6177
mhobson@sdpu.com

Debra Elofson, Executive Director
SD Public Utilities Commission
500 East Capitol
Pierre, SD 57501

Re: APPLICATION FOR interLATA RELIEF OF U S WEST
COMMUNICATIONS INC. PURSUANT TO SECTION 271 OF THE
TELECOMMUNICATIONS ACT OF 1996 --- Docket No. TCU1-165

Dear Ms. Elofson:

Enclosed please find an original and ten copies of the Motion to Strike Supplemental
Testimony, Public Exhibits and Confidential Exhibits of W. Thomas Simmons Received April
18, 2002, and the Motion Regarding Proceeding on Third Party Testing of Qwest's OSS.

Thank you for your consideration of this matter.

Sincerely yours,

Mary S. Hobson

MSH:cw

Enclosures

Cc: Steven Weigler
David A. Gerdes
Gregory J. Bernard
Colleen Sevold
Tom Welk



RECEIVED

APR 22 2002

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

April 19, 2002

MARY S. HOBSON

Director
(605) 261-4377

mary.hobson@sdpu.com

Steven H. Weigler
AT&T Communications of the Midwest
1875 Lawrence Street
Denver, CO

Black Hills Fiber Com
Gregory J. Bernard
Morrill, Thomas, Nooney & Braun
PO Box 8108
Rapid City, SD 57709

Midcontinent Communications
David A. Gerdes
May, Adam, Gerdes & Thompson LLP
503 S. Pierre St.
Pierre, SD 57501-0160

Re: Docket No. TC01-165

Dear Counsel:

Enclosed please find the Motion to Strike Supplemental Testimony, Public Exhibits and Confidential Exhibits of W. Thomas Simmons Received April 18, 2002, and the Motion Regarding Proceeding on Third Party Testing of Qwest's OSS.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Mary S. Hobson", written in dark ink.

Mary S. Hobson

Qwest
1801 California Street, Suite 4800
Denver, Colorado 80202
Phone 303-672-5823
Facsimile 303-295-7669

John L. Munn
Senior Attorney

RECEIVED

APR 22 2002

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

April 19, 2002

Debra Eloffson, Executive Director
SD Public Utilities Commission
500 East Capitol
Pierre, SD 57501

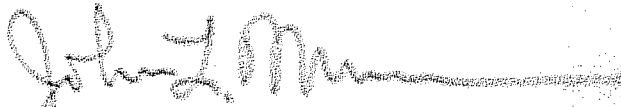
Re: IN THE MATTER OF THE ANALYSIS OF QWEST
CORPORATION'S COMPLIANCE WITH SECTION 271(c) OF THE
TELECOMMUNICATIONS ACT OF 1996 --- Docket No. TC01-165

Dear Ms. Eloffson:

Enclosed please find an original and ten copies of Qwest Corporation's Motion to Strike Supplemental Testimony, Public Exhibits and Confidential Exhibits of W. Thomas Simmons received April 18, 2002.

Thank you for your consideration of this matter.

Sincerely yours,



John L. Munn

Enclosures

Cc: Steven Weigler
David A. Gerdes
Gregory J. Bernard
Colleen Sevold
Tom Welk

APR 22 2002

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTASOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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

**MOTION TO STRIKE SUPPLEMENTAL TESTIMONY, PUBLIC EXHIBITS
AND CONFIDENTIAL EXHIBITS OF W. THOMAS SIMMONS RECEIVED
APRIL 18, 2002**

Qwest Corporation (Qwest) moves the South Dakota Public Utilities Commission (Commission) for its order striking the untimely Supplemental Testimony and Exhibits of W. Thomas Simmons dated April 17, 2002.

BACKGROUND

The Commission required Intervenors to submit testimony no later than March 18, 2002. Midcontinent Communications (Midco) filed the testimony of W. Thomas Simmons on that date raising issues to which Qwest replied in its rebuttal affidavits filed April 2. Qwest's Petition was filed more than four and a half months prior to Midco's deadline for filing testimony and exhibits. This case is now set for hearing to commence on Monday, April 22.

On Thursday, April 18, 2002, only two business days before the commencement of hearing, the undersigned counsel for Qwest received Midco's supplemental testimony and attached exhibits. Midco has not filed a motion for extension of the filing deadline and has made no effort to communicate with counsel for Qwest about the service of this supplemental testimony. Although the supplemental testimony itself is reasonably abbreviated, the exhibits are voluminous and in many cases, poorly marked. The entire

submission was provided in hard copy format only, contrary to the informal practice of the parties in this case, and more than half of it is claimed to be "Confidential" thereby requiring special handling to avoid disclosure to individuals who have not been bound by the parties' protective agreement.

All of these factors work to the extreme prejudice of Qwest. Qwest's witnesses and attorneys are located throughout its fourteen-state territory. Receipt of a voluminous paper filing in Boise, Idaho, on Thursday means that Qwest's witnesses and other attorneys, all of whom are located in cities distant to Boise, had no opportunity to receive and review the information until late Thursday at the earliest, due to the need to forward it by facsimile and/or email following a laborious image scanning exercise. Use of overnight mail (the method used to serve the undersigned) would have ensured Qwest's witnesses would not have seen the testimony and exhibits before the last business before the hearing. This is particularly prejudicial because, due to the logistical difficulties involved in traveling to Pierre, several witnesses and attorneys intend to spend part of the intervening weekend in transit.

The ability of Qwest's counsel and witnesses to meaningfully review Midco's filing before the evidentiary hearing beginning Monday, April 22 is critical to the presentation its witnesses will make early next week. Qwest has attempted in its rebuttal affidavits to respond to Midco's issues and concerns as they could be understood, based upon information contained in Midco's prefiled testimony. Midco now purports to "support" that earlier testimony with a large volume of written materials that have not previously been disclosed and that cannot be adequately reviewed and analyzed before

Qwest's witnesses take the stand and testify about the issues purported contained in these documents.

Midco has never requested an extension of time to file exhibits and has failed to demonstrate why the Commission should allow additional testimony on the eve of the evidentiary hearing. In a cover letter to Simmons' testimony, counsel for Midco asserted that its late filing was necessary because "the Exhibits were not available when Tom Simmons' initial testimony was prepared . . ." However, Simmons' testimony demonstrates that the exhibits were previously available but Midco simply failed to collect them in a timely manner. ("We needed time to identify, collect and organize exhibits that would best substantiate the points I wished to make.") (Supplemental Testimony, page 2, lines 8-9.)

Moreover, based on a review of the attached exhibits, it appears that Midco could have produced the attached exhibits before the March 18, 2002 deadline. Midco attached thirty-six exhibits to the untimely Simmons testimony. The undersigned could identify only three exhibits that do not pre-date the March 18, 2002 deadline. The exhibits include e-mail and correspondence with dates prior to March 18, 2002 (MIDCO 4, e-mail and log from September 2001; MIDCO 5, letter dated June 10, 1999; MIDCO 6, bill dated February 13, 2002; MIDCO 20, bill dated March 10, 2002; MIDCO 22, e-mail dated February 15, 2002; MIDCO 34, e-mail dated December 12, 2000; MIDCO 35, e-mail dated February 19, 2001; MIDCO 36, letter dated February 1, 2002); exhibits with no date (MIDCO 1, 2, 7, 15); logs or trouble tickets with final entries that pre-date March 18, 2002 (MIDCO 3, log with last entry of January 22, 2002; MIDCO 12 & 12A- alleged problems pre-dating filing deadline; MIDCO 14, summary of service issues dated no later

than December 2001; MIDCO 17, report from June 2001; MIDCO 18, trouble report from 1999 and 2000; MIDCO 19, 21, 26, service issues from November and December 2001); excerpts of Qwest Terms and Conditions or wholesale catalog which were publicly available in 2001 (MIDCO 9, 10, 13, 16); excerpts from reports in the multi-state process that were issued in 2001 (MIDCO 23-25, 27-31, 33). The only exhibits post-dating the March 18, 2002 include a report generated on March 19, 2002 (MIDCO 32), a trouble ticket with last entry of March 25, 2002 (MIDCO 8), and a trouble ticket of March 19, 2002 (MIDCO 11).

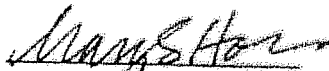
Allowing Midco to file additional testimony and exhibits at this time would cause severe prejudice to Qwest because its witnesses have not had adequate time to review and analyze the information prior to testifying on the topics purportedly addressed in the supplemental filing.

REQUESTED RELIEF

Based on the foregoing Qwest respectfully requests that the Commission strike the Supplemental Testimony of W. Thomas Simmons and attached exhibits.

DATED this 19th day of April, 2002.

Respectfully Submitted,



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

Attorneys for Qwest Corporation

RECEIVED

APR 22 2002

BEFORE THE PUBLIC UTILITIES COMMISSION SOUTH DAKOTA PUBLIC
OF THE STATE OF SOUTH DAKOTA UTILITIES COMMISSION

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
)
)
)

**MOTION REGARDING PROCEEDING ON
THIRD PARTY TESTING OF QWEST'S OSS**

Qwest Corporation (Qwest) moves the South Dakota Public Utilities Commission (Commission) for an order establishing a procedure for consideration of the results of third party testing of Qwest's Operations Support Systems (OSS). Qwest also moves that the order clarify that the subject of the third-party OSS test will not be considered during the hearing on April 22 to 26, 2002.

BACKGROUND

On October 25, 2001, Qwest filed the affidavit of Lynn M. V. Notarianni dated October 24, 2001, regarding Checklist Item 2, Access to OSS. Section V of Ms. Notarianni's affidavit at pages 35-45 addressed the comprehensive ROC third party testing of Qwest's OSS. Ms. Notarianni reported that, as of the date of her affidavit, the final report from the third party test was due January 28, 2002. (Notarianni Affidavit, p. 45) Because of delays in the testing, the draft final report from the ROC OSS test will be issued on the day this motion is being filed, Friday, April 19, 2002, and the hearing is set to begin on Monday, April 22, 2002.

Because the delay of the test reports has deprived the parties of a reasonable opportunity to review the results of the third party testing, Qwest requests that the Commission defer consideration of Qwest's prefiled testimony regarding third party testing structure and procedures (i.e., pages 35-45 of Ms. Notarianni's Direct Affidavit) until a further proceeding in which these topics can be considered in conjunction with the results of these procedures. The remainder of Ms. Notarianni's Direct Affidavit and all of her Rebuttal Affidavit will be adopted by Barbara Brohl and presented at the hearing beginning April 22, 2002 as scheduled.

Qwest requests that the Commission establish a reasonable process to consider the ROC OSS test and its results. Specially, Qwest requests that the Commission permit the parties to file written comments on the ROC final report ten days following the release of that report, which scheduled for May 28, 2002. Qwest further requests the Commission to hear oral arguments from the parties on their written comments seven days after receipt of the written comments.

This approach will provide the Commission and parties an opportunity to review the test principles and design in light of the actual results produced by the test.

REQUESTED RELIEF

Based on the foregoing Qwest respectfully requests that the Commission issue an order establishing a procedure for consideration of the results of third party testing of Qwest's Operations Support Systems (OSS) and clarifying that the subject of the

third-party OSS test will not be considered during the hearing on April 22 to 26, 2002.

DATED this 19th day of April, 2002.

Respectfully Submitted,



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

Attorneys for Qwest Corporation

RECEIVED

APR 22 2002

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTASOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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 Steel Rives LLP, and on this 19th day of April, 2002, true and corrected copies of the Motion to Strike Supplemental Testimony, Public Exhibits and Confidential Exhibits of W. Thomas Simmons Received April 18, 2002, and the Motion Regarding Proceeding on Third Party Testing of Qwest's OSS that was filed with the South Dakota Public Utilities Commission on April 19, 2002, were sent to the following intervenors:

Steven H. Weigler
AT&T Communications of the Midwest
1875 Lawrence Street
Denver, CO
Email: weigler@lga.att.com

via E-Mail and Overnight Delivery

Black Hills Fiber Com
Gregory J. Bernard
Morrill, Thomas, Nooney & Braun
PO Box 8108
Rapid City, SD 57709

via E-Mail and Overnight Delivery

Midcontinent Communications
David A. Gerdes
May, Adam, Gerdes & Thompson LLP
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Pierre, SD 57501-0160

via E-Mail and Overnight Delivery

Harlan Best, Staff Analyst
Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

via Overnight Delivery

Karen Cremer, Staff Attorney
Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

via Overnight Delivery


Mary S. Hobson
Attorney for Qwest Corporation

RECEIVED

APR 22 2002

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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
)
)
)

**MOTION TO STRIKE SUPPLEMENTAL TESTIMONY, PUBLIC EXHIBITS
AND CONFIDENTIAL EXHIBITS OF W. THOMAS SIMMONS RECEIVED
APRIL 18, 2002**

Qwest Corporation (Qwest) moves the South Dakota Public Utilities Commission (Commission) for its order striking the untimely Supplemental Testimony and Exhibits of W. Thomas Simmons dated April 17, 2002.

BACKGROUND

The Commission required Intervenor to submit testimony no later than March 18, 2002. Midcontinent Communications (Midco) filed the testimony of W. Thomas Simmons on that date raising in its rebuttal affidavits filed April 2. Qwest's Petition was *Duplicate* If months prior to Midco's deadline for filing testimony y set for hearing to commence on Monday, April 22.

On Thursday, April 18, 2002, only two business days before the commencement of hearing, the undersigned counsel for Qwest received Midco's supplemental testimony and attached exhibits. Midco has not filed a motion for extension of the filing deadline and has made no effort to communicate with counsel for Qwest about the service of this supplemental testimony. Although the supplemental testimony itself is reasonably abbreviated, the exhibits are voluminous and in many cases, poorly marked. The entire

submission was provided in hard copy format only, contrary to the informal practice of the parties in this case, and more than half of it is claimed to be "Confidential" thereby requiring special handling to avoid disclosure to individuals who have not been bound by the parties' protective agreement.

All of these factors work to the extreme prejudice of Qwest. Qwest's witnesses and attorneys are located throughout its fourteen-state territory. Receipt of a voluminous paper filing in Boise, Idaho, on Thursday means that Qwest's witnesses and other attorneys, all of whom are located in cities distant to Boise, had no opportunity to receive and review the information until late Thursday at the earliest, due to the need to forward it by facsimile and/or email following a laborious image scanning exercise. Use of overnight mail (the method used to serve the undersigned) would have ensured Qwest's witnesses would not have seen the testimony and exhibits before the last business before the hearing. This is particularly prejudicial because, due to the logistical difficulties involved in traveling to Pierre, several witnesses and attorneys intend to spend part of the intervening weekend in transit.

The ability of Qwest's counsel and witnesses to meaningfully review Midco's filing before the evidentiary hearing beginning Monday, April 22 is critical to the presentation its witnesses will make early next week. Qwest has attempted in its rebuttal affidavits to respond to Midco's issues and concerns as they could be understood, based upon information contained in Midco's prefiled testimony. Midco now purports to "support" that earlier testimony with a large volume of written materials that have not previously been disclosed and that cannot be adequately reviewed and analyzed before

Qwest's witnesses take the stand and testify about the issues purported contained in these documents.

Midco has never requested an extension of time to file exhibits and has failed to demonstrate why the Commission should allow additional testimony on the eve of the evidentiary hearing. In a cover letter to Simmons' testimony, counsel for Midco asserted that its late filing was necessary because "the Exhibits were not available when Tom Simmons' initial testimony was prepared . . ." However, Simmons' testimony demonstrates that the exhibits were previously available but Midco simply failed to collect them in a timely manner. ("We needed time to identify, collect and organize exhibits that would best substantiate the points I wished to make.") (Supplemental Testimony, page 2, lines 8-9.)

Moreover, based on a review of the attached exhibits, it appears that Midco could have produced the attached exhibits before the March 18, 2002 deadline. Midco attached thirty-six exhibits to the untimely Simmons testimony. The undersigned could identify only three exhibits that do not pre-date the March 18, 2002 deadline. The exhibits include e-mail and correspondence with dates prior to March 18, 2002 (MIDCO 4, e-mail and log from September 2001; MIDCO 5, letter dated June 10, 1999; MIDCO 6, bill dated February 13, 2002; MIDCO 20, bill dated March 10, 2002; MIDCO 22, e-mail dated February 15, 2002; MIDCO 34, e-mail dated December 12, 2000; MIDCO 35, e-mail dated February 19, 2001; MIDCO 36, letter dated February 1, 2002); exhibits with no date (MIDCO 1, 2, 7, 15); logs or trouble tickets with final entries that pre-date March 18, 2002 (MIDCO 3, log with last entry of January 22, 2002; MIDCO 12 & 12A- alleged problems pre-dating filing deadline; MIDCO 14, summary of service issues dated no later

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Allowing Midco to file additional testimony and exhibits at this time would cause severe prejudice to Qwest because its witnesses have not had adequate time to review and analyze the information prior to testifying on the topics purportedly addressed in the supplemental filing.

REQUESTED RELIEF

Based on the foregoing Qwest respectfully requests that the Commission strike the Supplemental Testimony of W. Thomas Simmons and attached exhibits.

DATED this 19th day of April, 2002.

Respectfully Submitted,


Mary S. Hobson
Steel River LLP
101 S. Capitol Blvd., Suite 1900
Boise, ID 83702

Attorneys for Qwest Corporation

APR 22 2002

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTASOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE ANALYSIS OF
QWEST CORPORATION'S COMPLIANCE
WITH SECTION 271 (c) OF THE
TELECOMMUNICATIONS ACT OF 1996

)
)
) Docket No. TC01-165
)
) CERTIFICATE OF SERVICE
)

I, John L. Munn, do hereby certify that I am an attorney for Qwest Corporation, and on this 19th day of April, 2002, true and corrected copies of Qwest's Motion to Strike Supplemental Testimony, Public Exhibits and Confidential Exhibits of W. Thomas Simmons Received April 18, 2002, that was filed with the South Dakota Public Utilities Commission on April 19, 2002, were sent to the following intervenors:

Steven H. Weigler
AT&T Communications of the Midwest
1875 Lawrence Street
Denver, CO
Email: weigler@ga.att.com

via E-Mail and Overnight Delivery

Black Hills Fiber Com
Gregory J. Bernard
Morrill, Thomas, Nooney & Braun
PO Box 8108
Rapid City, SD 57709

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Karen Cremer, Staff Attorney
Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

via Overnight Delivery


John L. Munn
Attorney for Qwest Corporation

Qwest
1801 California Street, Suite 4900
Denver, Colorado 80202
Phone 303 672-5823
Facsimile 303 295-7050

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APR 22 2002

John L. Munn
Senior Attorney

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

April 19, 2002

Debra Elofson, Executive Director
SD Public Utilities Commission
500 East Capitol
Pierre, SD 57501

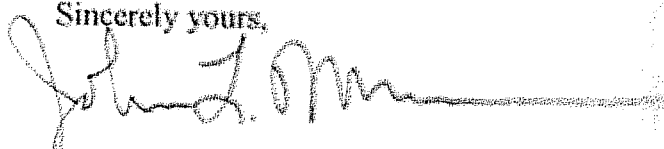
Re: IN THE MATTER OF THE ANALYSIS OF QWEST
CORPORATION'S COMPLIANCE WITH SECTION 271(c) OF THE
TELECOMMUNICATIONS ACT OF 1996 --- Docket No. TC01-165

Dear Ms. Elofson:

Enclosed please find an original and ten copies of the Supplemental Testimony of Larry
B. Brotherson filed on behalf of Qwest Corporation.

Thank you for your consideration of this matter.

Sincerely yours,



John L. Munn

Enclosures

Cc: Steven Weigler
David A. Gerdes
Gregory J. Bernard
Colleen Sevold
Tom Welk

RECEIVED

APR 22 2002

BEFORE THE PUBLIC UTILITIES COMMISSION SOUTH DAKOTA PUBLIC
OF THE STATE OF SOUTH DAKOTA UTILITIES COMMISSION

IN THE MATTER OF THE ANALYSIS OF
QWEST CORPORATION'S COMPLIANCE
WITH SECTION 271 (c) OF THE
TELECOMMUNICATIONS ACT OF 1996

)
)
) Docket No. TC01-165
)
) CERTIFICATE OF SERVICE
)

I, John L. Munn, do hereby certify that I am an attorney for Qwest Corporation, and on this 19th day of April, 2002, true and corrected copies of the Supplemental Testimony of Larry B. Brotherson on behalf of Qwest Corporation, that was filed with the South Dakota Public Utilities Commission on April 19, 2002, were sent to the following intervenors:

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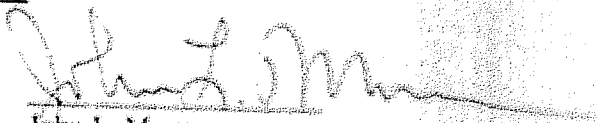
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Karen Cremer, Staff Attorney
Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

via Overnight Delivery


John L. Munn
Attorney for Qwest Corporation

BEFORE THE
PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

RECEIVED
APR 22 2002
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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

DOCKET TC01-165

QWEST CORPORATION'S
SUPPLEMENTAL AFFIDAVIT
OF
LARRY B. BROTHERRSON
GENERAL TERMS AND CONDITIONS

April 16, 2002

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4	III. BACKGROUND.....	1
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6	V. CONCLUSION.	4

REBUTTAL AFFIDAVIT

OF

LARRY B. BROTHERSON

General Terms and Conditions

Larry B. Brotherson states as follows:

I. INTRODUCTION.

My name is Larry B. Brotherson. I filed a rebuttal affidavit in this proceeding on April 2, 2002.

II. PURPOSE OF TESTIMONY.

The purpose of my supplemental affidavit is to provide further information regarding Midcontinent Communications's ("Midco") concern regarding a mailing it received from Qwest.

III. BACKGROUND.

In the testimony of W. Thomas Simmons, Midco expresses concern about a mailing that Mr. Simmons says a Midco customer received from Qwest.¹ In my rebuttal affidavit I stated that I would supplement my testimony after Qwest had an opportunity to obtain more information about this issue from Midco and to investigate.

As I stated in my rebuttal affidavit, Mr. Simmons is in regular contact with Qwest's account team but had never raised this issue, nor does his testimony provide any details sufficient for Qwest to investigate and respond. Qwest takes Mr. Simmons's

¹ Simmons Testimony at 13.

1 concern seriously. Since receipt of Mr. Simmons's testimony, Qwest has contacted
2 Midco and requested the underlying information and details so that Qwest could
3 investigate and respond. Midco has cooperated with Qwest's request for more
4 information and has provided a copy of the mailing at issue. This mailing was
5 addressed to Midco, not to a customer of Midco's. It is a brochure advertising a Qwest
6 product. The mailing at issue is attached as Exhibit LBB-GTC-3.

7 IV. INVESTIGATION

8 Upon receipt from Midco of the mailing that Mr. Simmons referenced in his
9 testimony, I initiated an investigation to determine why Midco received this mailing. I
10 learned that the brochure that Midco received was a mass mailing that was sent to
11 business customers throughout South Dakota. The brochure Midco received advertised
12 a time-specific promotion for Qwest Dedicated Internet Access ("Qwest DIA"). Qwest
13 DIA provides an advanced OC-192 broadband IP backbone for high-speed internet
14 connectivity. The promotion required a customer to sign up for the service between
15 March 6, 2001 and May 31, 2001 to receive Qwest DIA for \$799 a month. Qwest DIA
16 offers a customer dedicated internet access T1 port, a Cisco 1720 router, on-site
17 installation, and 24 X 7 hardware maintenance agreement.

18 This Qwest DIA promotion was a joint promotion between Qwest and Cisco
19 directed at business customers. The data used to create the mailing list for this
20 promotion was a combination of data from Qwest's business retail, Cisco and Harte-
21 Hanks Direct Marketing, a third-party marketing company with whom Qwest contracted.
22 These three databases were combined and the duplicate information was removed to

1 create the mailing list for the Qwest DIA promotion at issue. Because of its expertise
2 and marketing database, Harte-Hanks was selected to help create the mailing list,
3 generate interest in the product, and generate inquiries to Qwest's call centers and web-
4 site. A copy of the Harte-Hanks home web-site is attached as Exhibit LBB-GTC-4.
5 Cisco provided marketing information and mailing lists because the promotion included
6 a Cisco 1720 router as part of the service offering. Qwest utilized its retail customer
7 information to help create the promotional list.

8 Qwest obtained its retail business customer information from Qwest's database
9 of retail business customers. The Qwest retail business customer list that contributed to
10 this mailing list does not contain any customers identified as "Midco resold customer."
11 If, however, a Midco resold customer also happens to purchase retail services directly
12 from Qwest, that customer will be on the list of Qwest retail customers. Accordingly, it is
13 impossible to state that a Midco customer did not receive the Qwest DIA mailing. This
14 is because the customer could also be a retail customer of Qwest. Further the
15 customer could be on a commercially available mailing list offered by Harte-Hanks.
16 Finally, the customer could be on the Cisco list. In sum, if this mailing went to any
17 customers of Midco, the customer addresses were obtained through legitimate
18 marketing mailing lists and not through any use of Qwest wholesale customer data.

19 Because Midco is a retail customer of Qwest services as well as a wholesale
20 customer of Qwest, a query of the business retail customers included Midco as a
21 purchaser of retail services. As a result, it is not surprising that Midco received the
22 promotional brochure advertising Qwest DIA services. Midco is a business that could

1 require 1) reliable high-speed internet connectivity over an OC-192 broadband IP
2 network, 2) network connectivity, 3) web hosting, 4) web-centric consulting, certified
3 technical expertise, 5) 24 X 7 system monitoring and hardware support, 6) guaranteed
4 99.9% internet access "up-time", 7) single point of contact, 8) bandwidth and scalability,
5 9) DS1 internet access, 10) a Cisco 1720 router, 11) on-site installation and 12) 24 X 7
6 hardware maintenance agreement.

7 **V. CONCLUSION.**

8 Qwest markets its products and services to its customers as well as to potential
9 customers through various marketing companies. The mailing at issue went to Midco
10 because Midco is a retail business customer of Qwest's. My investigation reaffirms that
11 Qwest marketing does not use the competitive information of its wholesale customers.

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

JEAN M. TONER
Hj. Comm. on Edu-
And H. AD

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 TC01-165
)
)
)

QWEST CORPORATION'S
EXHIBITS to the SUPPLEMENTAL AFFIDAVIT
OF
LARRY B. BROTHERRSON
GENERAL TERMS AND CONDITIONS
April 1, 2002

INDEX TO EXHIBITS

DESCRIPTION

EXHIBITS

Qwest DIA Brochure

LBB-GTC-3

Harte-Hanks Website Information

LBB-GTC-4

CONTINUATION

[2]

call 1.800.RIDE.QWEST
(800.743.3793) or visit www.qwest.com for more information

for immediate service,



INSIDE:

AN EXCLUSIVE OFFER FOR THE
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QWEST DEDICATED INTERNET ACCESS.

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QWEST DIA OFFERS

- > DEDICATED INTERNET ACCESS T1 PORT
- > A CISCO® 1720 ROUTER
- > ON-SITE INSTALLATION
- > 24 X 7 HARDWARE MAINTENANCE AGREEMENT

EVERYTHING YOU NEED FOR ONE GREAT PRICE.

The productivity you need...

Qwest Dedicated Internet Access (DIA) provides the productivity that others only promise. Qwest provides reliable high-speed Internet connectivity over one of the world's most advanced OC-192 broadband IP backbones. This helps provide the bandwidth and the scalability you need to become more efficient, now and in the future. So you can enable the Internet applications your business needs to be successful, such as:

- > E-commerce
- > Electronic Data Interchange
- > Supply Chain Management
- > Finance and Administration
- > Online Training and E-learning
- > E-government and more

...not the overhead you don't.

Better yet, with Qwest DIA, you'll gain efficiencies from dealing with a single company responsible for everything from network connectivity, to web hosting, to web-centric consulting. We also provide diverse billing options and low subscription rates to match your current and future budgets and bandwidth needs.

All to help you avoid the cost, time and headaches of trying to run, or cobble together a network on your own. (Talk about insane.)

Reliability to rave about...

To really put your mind at ease, Qwest's performance metrics are some of the best in the business (see chart below). And because Qwest DIA is designed to be a turn-key solution, you can also take advantage of our exceptional features and benefits, including:

- > Certified technical expertise to help you design and maintain your network
- > 24 x 7 system monitoring and hardware support
- > 99.9% Internet access "uptime" guarantee
- > System scalability

All of which translates into superior availability, reliability, and responsiveness for your most critical applications.

...and all for one great offer.

Best of all, Qwest DIA provides everything you need for one great offer. Sign-up for a Qwest Dedicated Internet Access Package and receive a DIA T1 port, a Cisco® 1720 router, on-site installation and 24 x 7 hardware maintenance agreement for only \$799/month.*



So sign-up for Qwest DIA today. Then drive your competition crazy.

Provider	Qwest Dedicated Internet Access	WorldCom*	Sprint*	Cable & Wireless*
OC-192 Miles in service*	4,800	1,700	0	0
Number of hubs with OC-192 switches*	9	3	0	0
Monitoring/Performance	Real-Time at: http://www.qwest.com	www.uu.net	Limited customer level only	Real-Time
Bandwidths	56Kbps to OC-48	56Kbps to OC-12	56Kbps to OC-12	56Kbps to OC-12
Cisco® Powered Network (Domestic)	Yes	No	Yes	No

*Data based on information posted on public websites as of 1/1/01. Three-year service agreement required to obtain special promotional pricing. Internet Service Provider cost is additional. Customers in the states of AZ, CO, IL, IA, MN, MO, NE, NM, ND, OK, SD, UT, WA and WY will have their Qwest Internet services provided in conjunction with a separate Global Service Provider (GSP). This provider will supply customers with connectivity to the global Internet in those states. Internet Access Service availability restricted to 99.99%. Please refer to the Qwest Agreement for more information. Services not available in all areas. Some restrictions apply. Call Qwest for details. Offer expires 5/31/01. ©2001 Qwest Communications International Inc. All rights reserved.

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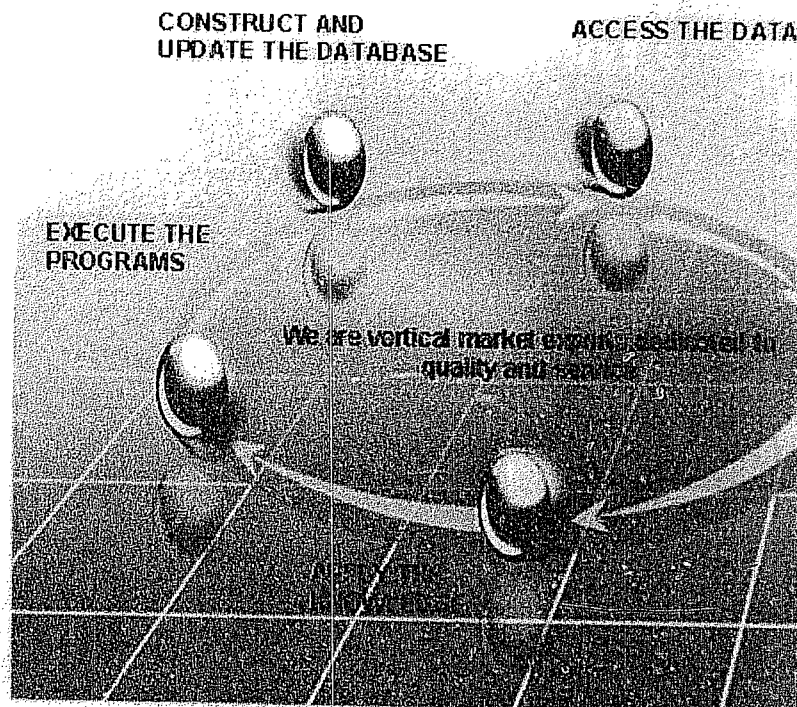
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CONTINUATION

[3.]

Harte-Hanks Direct Marketing



Harte-Hanks Direct Marketing

Stock Exchange Listing: NYSE:HHS

Location: Headquarters, San Antonio, TX – with more than 40 offices throughout the United States and worldwide

Overview

Harte-Hanks Direct Marketing is a worldwide, direct and interactive services company that provides end-to-end customer relationship management (CRM) and related marketing services solutions for a host of consumer and business-to-business marketers. Harte-Hanks and its CRM integrated solutions use technology as the enabler to capture, to analyze and to disseminate customer and prospect data at all points of contact. The company's customer-centric models allow it to be the overall solutions provider for driving traffic to a Web site, call/contact center, or brick-and-mortar location. With premier specialized offerings -- Web page design to e-care, desktop database capabilities to systems integration, personalized mail to e-mail, proprietary software products to application service provider and hosting solutions -- Harte-Hanks provides practical implementation of technology and understands the needs of clients and their customers to deliver best-of-breed solutions. Visit the

Harte-Hanks Web site at www.harte-hanks.com or call (800) 456-9748.

Technology/Product Description

In our nationwide facilities, as well as our international locations, we help organizations attain their goals by developing, implementing and delivering specialized direct and interactive CRM marketing services.

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Harte-Hanks provides end-to-end CRM and related solutions for businesses in both consumer and business-to-business markets across North America, Europe, South America and the Pacific Rim. We capture, analyze and disseminate customer and prospect data at all points of contact. Our services help clients generate traffic to web sites, call/contact centers and retail locations, gaining knowledge about customers in the process. What continues to separate Harte-Hanks from other CRM companies is our proven ability to turn insight into action and provide the tangible marketing recommendations to drive incremental profits. In fact, for more than 30 years, Harte-Hanks successfully has delivered hundreds of marketing database solutions.

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April 23, 2002

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Via Overnight Mail

APR 24 2002

Debra Elofson
Executive Director
SD Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Re: In the Matter of the Analysis into Qwest Corporation's Compliance with
Section 271(c) of the Telecommunications Act of 1996, TC01-165

Dear Ms. Elofson:

Enclosed for filing are the original and ten copies of Additional Statement of
Supplemental Authority Regarding Qwest's Performance Assurance Plan.

Please call me if there are any questions.

Sincerely,

Steven H. Weigler/AW
Steven H. Weigler

SHW/aw

Enclosure

cc: Service List



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APR 24 2002
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE ANALYSIS INTO QWEST)
CORPORATION'S COMPLIANCE WITH SECTION)
271(C) OF THE TELECOMMUNICATIONS ACT OF)
1996)

Docket No. TC01-165

ADDITIONAL STATEMENT OF SUPPLEMENTAL AUTHORITY
REGARDING QWEST'S PERFORMANCE ASSURANCE PLAN

AT&T Communications of the Midwest, Inc. ("AT&T") hereby submits the Montana Final Report¹ and the Colorado Public Utilities Commission's Decision on Remand² as well as an Affidavit of Steven Davis, Esq. of Qwest³ as supplemental authority stating as follows:

In pleadings before this Commission, Qwest has indicated that decisions from the two above stated commissions regarding the Qwest Performance Assurance Plan should carry no weight because they either were not "final" (in the case of Montana) or that they were just the decision of a "hearings commissioner" (in the case of Colorado).

AT&T's most current supplemental authority includes the final report in Montana that contains sound and well-reasoned dicta supporting its preliminary findings. These findings include:

- 1) Maintaining a 36% procedural cap as opposed to hard cap.
- 2) Maintaining equalization principles if the Commission ultimately decides to institute a hard cap.
- 3) Basing the procedural cap on current, as opposed to historical, ARMIS data.
- 4) Finding that the QPAP is not a "liquidated damages" contract and thus CLECs can seek alternative remedies after meeting a procedural threshold (as instituted by the Colorado PUC and also adopted in Washington State).

¹ Exhibit A.

² Exhibit B.

³ Exhibit C.

- 5) Finding that only a court or agency that awarded damages to CLEC determine offset as opposed to Qwest making that determination.
- 6) Striking the use of Tier 1 payments to fund the Commission's QPAP oversight.
- 7) Finding that there is no escalation of Tier II payments to the states.
- 8) Continuing Tier 1 payment escalation continuously after six months (as instituted by the Colorado PUC).
- 9) Finding that it is not timely to include special access penalties but indicates that it retains the right to implement at the six-month review.
- 10) Finding that the Commission as opposed to Qwest will maintain ultimate change control over the QPAP including the right to resolve disputes occurring in the six-month review.
- 11) Finding that Qwest need not make changes to the 100% cap for interval measures. However, the Commission retains the right to require Qwest to do so (as well as any other changes the Commission so requires) at the six-month review.
- 12) Finding that language should be added to the QPAP allowing CLECs to seek interconnection remedies until entering into the QPAP. Also, requires Qwest to institute language clarifying that the CLECs would receive remedies for performance not included in the QPAP.
- 13) Finding that bill credits are appropriate.
- 14) Maintaining Commission control over audit while contemplating participation in multi-state auditing effort.
- 15) Including AT&T's suggested language in §13.10 related to payments should not be recovered in rate escalation.

As such, Qwest's argument that these findings were "preliminary" carries no weight.

AT&T's supplemental authority also includes the Colorado Public Utilities Commission's "Decision on Remand and Other Issues Pertaining to the Colorado Performance Assurance Plan" and the Affidavit of Steven Davis, Esq. accepting the plan. The Colorado Public Utilities Commission's created plan (contained in Attachment A of Exhibit B) is contrary in several key aspects to Qwest's currently proffered QPAP. Interestingly enough, the Colorado Commission made analogous findings on the same several key issues to the findings made by various Commissions that have entered findings on the QPAP. Although Qwest has argued that the QPAP and CPAP are "different plans," they are certainly not different in terms of the key elements at issue.

including legal operation, ability for CLECs to seek alternative remedy, payment escalation, inclusion of special access measures and the relevant commission's ability to craft and maintain a performance assurance plan. Most importantly, the Order on Remand is unambiguous; if Qwest does not accept the Colorado Commission's mandated CPAP, the Colorado Commission "would recommend to the Federal Communications Commission that Qwest has not complied with the public interest requirements of §271."

AT&T suggests that these orders, including Qwest's acquiescence in the Colorado PAP, be considered as strong precedent in building South Dakota's performance assurance plan.

Respectfully submitted on April 23, 2002.

**AT&T COMMUNICATIONS OF THE
MIDWEST, INC.**

By: Steven H. Weigler /SR
Mary B. Tribby
Steven H. Weigler
AT&T Law Department
1875 Lawrence Street, Suite 1575
Denver, Colorado 80202
(303) 298-6957

⁴ Exhibit B at p.57.

Service Date: April 19, 2002

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF the Investigation into	}	UTILITY DIVISION
Qwest Corporation's Compliance with	}	
Section 271 of the Telecommunications Act	}	DOCKET NO. D2000.5.70
of 1996	}	

FINAL REPORT ON QWEST'S PERFORMANCE ASSURANCE PLAN
AND
RESPONSES TO COMMENTS RECEIVED ON PRELIMINARY REPORT

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INTRODUCTION

This is the Commission's final report regarding whether Qwest's performance assurance plan (QPAP) is sufficient to ensure the local phone service market in Montana will remain open after Qwest obtains Section 271 approval from the Federal Communications Commission (FCC). Evaluation of the QPAP is one part of the Commission's analysis of Qwest's compliance with the public interest requirements of Section 271.

In its orders regarding Section 271 applications, the FCC clearly indicates that a successful 271 application must have mechanisms in place to ensure that the efforts the regional Bell companies like Qwest have taken to open up their local service markets are maintained after they win Section 271 approval. Companies that have obtained 271 approval to date have demonstrated self-backsliding measures are in place to assure future compliance by implementing a performance assurance plan. The FCC identifies five key characteristics it looks for when evaluating whether a performance assurance plan satisfies the public interest. According to the FCC, a plan should contain:¹

- Potential liability that provides a meaningful and significant incentive to comply with the plan's performance standards;
- Clearly articulated, pre-determined measures and standards that encompass a comprehensive range of carrier-to-carrier performance;
- A reasonable structure that is designed to detect and sanction poor performance when it occurs;
- A self-executing mechanism that does not open the door unreasonably to litigation and appeals; and
- Reasonable assurance that the reported data are accurate.

Qwest's performance assurance plan was addressed by the participants in written comments, in two separate in-person workshops in August 2001, and in briefs. John Antonuk, the consultant hired by the nine states participating in the QPAP proceeding to conduct the workshops, issued *His Report on Qwest's Performance Assurance Plan* on October 22, 2001. Antonuk was hired to conduct these workshops after the predecessor post-entry performance plan (PEPP) collaborative

exchange market." Achieving this goal depends on a finding that Qwest's entry into the long distance market is in the public interest. In regards to this Montana PAP, the public interest test is met only when a mechanism is in place to ensure that the local market is irreversibly open to competition and that wholesale service quality will not deteriorate after Qwest receives 271 relief. As incumbents lack the incentive to help competitors, Covad adds that the FCC strongly encourages monitoring of post-entry wholesale service performance by a PAP and the ultimate question Commission must address is whether to accept Antonuk's resolutions or adopt portions advanced by others.

Participants also submitted general observations regarding the Commission's preliminary report. According to Qwest, the Commission should evaluate the QPAP based on the FCC's established criteria under Section 271's public interest standard, not based on the Commission's own view of what the QPAP should include. Qwest asserts that several of the Commission's preliminary findings should be reversed in light of FCC precedent, the absence of record support for rejecting Antonuk's recommendations, and the compromises Qwest agreed to in the plan in order to achieve consensus. MCC says the Commission's preliminary findings are reasonable and balance the interests of Qwest the competitive local exchange carriers (CLECs). MTA agrees the Commission must give itself the tools to preserve and promote competition and the means to redress unfair practices. MTA adds that the Commission should bring common sense to implementation of the Act and avoid legalistic obfuscation. TA claims the proposed QPAP does not meet the FCC's expectations because the proposed penalty levels are too low to keep Qwest from engaging in anticompetitive behavior, the plan does not accurately measure the harm that Qwest's noncompliant performance can cause CLECs, and it underestimates Qwest's ability to act anticompetitively, even though Qwest may be in apparent compliance with the plan. TA characterizes the QPAP in its current form as "window dressing" that hides the truth that there is no regulatory backstop to prevent Qwest from anticompetitive behavior. TA objects to the use of parity as the principal standard for measuring performance and alleges they do not accurately reflect harm to CLECs by Qwest's actions, claims many of the plan's performance measurements are meaningless, proposes that billing measurements be weighted the same as ordering and repair measurements, and recommends elimination of all caps in the plan. In its comments, AT&T

states to agree with most of the Commission's preliminary findings. AT&T adds that the FCC has indicated that the Commission, not Qwest, has authority to implement and control the QPAP.

The structure of this report mirrors the organization of Antonuk's *Report* and groups issues raised by the participants under five sections. Each section corresponds to the five QPAP characteristics outlined by the FCC in its orders on performance assurance plans.

I. MEANINGFUL & SIGNIFICANT INCENTIVE

A. Total payment liability.

1. 36% of intrastate net revenues standard. Antonuk agreed with Qwest that the appropriate amount of revenue to place at risk each year under the QPAP is 36% of Qwest's 1999 net intrastate revenues as reported to the FCC on its ARMIS return. For Montana, the 36% standard results in Qwest having \$16 million at risk each year under the QPAP. Antonuk reasons that the FCC has approved this amount as it provides a meaningful incentive to provide adequate performance in its 271 orders in other states. He finds the 36% standard an appropriate starting point, to be examined again in the context of all the other QPAP provisions affecting Qwest's incentive to perform.

Covad comments

Covad opposes a 36% hard cap because it will under compensate CLECs, is inconsistent with the purpose of a performance assurance plan, is not in the public interest and should be rejected. Annual caps may under compensate CLECs. The "injustice of undercompensation" is underscored by the fact that CLECs receive no compensation for the numerous orders that are cancelled when Qwest's service quality is deficient. As the cap serves only to limit Qwest's exposure to penalties, it is counter-intuitive as caps are only reached when penalties are insufficient incentive for Qwest to provide adequate service quality. Based on a recent Colorado Commission order, Covad recommends changes to the QPAP. As the Colorado Commission ordered, there should be a soft, procedural, cap and instead of a 36% procedural cap, Covad recommends New York's 44% cap. Covad notes the Utah Commission Staff's observation that the New York Commission raised the cap to 44% "after the failure of an initial 36% cap."

Commission preliminary finding: Because the amount of any proposed cap is inseparable from the below issue of procedural versus absolute caps, the Commission's finding follows the latter discussion.

2. Procedural cap vs. absolute cap. Instead of either a procedural cap (which can rise if Qwest's performance under the plan is so bad that its payments exceed the amount of the cap) or an absolute cap (which could not be raised no matter what), Antonuk prefers a "sliding" cap that has the following attributes:

- The Commission could order the 36% cap to increase by no more than 4 percentage points when the cap is exceeded by 4 percent or more for any 24-month consecutive period, if:
 - the Commission finds Qwest could have stayed under the cap through its reasonable and prudent efforts, and
 - that finding has been made after the Commission reviews the results of root-cause analyses and has provided Qwest the opportunity to be heard.
- The Commission could order the cap to decrease by no more than 4 percentage points when Qwest's total payment liability is 8 or more percentage points (i.e., 26% or less) below the cap amount for 24 consecutive months, if:
 - the Commission finds the performance results occurred because of an adequate Qwest commitment to provide adequate service, and
 - that finding is made after all interested parties have an opportunity to be heard.
- The sliding cap applies to the next 24-month period beginning at the completion of the first 24-month period, provided that the maximum cap increase is 8 percentage points and the maximum cap decrease is 6 points.

Qwest comments

Whereas it deviates from the "hard 36% annual cap", Qwest finds Antonuk's approach reasonable and amends the QPAP (Section 12.2) to allow the cap to range between 44% and 30%.

AT&T comments

AT&T objects to Antonuk's "sliding cap" proposal because: (1) it provides for a 4% increase to the cap only after CLECs have been denied payments due to the cap for 2 years, during which time Qwest could exceed the cap for months at a time with impunity; (2) the FCC has never authorized a plan where total liability was less than 36% of net intrastate revenues, yet Antonuk's proposal allows the cap to decrease down to 32%; (3) the sliding cap proposal was not advocated or requested by any party, including Qwest. AT&T recommends as better solutions to the cap issue either the Utah Staff proposal or the Colorado approach. The Utah Staff proposal raises the cap to 44% of net intrastate revenues as the New York commission did, and provides for up to a 4-percentage-point increase in the cap if Qwest exceeds the cap for 12 straight months. In Colorado, according to AT&T, there is no cap on Tier 1 payments (to CLECs) but Tier 2 payments (to states) are subject to a procedural cap. The Colorado commission may raise the cap if Qwest's payment liability equals or exceeds the annual cap for two consecutive years or if two consecutive months' worth of payments equal or exceed one-third of the annual cap. AT&T notes that Bell South's recent 271 applications to the FCC for Georgia and Louisiana included performance plans that, in Georgia, puts 44% of Bell South's 1999 intrastate net revenues at risk and, in Louisiana, does not limit Bell South's payment liability (although it includes a procedural cap of 20% of 1998 net revenues).

MCC comments

MCC finds unnecessary the raising and lowering of caps as resolved in the Report, the so-called "sliding scale", and instead favors Qwest's 36 % cap proposal. MCC finds the cap reasonable for several reasons: (1) the incentive risk is substantial and will likely encourage service and performance at parity to what Qwest's retail customers receive, (2) sliding caps are potentially harmful and should be changed based on evidence explaining why performance declines and (3) a changed cap may trigger less acceptable performance for the majority of Qwest's retail customers.

Covad comments

Adjusting the cap upward or downward is not acceptable to Covad.

Commission preliminary finding: The Commission is presented with four different options regarding the annual cap on total payment liability. Some key benefits and drawbacks of each option are explained below:

I. Antonuk's proposal for a "sliding cap."

Antonuk determines that, because there is not much experience as yet with performance assurance plans, it would be prudent to allow movement of the cap -- up or down -- within a confined range in certain defined circumstances. Qwest prefers the hard 36% cap, but agreed to incorporate Antonuk's proposal instead. AT&T, Covad and MCC objected to the sliding cap proposal for the reasons identified above. Chief objections are that the FCC has never approved a plan that allows the cap to decrease below 36% and that the proposal allows too much time to pass between Qwest's noncompliant performance in excess of the cap and implementation of a higher cap. Essentially, this is a procedural cap with undesirable attributes.

2. "Hard" cap of 36% of net intrastate revenues.

The FCC has found the 36% standard sufficient to create a meaningful and significant incentive to perform for other Bell operating companies seeking 271 relief. MCC recommends the hard 36% cap. AT&T and Covad object to a hard cap because it could result in Qwest not providing compensation to CLECs who had been harmed by Qwest's noncompliant performance.

3. AT&T and Covad also argued that the cap amount should be set at 44% rather than 36%.

4. "Procedural" cap of 36% of net intrastate revenues.

Antonuk found that a procedural cap exposes Qwest to unknown risk. He reasons that, just as CLECs are able to decide whether the costs of entering the competitive local market are too high, so should Qwest. A procedural cap reduces Qwest's ability to determine its payment liability exposure under the QPAP. Qwest and MCC do not support a procedural cap. AT&T and Covad support the Colorado approach to a procedural cap.

Of the above options the Commission finds that a 36% procedural cap is preferable to the other options. The Commission invites comments on how to implement a 36% procedural cap. Comments should address the criteria by which the cap would rise and, if so, how high it may rise.

Comments on Commission's preliminary report Parties commenting on these issues include AT&T, MCC, MTA, TA and Qwest.

AT&T supports the concept of a procedural cap but would still modify the Commission's preliminary report. In place of the 36% procedural cap, AT&T

recommends the Bell South and Louisiana PUC's approach. That approach applies a 36% procedural cap to net revenues for both Tier I and II remedies. With this approach the BOC pays up to the procedural cap, if otherwise exceeded, and then must file a petition, within 30 days, to show why it should not pay amounts in excess of the procedural cap. The Commission could decide "...to absolutely cap the payments at 36%, set a higher cap or to allow the payments to continue until Qwest provides nondiscriminatory service." However, AT&T notes, the Louisiana PUC ordered a rolling twelve-month, not an individual monthly, cap.

MCC concurs with the Commission's 36% procedural cap and adds that the cap should apply on an annual basis and that a change in the cap should only be considered after the first year of operation and only then if a party demonstrates just cause.

As regards the presence of meaningful and significant incentives, MTA's general comments include that the incentive to comply with performance standards must be considered in light of "natural" market incentives of competitors to prevail in markets they serve. Whereas Qwest must satisfy The 1996 Act's checklist, it is unnatural in competitive markets for a company to welcome competition. As evidenced in the CLEC Forum, Qwest keeps its retail customers when it provides insufficient wholesale service to competitors. MTA reasons that the incentive to perform must at least be equal to the incentive to "beat the competition" as otherwise Qwest is rewarded by maintenance of a hold on retail markets. In turn, QPAP is about Qwest's ability to keep open its markets in the face of incentives to do the reverse and while MTA commends Qwest for efforts to meet The 1996 Act's checklist, the QPAP must ensure that progress is sustained. Thus, the "public interest test is met only when a mechanism is in place to ensure that the local market is irreversibly open to competition and that wholesale service quality will not deteriorate after Qwest receives 271 relief." MTA next recites the essence of the Commission's concern (see I. A. 7 below) about the relation

between the cap (liability limit) and tax deductibility of payments. MTA estimates that if the effect is to reduce tax obligations by one third, the actual liability that correlates to Qwest's \$16 million annual risk is only about \$10.7 million. MTA questions whether this liability is significant enough of an incentive for Qwest to perform in compliance with QPAP. In this regard, MTA concurs with AT&T's and Covad's argument that the result will be that Qwest will not compensate CLECs harmed by Qwest's noncompliant performance. To avoid Qwest's "maxing out" its liability, after which it may "underperform with relative impunity", MTA recommends no limit on Qwest's total payment liability. MTA notes that Colorado's Commission imposes no cap on Tier 1 payments.

TA asserts that the Commission's penalty proposal will not dissuade Qwest from behaving anticompetitively. TA likens the proposed penalty level to a \$5 parking ticket and adds that the Commission should reconsider its 36% cap particularly in the early stages and delete all caps from the plan. It is in the "early stages" that Qwest's performance may cause the most harm for competitors. Once Qwest has a record of good performance, that is better for CLECs than Qwest provides to own customers, then a 36% procedural cap may be reconsidered. This issue can be revisited during the periodic review.

Qwest comments that the Commission's review of the four options is unbalanced. Instead, what is relevant is whether the method of capping falls within a "range of reasonableness", as established by FCC precedent generally and the FCC's approval of a 36% hard cap in the Texas plan. Qwest adds that the Commission's choice is unexplained. Qwest notes that due to the incentive Qwest would then have to favor CLEC customers that the MCC supports a 36% hard cap and strongly opposes increasing the cap above that level. Finally, Qwest holds that a procedural cap is no cap at all and it has the potential for unlimited financial exposure and adds it needs assurance of the uppermost limit of its liability. Qwest concludes this item by asserting to not object to Antanuk's proposal for a 36% hard cap but asserts the Commission's elimination of the cap is unbalanced.

Commission's finding: The Commission finds merit in staying the course of a 36% initial procedural cap. The Commission agrees that it is also reasonable to make the 36% cap an annual cap. So long as Qwest maintains adequate performance, Qwest does not risk exceeding the cap. If however, Qwest's performance is not adequate and the cap would otherwise be exceeded on an annual basis, then upon petition the Commission will consider raising the ceiling, and it will do so on an expedited basis. The Commission notes also the MCC's support for the 36% procedural cap in the Commission's preliminary order. The Commission declines requests to eliminate the Tier 1 cap.

3. Tier 1 percentage equalization when cap is reached. If the cap is reached in a year, a problem may occur due to the operation of a cap: while CLECs who incur noncompliant service from Qwest up to that point receive compensation, CLECs who incur noncompliant service after the cap is reached receive no compensation. To address this problem, Antonuk recommends the following method of equalization at the end of each year when the cap is reached:

- a. The amount by which any month's total payments exceed $1/12^{\text{th}}$ of the annual cap shall be apportioned between Tier 1 and Tier 2 according to the percentage that each Tier bears of the total payments for the year to date. Antonuk refers to the results of this calculation as the "tracking account."
- b. Tier 1 excess will be debited against ensuing payments that are due to each CLEC by applying to the year-to-date payments received by each a percentage that generates the required total Tier 1 amount.
- c. The tracking amount will be apportioned among all CLECs so as to provide each one with payments equal in percentage to its total year-to-date Tier 1 payment calculations.

d. This calculation begins in the first month that payments are expected to exceed the annual cap and continues in each month of that year. Qwest will recover any debited amounts by reducing payments due from any CLEC for that month and any succeeding months as necessary.

Qwest comments

Qwest does not oppose Tier 1 equalization. Qwest incorporates Antonuk's language into the QPAP (12.3) but with some changes it views necessary to clarify the operation of the complex process. Because QPAP monthly payments may fall below or exceed the monthly cap, accounts must be balanced using year-to-date payments and a cumulative monthly cap.

Commission preliminary finding: The Commission finds merit in Antonuk's recommendation to equalize payments to CLECs. Because Qwest modified Antonuk's recommendation, the Commission invites comments on how Qwest proposes to implement Antonuk's recommendation. (See QPAP Section 12.3)

Comments on Commission's preliminary report Parties commenting on this issue include AT&T, MTA, TA and Qwest.

AT&T interprets the Commission's preliminary finding to allow only Qwest to comment. AT&T adds, however, that if a procedural cap is instituted, the basis for equalization principles wanes and when the Commission conducts an inquiry after Qwest attains a cap, payment equalization can be determined, if any is appropriate. If a hard cap is set and the Commission finds that equalization is appropriate, the QPAP needs revising to indicate that equalization will be considered in a procedural cap hearing.

MTA comments that the net effect of the complex percentage equalization formula is that Qwest's liability varies inversely with the harm it causes. Once a cap is reached the more Qwest underperforms the less CLECs individually and collectively receive. This is the opposite effect the PAP is designed to achieve. MTA disagrees with Antonuk's view that equalization is a solution as it fails to provide meaningful and significant incentives. And once the cap is achieved

Qwest may "underperform without additional incentives to perform" with negative consequences on CLECs. The solution is no cap, not a complicated percent equalization formula.

TA asserts that if Qwest is serious about opening local exchange market to competition, then it should embrace no cap. Since Qwest favors limiting its liability it clearly does not plan to offer quality service to competitors. TA finds no need for the complexity of caps and the Tier 1 equalization. The heart of the issue is not addressed by equalization but by the removal of caps.

Because QPAP payments may exceed the monthly cap intermittently Qwest comments that the balancing account must be performed using year-to-date payments and a cumulative monthly cap. Qwest believes that its modifications of Antonuk's proposal achieve this purpose. Qwest adds that AT&T, COVAD and WorldCom do not object to Qwest's recommendation in a Washington State PUC proceeding.

Commission's finding: The Commission finds merit in equalization. Tier 1 equalization is not designed to be an incentive to perform. Rather, it serves the purpose of equity: no CLEC is denied Tier 1 payments if and when Qwest payments would exceed the cap on a monthly basis. If on an annual basis the cap would also be exceeded, then upon petition and based on good cause it may be increased. Thus, the need for equalization does not wane when combined with a procedural cap. The cap is a binding constraint on Qwest's risk during any particular year, a constraint that may be lifted if performance is woefully inadequate.

4. Qwest's marginal costs of compliance. Because he found no evidence to enable its use, Antonuk rejects the New Mexico Staff's proposal to inquire about Qwest's marginal costs of noncompliance and not the size of the payments to CLECs.

Comments on Commission's preliminary report Although the Commission's Report makes no preliminary finding on Qwest's marginal compliance costs, MTA takes issue with Antonuk's rejection of the New Mexico staff proposal. New Mexico Staff asserts that a proper inquiry is about Qwest's marginal costs of noncompliance and not the size of the payments to CLEC's. MTA adds that the PAP is about incentives to perform.

Commission's finding: The Commission disagrees with MTA that the above mechanisms for establishing caps, apportioning penalty payments between Tier 1 and 2 etc., should be reconsidered and that the New Mexico Staff proposal should be implemented. The proposal by the New Mexico Staff was in lieu of Qwest's hard cap, not the procedural cap adopted herein. The procedural cap can be increased if good cause exists to do so.

5. Continuing propriety of a cap based on 1999 net revenues. Antonuk rejects ELI/Time Warner/XO Utah's proposal to not always base the cap on 1999 net revenues. Antonuk reasons it is preferable to rely upon the firm amount represented by the 1999 net revenues than it would be to accept the uncertainty of the amount of the cap fluctuating up or down.

Covad comments

Covad disputes Antonuk's decision to always base caps on 1999 net revenues and prefers a more recent -- year 2000 ARMIS-- basis. Covad's principal reason is the inability of 1999 data to capture post Qwest-US West merger efficiencies and economies. Covad concludes that the source data must be reviewed regularly to ensure Qwest's total exposure "remains constant."

Commission preliminary finding: The Commission agrees with Covad that the cap amount should be revised yearly to reflect the company's most recently reported amount of net intrastate revenues.

Comments on Commission's preliminary report Qwest comments that Antonuk correctly recognizes that by updating the cap each year will not keep Qwest's

liability constant and that it "appears" preferable to rely on a firm dollar amount instead of taking unknown and unknowable risks. Qwest notes Antonuk's recognition, that Qwest's net intrastate revenue is as likely if not more likely to decrease rather than increase in future years, and that a higher cap may result if based on 1999 amounts. Qwest prefers a cap that is based on known data so that its maximum potential exposure is known. Qwest adds that the plans for Texas, Kansas, Oklahoma, Arkansas and Missouri provide for annual reviews and decreases in the cap -- the most recent FCC approved plan relies on 1999 ARMIS data. If, however, the Commission is not persuaded by Antonuk's rationale for a fixed cap, Qwest does not object to an annual recalculation so long as the following language is included in the QPAP:

The cap shall be recalculated each year based on the prior year's Montana 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.

Commission's finding: The Commission continues to find merit in an annual update to reflect Qwest's most recently reported intrastate revenues. The QPAP language Qwest suggests appears congruent with this finding.

6. Likely payments in low-volume states. In noting that the QPAP will provide for minimum payments, Antonuk addresses the New Mexico Staff concern that the QPAP will not provide Qwest with sufficient incentive to provide compliant service in states with low order volumes.

Comments on Commission's preliminary report In its comments, MTA links this issue with another that is discussed below (II. H. Low volume CLECs). Although the Commission's Report makes no preliminary finding on the issue of payments in low volume states, MTA submits that the minimum payment appears to be \$5,000, except that 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." MTA is concerned that the combined effect of

three provisions all serve to limit Qwest's liability in low volume, developing markets. The three provisions include: (1) QPAP's addressing CLEC volumes in the "range of 10 to 100" (2) that parity or benchmark standards will use the aggregate volumes of participating (PAP) CLECs and (3) that the QPAP addresses low volumes by adding sufficient consecutive months of data as needed to require a 100% performance result. To expand, MTA disagrees with Antonuk's finding that the so-called "one-miss" standard occurs only 8% of the time; CLECs should not be penalized due to their newness and small size in developing markets. Rather, MTA holds that it is the nascent and small competitors that need protection from the occasional but significant "miss." Therefore, MTA recommends either eliminating the qualifiers in "Section III, part 2", that aggregate volumes and that add consecutive months so that a 100% performance result is not required, or adding language that provides minimum payments or other remedies in low-volume situations under an expedited dispute resolution process.

Commission's finding: In response to MTA's comments, several Commission findings are relevant. First, in his *Report*, Antonuk states that the QPAP's provision for minimum payments is the direct way to address the New Mexico staff concern (see Section 10.2). In the case of developing markets there is a minimum payment of \$5,000 per sub measurement (see QPAP Section III, part 2) an amount that is apportioned among CLECs based on relative shares of the number of total service misses. Given these three products and seven sub-measurements, the combined payments to CLECs in Montana could, based on these minimum payments alone, amount to a total of \$1.26 million per year. Second, the minimum payment to any particular CLEC for which Qwest missed any measure applicable to a low-order volume CLEC is \$2,000 times the number of months in which at least one payment was made to the CLEC (see, however, QPAP Sections 6.2 and 6.4, and III. G *infra*). Therefore, there are minimal payments to CLECs collectively and individually in the case of a low-order volume CLEC. Third, the Commission is not persuaded by MTA's recommendations. The "qualifier"

MTA suggests be eliminated as one option refer generally to sections "10 and 2" but provide no specific and clear connection to the balance of the QPAP. The Commission does not agree that these parameters, and the purposes they serve, should be reopened to debate along with the balance of the QPAP. As for MTA's alternative, an "expedited dispute resolution process," to provide minimum payments seems to shelve the QPAP nearly in its entirety and open up to dispute how much money MTA wants a CLEC to get. There already are minimum payments for CLECs. The Commission notes here that there must be escalation for payments involving consecutive month misses as required by Antonuk *et al.*, p. 34, and QPAP Section 6.2.1) for low-volume CLECs (see Section 2.4).

7. Deductibility of payments. Antonuk dismisses WorldCom's concern that Qwest may be able to deduct QPAP payments for income tax purposes because the QPAP in this respect is no different than other performance assurance plans considered by the FCC.

Commission preliminary finding: The Commission sees a relation between the income tax deductions Qwest may take for QPAP payments and the earlier issue of Qwest's total payment liability. Qwest appears to assert that if a 36% cap is combined with 1999 ARMIS net revenues, it will face about a \$16 million dollar expense in Montana. However, the net impact of such a penalty is less due to Qwest's apparent right to tax offsets for Tier 1 and Tier 2 payments.² If payments to CLECs or to a state are offsets to tax obligations, then while the purpose of such payments is, in part, achieved, unless the consequence on Qwest of such payments was designed to account for tax effects, the objective is not achieved.³ This, in part, is one reason a 36% hard cap is favored less than a procedural cap. The Commission is interested in further explanation on how the tax offsets are shared between state and federal tax obligations, by how much Montana tax revenue might decrease with the offset and if there is a rollover provision in the tax code that permits Tier 1 and/or Tier 2 payments to offset tax obligations in years subsequent to the year in which the payments were actually made.

² See Qwest's response to data request PSC -144.

³ See Qwest's response to data request PSC -146.

Comments on Commission's preliminary report MTA, TA and Qwest comment on the Commission's finding. MTA comments that deductions render an insufficient exposure even less significant and meaningful (see I. A. 1. and 2.). If, as Antonuk argues, a PAP is to "sanction poor performance," then TA asserts that penalty payments should not be deductible such that Qwest's sanction is lessened by a taxpayer subsidy. TA adds that Qwest's ability to deduct payments argues against the existence of a cap.

In its comments, Qwest asserts that the FCC has found useful a yardstick based on ARMIS pre-tax revenue data. Qwest finds the FCC action a controlling precedent for Montana. If the Commission chose a \$16 million post-tax liability, Qwest risks \$56 million of Montana net revenues. Qwest concludes that no party suggests Qwest put at risk more than 36% of revenues, and as evident in MCC comments "precisely the opposite is true."

Commission's finding: The Commission finds that its concern over the deductibility of payments for tax purposes remains one reason to adopt a 36% procedural cap. No party responded to the Commission's invitation to comment on the relation between federal and state tax obligations in relation to Tier 1 and 2 payments.

B. Magnitude of payout levels.

Antonuk rejects CLEC claims that the QPAP payout levels are too low. He finds the payout information that Qwest submits to demonstrate that Qwest's cost of noncompliance is significant and substantial under the QPAP.

C. Issues related to compensation for CLEC damages.

i. Relevance of compensation as a QPAP goal. Antonuk rejects arguments (Z-Tel's and others') that the purpose of a PAP is to create incentives to detect and sanction poor performance, not to compensate CLECs for harm, and that the

payments to CLECs are not liquidated damages. Antonuk adds that the FCC couches its test in terms of incentives, but an elementary legal principle in the field of remedies is the public interest in holding parties responsible for the damages they cause to induce them to behave in ways to avoid such harm. Antonuk concludes it is appropriate for the QPAP to address the issue of CLEC compensation for contractual damages, and it is appropriate that the QPAP liquidate such damages.

AT&T comments

AT&T objects to Antonuk's position that the QPAP is a liquidated damages contract. AT&T argues the QPAP is similar to a commercial liquidated damages contract, but there are important differences, such as: the QPAP's main purpose is to ensure that Qwest continues to deliver compliant service to CLECs; Qwest offers the QPAP in order to meet the public interest requirements of Section 271; the QPAP contemplates substantial governmental intervention and control; the SGAT (which includes the QPAP) is mandated by the federal Telecommunications Act; Qwest is required by law to negotiate in good faith; and states receive payments under the QPAP absent any contractual relationship with Qwest.

Covad comments

Covad asserts that the SGAT into which the QPAP is folded is not an "ordinary commercial contract" but rather a "hybrid" contract.

Commission preliminary finding: The Commission finds that, while the QPAP is similar to a typical commercial liquidated damages contract between two parties, it also serves other purposes such as those identified in AT&T's comments.

Comments on Commission's preliminary report MTA and Qwest comment on the Commission's finding. Qwest argues that the QPAP is not different from any other liquidated damages contract, that it is designed to provide a self-executing payment mechanism that will not unreasonably lead to litigation, and that the FCC has approved other performance assurance plans where the payments were expressly characterized as "liquidated damages." Qwest notes that AT&T's argument in response to Antonuk's report that Qwest is required to negotiate in good faith is not relevant here. Qwest claims the QPAP is not mandated by the Telecommunications Act. Rather, Qwest asserts it offers the QPAP to the FCC as

a condition for interLATA entry. According to Qwest, the attachment of the QPAP to the SGAT does not mean that established principles of contract law regarding liquidated damages can be disregarded.

MTA concurs in the preliminary finding, but notes there are several QPAP provisions that limit Qwest's liability and, therefore, dilute or eliminate the QPAP's incentive goals. MTA argues that Antonuk conceded that the FCC "couches its test in terms of incentives," but then disregarded this statement and reverted to legalistic principles. MTA suggests the Commission keep in mind the need to maintain QPAP incentives.

Commission's finding The Commission's finding remains the same. The QPAP is similar to a typical liquidated damages contract between two parties, but also serves other purposes. The finding here goes hand in hand with the finding below regarding CLEC remedies. Here, the Commission continues to find that, while the QPAP is similar to a liquidated damages contract, there are important differences as cited in AT&T's and Covad's earlier comments and in the Commission's preliminary finding. In the related finding below regarding CLEC remedies, the Commission finds that the QPAP should not preclude CLECs from seeking to recover extraordinary losses that result from Qwest's alleged failure to provide service in compliance with the QPAP. If the Commission agreed with Antonuk's conclusion and Qwest's argument that the QPAP is strictly a liquidated damages contract, CLECs would be precluded from seeking such recovery.

In its comments, Qwest points to the FCC's approval of the Texas and other states' Texas-based performance assurance plans which included express characterizations of the payments to CLECs as "liquidated damages." The Commission responds that the FCC has also made clear in its 271 orders that states retain discretion as to the structure of performance assurance plans and that individual state plans may vary. For example, when considering the Pennsylvania

performance assurance plan for Verizon, which included significant differences from both the New York and Texas plans, the FCC said:

*As stated above, we do not require any monitoring and enforcement plan and therefore, we do not impose requirements for its structure if the state has chosen to adopt such a plan. We recognize that states may create plans that ultimately vary in their strengths and weaknesses as tools for post-271 authority monitoring and enforcement.*⁴

In another Section 271 order, the FCC said:

*As the Commission has recognized, individual state PAPs may vary, and our task is to determine whether the PAP at hand falls within a zone of reasonableness and is "likely to provide incentives that are sufficient to foster post-entry checklist compliance."*⁵

The Commission's finding here is in accordance with the FCC's conclusions that individual plans may vary from state to state and that there are no set requirements for plans' structures, as long as they meet the FCC's "zone of reasonableness" test and provide sufficient incentives to foster continued checklist compliance.

2. Evidence of harm to CLECs. Antonuk finds Qwest to argue correctly that CLECs did not provide evidence in this proceeding to show what their damages had been or would be.

AT&T comments

AT&T claims that once Antonuk decided the QPAP is a liquidated damages contract, as opposed to being similar to one, he then took the CLECs to task for failing to quantify their damages. AT&T argues this is a burden placed on it inappropriately by Antonuk, but even so, claims it was prohibited in this proceeding from providing evidence of damages it suffers when Qwest's service is noncompliant. According to AT&T, examples of damages include the costs of unutilized or underutilized AT&T personnel, equipment and marketing due to Qwest's failure to provide service to AT&T, goodwill costs, and customer service cancellations, including possible cancellations of other services such as cable.

⁴ *Verizon Pennsylvania Order*, FCC 01-269 (rel. September 19, 2001) at ¶ 128.

⁵ *Verizon Connecticut Order*, FCC 01-208 (rel. July 20, 2001) at ¶ 77 (footnote omitted).

wireless, toll and cable modem. AT&T argues it is not possible to quantify CLEC damages.

Commission preliminary finding: No finding or comment is necessary.

Comments on Commission's preliminary report Qwest reiterates its support for Antonuk's rejection of AT&T's claim that it was prohibited at the QPAP workshop from introducing evidence of the harm it had experienced as a result Qwest's alleged discriminatory treatment.

Commission's finding: Again, no finding or comment is necessary here.

3. Preclusion of other CLEC remedies. Sections 13.5 and 13.6 of the QPAP treat Tier I payments as liquidated damages which are designed to provide an exclusive remedy to compensate CLECs for damages resulting from Qwest's poor service. In return for the right to such payments without having to prove harm, Qwest would secure the assurance that other damages arising from the same performance will be waived. Qwest also asserts that the offset provision of the QPAP (Section 13.7) would apply to non-contractual remedies. CLECs disagree, arguing they should not be foreclosed from seeking other remedies. Qwest's reply brief commits to not preclude non-contractual legal and regulatory claims, but Antonuk finds Sections 13.5 and 13.6 unclear and inconsistent when taken together. Antonuk adds that the same need exists to ensure that from any such recovery there is deducted in one way or another the contract damages amount for which the QPAP should provide. To remedy the inconsistency, and to make clear that the QPAP allows CLECs to recover noncontractual damages, Antonuk strikes most of Section 13.6, replacing the stricken language with a provision requiring a CLEC to elect either (a) the remedies otherwise available by law, or (b) those available under the QPAP and other remedies as limited by the QPAP. Thus, CLECs may select all or none of the QPAP remedies. CLECs electing QPAP remedies are not precluded from seeking recovery under noncontractual theories of liability those parts of damages that are not recoverable under contractual

theories of liability (e.g., federal enforcement under 271(d)(6), antitrust, tort and consumer protection remedies).

Qwest comments

Qwest does not oppose Antonuk's preclusion of other CLEC remedies and asserts that its modified QPAP (13.6) incorporates Antonuk's "three-factor" test concerning alternative remedies. Qwest, however, modifies the QPAP further to clarify that payments under PSC rules and orders will be considered contractual. Qwest's clarifications assume that PSC rules and orders regarding wholesale service quality issues are also contractual as they relate to interconnection agreements.

AT&T comments

AT&T strenuously objects to Antonuk's recommended revisions as providing Qwest the ability to put CLECs out of business without fear of significant financial harm to itself. AT&T disagrees with Antonuk's findings that restrict CLEC remedies to only those available under the QPAP. AT&T argues that Antonuk's position is legally inappropriate and raises public policy concerns. AT&T claims that, if Antonuk's approach is adopted, alternative CLEC remedies for damages are essentially eliminated in a way never contemplated by the FCC or any other state commissions. AT&T proposes instead the findings of the Colorado PUC regarding remedies, which allow CLECs the ability to sue to recover extraordinary losses due to Qwest's poor performance. AT&T recommends the Commission adopt the Colorado commission's language regarding preclusion of CLEC remedies (CPAP 16.6).

Covad comments

Covad asserts Antonuk's conclusions are fatally flawed as they ignore the fact the QPAP will be incorporated into the SGAT as well as the fact that damages not compensated under the QPAP should be recoverable. Covad recommends rejecting his conclusions and accepting the Colorado PUC's approach. That approach finds, in part, that concerns about backsliding justify the risk that Qwest may overcompensate CLECs on occasions for damages while preserving the rights of CLECs to sue when under compensated. In turn, the Colorado PUC finds appropriate a provision that permits the assertion of "contractual theories of relief" where extraordinary losses are sustained as a result of Qwest's poor service quality.

Commission preliminary finding: The Commission rejects as unreasonable Antonuk's recommendation, which would preclude CLECs opting into the QPAP from seeking other remedies when they sustain extraordinary losses as a result of Qwest's noncompliant performance. The Commission adopts the recommendation of AT&T and Covad and directs Qwest to replace the third and final sentence of Montana QPAP Section 13.6 (11/6/2001 version) with the

following slightly revised language recommended by the Colorado PUC at CPAP section 16.6:

Tier 1 payments are in the nature of liquidated damages. Before a CLEC shall be able to file an action seeking contract damages that flow from an alleged failure to perform in an area specifically measured and regulated by the QPAP, CLEC must first seek permission through the Dispute Resolution Process set forth in SGAT Section 5.18 to proceed with the action. This permission shall be granted only if CLEC can present a reasonable theory of damages for non-conforming performance at issue and evidence of real world economic harm that, as applied over the preceding six months, establishes that the actual payments collected for non-conforming performance in the relevant area do not redress the extent of the competitive harm. If CLEC can make this showing, it shall be permitted to proceed with this action. If the CLEC cannot make this showing, the action shall be barred. To the extent that CLEC's contract action relates to an area of performance not addressed by the QPAP, no such procedural requirement shall apply.

The Commission agrees with Antonuk's finding that CLECs electing QPAP remedies are not precluded from seeking recovery under noncontractual theories of liability those parts of damages that are not recoverable under contractual theories of liability (e.g., federal enforcement under 271(d)(6), antitrust, tort and consumer protection remedies).

Comments on Commission's preliminary report In its comments, Qwest strongly objects to the Commission's rejections of Antonuk's approach regarding remedies in favor of the Colorado PUC's recommended approach. Qwest argues that the FCC has approved plans that require a CLEC to elect exclusive remedies in exchange for the benefits of receiving self-executing payments. According to Qwest, it is the FCC's opinion, not this Commission's, that matters when it comes to public interest issues. Qwest claims this Commission's consultative role does not extend to the public interest demonstration. Qwest says the Commission's replacement language for Section 16.6 omits a critical provision of the Colorado plan that requires any damages awarded to a CLEC to be offset with Tier 1 payments.

AT&T, MTA and TA support the preliminary finding. AT&T asserts the language of Section 13.6 that was stricken by the Commission conflicted with FCC and other state commission precedent and insulated Qwest from any possibility of liability other than what is expressly stated in the QPAP. MTA takes issue with the requirement to use the dispute resolution process unless that process is improved to make it less burdensome, time consuming, and more accessible.

Commission's finding: The Commission affirms its preliminary finding. Should a CLEC experience extraordinary losses due to Qwest's poor performance in an area covered by the QPAP, the CLEC should not be barred by the QPAP from seeking recovery of those losses. Contrary to Qwest's argument, the Commission's finding does not ignore FCC authority. As noted above in the finding at L.C.1, the FCC has clearly stated that state plans may vary. Just because the FCC approved the Texas plan, as well as all the other Texas-based plans, does not mean every provision in those plans must be included in every state's plan. The Commission is puzzled by Qwest's argument that the Commission has no consultative role on public interest issues and, therefore, only the FCC's opinion of the QPAP is relevant. The Commission responds that the FCC's 271 orders are replete with references to states' roles in creating and revising PAPs and in administering and enforcing them after states have adopted them.

The Commission's replacement of the final sentence of QPAP Section 13.6 with the Colorado PUC language as directed herein does not open the floodgates to unreasonable litigation and appeal. Rather, the added provision requires a CLEC seeking QPAP contract damages over and above the payments awarded to it by the QPAP to first obtain permission to do so via the SGAT's dispute resolution process, in which the CLEC

must demonstrate the QPAP payments received were not sufficient to redress the alleged harm. Only then will permission be granted for the CLEC to proceed with the action. Regarding MTA's objection to the dispute resolution requirement as burdensome and time-consuming, the Commission responds that this provision appropriately puts the burden on the CLEC to make the necessary demonstration before the CLEC may seek additional contractual remedies outside of the QPAP payments. This provision is meant to erect a hurdle for the CLEC to clear.

Concerning Qwest's comment that the Commission's replacement language omitted the sentence in the Colorado CPAP provision that required any damages awarded to a CLEC in this type of action to be offset with QPAP payments, the Commission responds that offset is addressed in its own section (13.7) in the Montana QPAP.

4. Indemnity for CLEC payments under state service quality standards. Antonuk rejects AT&T's proposal that Qwest compensate CLECs for any payments they must make for failure to meet state or federal service quality rules, provided that Qwest wholesale service deficiencies cause CLEC failures. This issue was addressed in prior workshops (indemnity for CLEC payments under state service quality standards) where such indemnification was similarly rejected.

5. Offset provision (Section 13.7) AT&T objects to Qwest's provision that allows it to reduce damages a court or regulatory agency orders it to pay a CLEC by the amount of QPAP payments to that CLEC, if the damages are based on the "same or analogous" wholesale performance. As regards the issue of Qwest's right to an offset, Antonuk finds that this issue is really about where to resolve disputes that concern offsets. He finds the QPAP dispute resolution process to provide parties an opportunity to challenge any Qwest decision to reduce QPAP payments under the offset language. He includes in the QPAP a provision for interest on awards so that Qwest does not have a time-value-of-money advantage

while resolving disputes. As regards disputes about the "same or analogous performance" provision, he finds the Qwest revised language generally appropriate as it limits the offset provisions to the portion of damages that represent compensatory recovery by CLECs. In finding the term "analogous" too vague he prefers the phrase "same underlying activity or omission for which Tier 1 assessments are made under this QPAP." While the QPAP has nothing to do with compensation for physical property or personal injury damages, to preserve the effect of other SGAT provisions that do, he revises Section 13.7 to prohibit offsets against CLEC payments that relate to third-party physical damage to property or personal injury.

Qwest comments

Qwest incorporates into the QPAP (13.7) changes Antonuk recommends.

AT&T comments

AT&T agrees that CLECs are not entitled to double recovery for the same damages. However, AT&T claims that the offset issue is one that should be argued in court if a CLEC decides to sue in order to recover alleged losses and that the issue should be decided by the finder of fact in that forum. AT&T points out that neither the Texas nor Colorado performance assurance plans include provisions such as this one that allows Qwest to offset payments won by CLECs using alternative remedies. AT&T notes that Qwest will have the opportunity to argue the appropriateness of offset in court. AT&T rejects Antonuk's reasoning that Qwest is not actually able to use this provision to offset legal judgment obtained against Qwest by a CLEC because the CLEC is free to use the dispute resolution procedure in the SGAT to pursue its claim in front of the state commission. AT&T recommends the Commission reject Antonuk's finding regarding the offset provision and instead adopt the offset language of the Texas or Colorado commissions, or that recommended by the Utah Staff.

Covad comments

Covad asserts that while Antonuk foists the responsibility and cost to determine the appropriateness of offsets onto CLECs, Covad prefers having the entity (PSC or court) that renders damage awards to make offset decisions.

Commission preliminary finding: The Commission rejects Antonuk's recommendation that permits Qwest to offset damages a court or other agency orders it to pay a CLEC by the amount of QPAP payments to that CLEC when the damages are based on the same wholesale performance. The Commission does not believe double recovery by a CLEC for the same poor performance is proper.

but finds that the appropriate entity to determine whether an award to a CLEC should be offset is not Qwest, but is the same court or adjudicatory body that awarded the damages to the CLEC. Similarly, that entity will also decide whether the performance at issue is the same performance as that which was compensated under the QPAP. Qwest is directed to replace the first two sentences of QPAP Section 13.7 (11/6/2001 version) with the following Colorado CPAP recommended language:

If for any reason a CLEC agreeing to this QPAP is awarded compensation for the same harm for which it received payments under the QPAP, the court or other adjudicatory body hearing such claim may offset the damages resulting from such claim against payments made for the same harm.

The Commission agrees with Antonuk's reasoning that prohibits offsets against CLEC payments related to third-party physical damages or personal injury. Therefore, no change to the final sentence of QPAP Section 13.7 is necessary.

Comments on Commission's preliminary report Qwest comments that the Commission's preliminary finding conflicts with its acceptance of Antonuk's finding that CLECs seeking noncontractual relief should not be permitted to recover damages they are also able to recover under contractual theories of liability. Qwest claims Section 13.7 merely allows Qwest to choose the forum in which it enforces the offset right. According to Qwest, under Section 13.7, when a CLEC seeks noncontractual relief for "the same underlying activity or omission," Qwest may either obtain an offset of the amount that would be recoverable under contractual theory by raising the offset as a defense to the CLEC's noncontractual claim in court, or may reduce its QPAP payments by the amount of the award, an action that is subject to the dispute resolution process in the SGAT. In either case, Qwest argues, Qwest is not able to make an unreviewable decision about an offset. Qwest asserts the Commission's added language is flawed because it will encourage litigation by CLECs to obtain multiple recovery for the same damages and because the language regarding a court's or adjudicatory body's offset authority is permissive ("may offset") rather than mandatory ("shall offset").

AT&T, MTA and TA support the Commission's tentative finding. AT&T comments that the offset provision preliminarily adopted by the Commission is analogous to the Texas plan's offset provision at § 6.2, as well as being in accordance with the recent clarification regarding this issue made by Special Master Phil Weiser for the Colorado PUC, and with the positions of the Wyoming PSC and the Utah Staff. MTA notes the Commission can and should be one of the adjudicatory bodies referred to in the Commission's suggested language.

Commission's finding: The Commission continues to find that it is up to the court or agency that awarded damages to a CLEC to determine whether those damages should be offset with QPAP payments. It is not appropriate for Qwest to make that determination, which is what the 11/6/2001 QPAP provides at Section 13.7. The Commission does not see a conflict between this finding and its acceptance of Antonuk's finding that CLECs seeking noncontractual relief should not be permitted to recover damages they are also able to recover under contractual theories of liability. This finding simply assigns responsibility for the determination of offset to the same court or agency that awarded damages to the CLEC.

6. Exclusions (Section 13.3).

This section of the QPAP lists cases that excuse Qwest from Tier 1 and Tier 2 payments. Antonuk's *Report* discusses six such exclusions.

- a. Bad faith. Antonuk finds this exclusion should stay in the QPAP because CLECs should not receive QPAP payments as a result of their manipulative conduct. However, he adds a provision to Section 13.3 that Qwest does not use this exclusion to excuse its own failure to deliver performance it should reasonably be expected to provide just because the CLEC knows of Qwest's weakness.

b. Duplicative force majeure provisions. Given that the SGAT provides for service obligations, Antonuk rejects Qwest's argument that the QPAP requires its own separate and different force majeure provision.

c. Resolving disputes over force majeure events. Antonuk agrees with Qwest's view that the PSC resolve disputes of whether force majeure events occurred. The QPAP should require Qwest to notify the PSC of its force majeure claims within 72 hours of learning of them, or after it reasonably should have learned of them.

d. Nexus between force majeure events and Qwest performance. Antonuk accepts the QPAP's existing language, but recommends adding AT&T's language specifying the method for calculating the impact of a force majeure event on interval measures (and payments). Qwest's burden will be to not only show a force majeure event occurred, but to demonstrate its relation to failed performance.

e. Applicability of force majeure to parity measures. Antonuk finds that parity performance measures should not be subject to force majeure payment exclusions.

f. CLIC forecast exclusion. Antonuk finds the language of this provision is too broad and he recommends limiting the exclusion to failure to provide forecasts that are "explicitly required by the SGAT." He does not allow forecast exclusions stemming from state rules.

Qwest comments

Qwest states to incorporate language into the QPAP (see 13.3.2 and 13.3) in accordance with all of Antonuk's findings regarding exclusions.

Comments received on Commission preliminary report While the Commission considered issues concerning exclusions to be resolved because no participant

objected to Antonuk's findings in response to his report, both MTA and TA submitted comments relating to this section.

TA objects to three provisions in the force majeure section: (1) the term "work stoppage" is undefined and should be limited to strikes by Qwest employees; (2) the exclusion for "equipment failure" should be removed because it is Qwest's responsibility to maintain its equipment and its failure to do so should not exempt it from QPAP payments; and (3) the exclusion for Qwest's "inability to secure products or services of other persons" should be revised to require Qwest to promptly secure or try to secure the needed products or services.

MTA points out that the force majeure provision at Section 13.3 adopts by reference the force majeure definition at SGAT Section 5.7.1. MTA objects to that section's broad definition of force majeure events, which basically defines them as events outside Qwest's control, and expressly includes, among others, things, "government regulations." MTA notes that all FCC and Commission rules implementing the Act, and perhaps the QPAP itself, are government regulations. MTA recommends "government regulations" be stricken from this SGAT provision, or alternatively, that the term be clarified as to what government regulations it refers.

Commission's finding: The Commission finds TA's objections are moot because, in the current 11/6/2001 version of the QPAP, the force majeure terms to which TA objects, along with several others, are deleted. The Commission rejects MTA's proposal to revise SGAT Section 5.7.1 because issues concerning SGAT general terms and conditions, including this provision, were discussed, considered and resolved in the 271 checklist workshop process.⁶

⁶ See the Montana PSC's *Final Report on SGAT General Terms & Conditions and Responses to Comments Received on Preliminary Report*, December 20, 2001. See also John Antonuk's *General Terms & Conditions, Section 5.7.1, and Track A Report*, September 21, 2002, p. 23.

7. SGAT limitation of liability to total amounts charged to CLECs. Antonuk finds that the payments referred to in SGAT Section 5.8.1 and in the QPAP are mutually exclusive: Qwest's liability for property damage and personal injury should not be limited by QPAP payments, and vice versa. He recommends that Section 5.8.1 should be revised to include this provision: "*Payments pursuant to the QPAP should not be counted against the limit provided for in this SGAT section.*"

Qwest comments:

Qwest states to have revised the QPAP and adds that it will file to revise the SGAT (5.8.1).

Comments received on Commission's preliminary report MTA concurs with the finding here, but argues the amendment recommended by Antonuk does not accomplish the objective he stated in his report. MTA recommends Antonuk's amendment be replaced by this sentence from his report:

Qwest's liability for property damage and personal injury should not be limited by QPAP payments, just as QPAP payments should not be limited by payments for property damage and personal injury.

Commission's finding: The Commission agrees with MTA, but for simplicity's sake, directs Qwest to change the Antonuk-recommended sentence as follows:

Payments pursuant to the QPAP should not be counted against the limit provided for in this SGAT section, and payments pursuant to this section should not be limited by payments made pursuant to the QPAP.

D. Incentive to perform.

1. Tier 2 payment use (Section 7.5). AT&T would eliminate the section that requires using Tier 2 payments for purposes that relate to the Qwest service territory. Antonuk prefers language that allows a PSC to direct the use of the

money, within the limits of state law. He also recommends that the QPAP include a funding mechanism to first use Tier 2 payments to support state commission activities that relate to wholesale telecom service issues, but also to use a portion of Tier 1 payments, if necessary, to support those activities. This mechanism operates as follows: 1/3 of Tier 2 payments and 1/5 of Tier 1 escalation payments would go to the fund for the states that participate in a multistate administration effort for (a) administrative activities, (b) dispute resolution, and (c) other wholesale telecom service activities that the participating PUCs decide are best carried out on a multistate basis. Any unused Tier 1 payments would be returned to CLECs who made them, on a prorated basis, at least every two years. To fund the activities on an interim basis Antonuk would require Qwest to make an advance payment against future Tier 2 obligations.

Qwest comments

Qwest modifies QPAP (7.5) and further clarifies that it will pay Tier 2 funds unless the Commission directs it to deposit the funds into "another source provided for under state law." However, Qwest adds it will make such payments provided the Commission identifies a state fund that exists by the time Tier 2 payments are due under the QPAP. Otherwise, Qwest will make deposits to the state's general fund. Also, in regard to Tier 2 payment use, Qwest includes four new QPAP sections (11.3, 11.3.1, 11.3.2 and 11.3.3) to establish the source and use of a funds set aside for the "Special Fund." Somewhat ambiguously, Qwest adds that "At least initially, the participating states are those which provide a positive recommendation based on the attached QPAP." Qwest asserts it is necessary for Commissions to pre-designate individuals the Commission authorizes to disburse such funds for legitimate purposes (QPAP section 13.0).

AT&T comments

AT&T objects to Antonuk's proposal that 1/5th of CLECs' Tier 1 escalation payments be used to support a fund for multistate oversight of the QPAP. AT&T argues the proposal is inappropriate because it was not discussed by the participants in this proceeding and because CLECs already pay state taxes and regulatory fees to support regulatory commissions, and should not be expected to remit to the states a portion of their payments for poor service.

Covad comments

Covad would constrain PSC uses to exclude ones that benefit Qwest. Covad finds it "incongruous" to compel Qwest's payments to be used for purposes by which it benefits and may, in fact, create a perverse incentive on the part of Qwest to provide wholesale service to CLECs.

Commission's preliminary finding: The Commission rejects Antonuk's proposal to divert a portion of CLECs' Tier 1 escalation payments to a fund to be used by the Commission in its efforts regarding QPAP oversight and wholesale service quality. The Commission intends at this time to fund its QPAP oversight activities through the use of Tier 2 payments. If Tier 2 payments prove to be insufficient to cover the cost of QPAP oversight, the Commission will revisit this issue.

The Commission supports Antonuk's recommendation that Montana and other state commissions in Qwest's service area join together to participate in a multistate QPAP oversight effort. The Commission will contact other state commissions to determine their interest and, if there is interest, will work with those states to develop a plan for going forward with this proposal.

Regarding the use of Tier 2 funds, the Commission agrees with Antonuk's recommendation that the QPAP include a provision that allows the Commission to direct the use of Tier 2 payments, within the limits of state law. In keeping with this finding, the Commission directs Qwest to keep the first sentence of QPAP Section 7.5 as it appears in the 11/6/2001 version of the QPAP, but to delete the remainder of this provision.

Comments on Commission's preliminary report Parties commenting on these items include AT&T, MTA and Qwest. AT&T asserts "the concept of creating a funding mechanism utilizing Tier 1 payments was never discussed in any proceeding and was not spontaneously created by Antonuk..." AT&T adds that Tier 2 is the most appropriate for plan administration and AT&T does not object to a multi-state effort; had CLECs known of this decision, they would have objected or sought higher payments. MTA agrees that Tier 1 payments should only be paid to CLECs. MTA questions whether state law sanctions the use of Tier 2 payments for QPAP oversight activity and MTA is skeptical about a multistate QPAP effort as the 271 effort has been expensive, burdensome and not accessible to small Montana CLECs. Qwest's comments on the use of Tier 1 and 2 payments. First, Qwest does not agree that using part of Tier 1 payments to administer the QPAP will impair CLECs or diminish Qwest's incentives. Qwest argues that it demonstrates, as Antonuk recognizes and CLECs do not rebut, that "total Tier 1 payments would likely be far in excess of the value of the service to

CLECs, amounting to years of free service to them.”⁷ Second, Qwest endorses the multi-state oversight effort to administer the QPAP. Third, Qwest recommends retention in the QPAP language that provides for Tier 2 payments to be placed in the state of Montana’s general fund if it not otherwise lawful for the Commission to receive such funds. Qwest adds that it is unclear if Montana law permits such receipt. Without reference to either of the four parts of LD “Incentive to perform”, TA states to support the Commission’s preliminary finding.

Commission’s finding: The Commission affirms its finding that it does not plan to use any portion of CLECs’ Tier 1 payments to fund the Commission’s QPAP oversight activities. However, if Tier 2 payments prove to be insufficient to cover the cost of QPAP oversight, the Commission will revisit this issue. The Commission continues to support Antomik’s recommendation that Montana and other state commissions in Qwest’s service area join together to participate in a multistate QPAP oversight effort. If the various multistate Qwest 271 projects were inaccessible and burdensome for Montana CLECs as MTA contends (and as the Commission does not concede), it is the Commission’s expectation that the multistate QPAP oversight activities will not require the same intense level of involvement over a sustained period of time as may have been required of participants in the previous projects. Finally, the Commission notes that Montana law requires that the Commission obtain legislative authority to spend Tier 2 funds for QPAP oversight activities.

2. 3-month trigger for Tier 2 payments. Antomik finds that in any 12-month rolling period in which there occurs two non-compliant months out of any consecutive three months, payments for Tier 2 measures without a Tier 1 obligation should begin after one more month of noncompliance, with escalation as laid out in the QPAP. In the case of Tier 2 measures that are also Tier 1, the

⁷ This reasoning supposes a \$20 loop UNE cost and base payments of between \$25 and \$35.

Tier 2 payments will begin in the second consecutive month of noncompliance, provided that the same "two-out-of-three month condition" is met.

Qwest comments

Qwest agrees to incorporate Antonuk's changes to the QPAP (9.1.2).

AT&T comments

AT&T requests clarification of Antonuk's recommendation here because, as AT&T interprets the QPAP, there is no provision for escalation of Tier 2 payments.

Commission preliminary finding: Like AT&T, the Commission does not find a provision in the QPAP for escalation of Tier 2 payments to the states. The Commission otherwise concurs with Antonuk's recommendation. Participants are invited to provide the Commission with any clarifying information.

Comments on Commission's preliminary report Qwest comments that the Commission is correct, there is no escalation of Tier 2 payments.

Commission's finding: The Commission affirms its preliminary finding and this issue is closed.

3. Limiting escalation to 6 months. Qwest favors limiting escalation to six months while CLICs (AT&T, ELI/Time Warner/XO Utah, WorldCom, Z-Tel, and Comcast) and the New Mexico Advocacy would not limit escalation. Antonuk rejects the CLICs' and New Mexico Advocacy staff's proposal for several reasons. First, he asserts it is not clear that poor performance past six months means Qwest methodically calculated that the continuing costs of compliance exceed the continuing costs of violation. He adds that many of the measures at issue are not parity measures but rather benchmark measures and this record does not demonstrate with certainty that those levels of performance can be met and maintained at any cost within the realm of economic reason. However, they generally relate to services about which little experience existed when the measures were adopted. Thus, the correlation between long-term non-compliance and insufficiency of inducements is not self evident as some have argued. If non-compliance continues for six months in the face of stiff financial consequences,

one of the issues that would bear consideration is the achievability of the established benchmark. Second, parity measures, while based on a substantiated and common belief that there are no material differences between serving retail and wholesale customers, cannot be said to rest upon an absolute certainty that growing experience with the CLEC community will not show otherwise. Third, calculated comparisons of the marginal costs of compliance versus non-compliance are not the only reason problems can persist. Antonuk finds the logic of extended escalation to depend profoundly upon the certainty of propositions like these. He finds it speculative to conclude that insufficiently increasing payments, as opposed to other factors, such as: (a) a less than optimally crafted standard, (b) a series of extenuating external circumstances, (c) buyer efforts to induce failure, (d) management's performance decisions and actions (that may have been soundly believed sufficient to improve performance, but proven inadequate only as time passed), or even other reasons, cause or contribute to a failure to provide compliant performance.

Antonuk concludes that if it can be shown that six months of escalation creates payment levels judged to be far enough in excess of both the value of CLECs and the costs of calculating decisions to continue to under perform, then a six-month cutoff of escalation is reasonable. This conclusion is appropriate in light of three other factors: (1) there are provisions for root cause analysis of continuing problems; (2) there exists the option of ending 271 authorization where that measure is shown to be appropriate to the circumstances and (3) there exists the ability under non-271 sources of regulatory authority to examine the causes and consequences of structural failures or weaknesses in the facilities, management systems, processes, activities, or resources by which regulated providers of utility services, such as Qwest, satisfy their service obligations.

AT&T comments

AT&T disagrees with Antonuk's finding and points out that both the Colorado commission and the Utah Staff rejected limits on payment escalation. AT&T claims that Qwest's argument that unlimited payment escalation would overcompensate CLECs misses the point because the purpose of payment

escalation is to balance CLEC compensation for their losses and to ensure the penalty is higher than the amount Qwest is willing to absorb as a cost of doing business. AT&T cited the Colorado commission's reasoning that continuing escalation of payments for continuous poor performance should help prevent the possibility that Qwest might evaluate whether it would rather absorb QPAP penalties and deter competition or avoid penalties and comply with the law.

Covad comments

Covad finds Antonuk's criticisms of CLECs for speculating inconsistent with his speculation that poor performance beyond six months is beyond Qwest's control. Covad reasons that because military-style testing demonstrates Qwest's ability to meet all PIDs prior to interLATA relief, Qwest should not be able argue, as Antonuk reasons, that poor performance beyond six months is due to circumstances beyond its control. Covad argues that limiting payment escalation to 6 months would merely allow Qwest to discriminate against CLECs for extended periods of time. Covad notes the Colorado Commission's Special Master's Final Report that requires escalation beyond six months and recommends adopting such an approach.

Commission preliminary finding: The Commission rejects Antonuk's recommendation for a six-month limitation on Tier 1 payment escalation for the reasons identified by AT&T and Covad: (1) to deter Qwest from providing poor service to CLECs for extended periods of time; and (2) to help to ensure Qwest's payment for noncompliance is higher than the amount Qwest is willing to absorb as a cost of doing business. Participants are invited to propose changes to QPAP Section 6.2.2 and Table 2 therein to reflect the escalation increments for noncompliance months after the 6th month.

Comments received on preliminary report Qwest reiterates that the FCC has approved a six-month escalation limit in every Texas-based plan it has considered (Texas, Kansas, Oklahoma, Arkansas, and Missouri). Qwest argues that unlimited escalation would unreasonably overcompensate CLECs without increasing incentives for Qwest to comply with the performance standards. Qwest claims the record in this proceeding does not support the premise of the Commission's finding - that unlimited escalation is necessary to ensure Qwest payments under the plan are higher than the amount Qwest is willing to absorb as a cost of doing business. Qwest repeats Antonuk's observations from his Report that repeated claims by Qwest could result as much from poorly designed standards as anything else and that there is no evidence at this point that proves

TA and MTA propose that, after six missed months, the penalty amounts should double in each successive missed month. MTA disagrees with Antonuk's reasoning that Qwest's continued failures to meet a performance measure would indicate the performance is beyond Qwest's control and continued payment escalation would be ineffective. MTA argues that continued performance failures indicate something is wrong and that Qwest should not be given an incentive to "wait out" the six months and face no increased consequences after that.

Commission's finding: The Commission's preliminary finding remains unchanged. Even though, as Qwest points out, the FCC has approved payment escalation limits when it approved all the Texas-based plans, the Commission reiterates here that the FCC has recognized that individual state plans may – and do – vary. If, as Qwest posits could happen, continued deficient performance is not Qwest's fault, but rather caused by poorly designed performance measurements, there will be the opportunity to correct the PIDs at the six-month review.

The Commission adopts AT&T's proposal for continued Tier 1 payment escalation after 6 months. The proposal is reasonable and fair because it continues escalation in the same increments after 6 months of deficient performance as those which occur prior to 6 months. The Commission rejects as unreasonable the proposal by TA and MTA to double the penalty amounts in each successive month of deficient performance.

4. Splitting Tier 2 payments between CLBCs and the states. Because it was not done in the Colorado PAP as Covad asserts, and no other 271 PAP approved by the FCC does so, Antonuk rejects Covad's proposal to divide Tier 2 payments

between the states and CLECs. Antonuk finds that Tier 1 payments already provide adequate compensation to CLECs.

II. CLEARLY ARTICULATED AND PRE-DETERMINED MEASURES

A. Measure selection process. Antonuk explains how the Performance Indicator Definitions (PIDs) were developed and how they are incorporated into the QPAP.

B. Adding measures to the payment structure.

1. Requiring payments for cancelled orders. Antonuk rejects the CLECs' proposal that the QPAP should provide for payments when CLEC customers cancel orders after Qwest misses a due date.

Comments on Commission's preliminary report TA and MTA recommend the Commission reconsider Antonuk's resolution. If due to Qwest's inability to serve or to delay serving, a CLEC, a customer cancels an order with the CLEC, TA asserts Qwest should be penalized. If excused, Qwest may selectively target a CLEC's higher valued customers for poor service and may, in turn, thwart a CLEC's effort to take customers from Qwest. MTA argues that a CLEC's reputation is damaged beyond the loss of one customer when a Qwest due date miss results in the customer canceling the order and that, meanwhile, Qwest is able to retain that customer.

Commission's finding: The Commission declines to modify the QPAP as TA and MTA recommend. That said, the Commission advises CLECs to document their experiences and in the proper forum apprise the Commission of the instances involving the sort of behavior they predict here.

2. Requiring payments for "diagnostic" PIDs. Antonuk finds that EELs, line sharing and sub-loops should be included in the QPAP payment structure as soon

CONTINUATION

[4.]

as practicable. He notes that firm benchmarks or parity standards will have to be adopted first.

Conrad comments

Conrad asserts the Report's conclusion should be revised to provide that when PIDs convert from being diagnostic to either a benchmark or a parity standard that the QPAP will include them as of the date Section 271 relief is granted.

Commission preliminary finding: The Commission concurs with Antonuk's resolution and only adds that its recent emerging services final report on line sharing and subloop unbundling expresses the same view. Line sharing now has a parity provision. Additionally, the Commission agrees with Covad that PIDs that are currently labeled "diagnostic" be included in the QPAP as soon as they are converted to benchmark or parity standards.

Comments on Commission's preliminary report Both MTA and Qwest filed comments. MTA concurs with the Commission's preliminary finding and would only encourage the Commission to include diagnostic PIDs in its six-month progress review of the QPAP.

Qwest comments that the Commission misapprehends the issue that is raised in Antonuk's Report. Qwest asserts to have been asked whether "diagnostic submeasurements of PIDs that were already in the QPAP would be added and eligible for payment." Qwest asserts to commit to add them if they received "a standard through the ROC OSS collaborative before that process ended." It is that recommendation Qwest holds Antonuk adopts. Qwest, however, never asked and did not commit to include all diagnostic PIDs in the QPAP prior to the six-month review and nor did any party advance a contrary position.

Commissioner's finding: The issue here may be confused but for good reason: there is no mention of diagnostic "submeasurements" of PIDs in Antonuk's report that were already in the QPAP. The discussion there references EELs, line sharing and sub-loops. His report summarizes Qwest's position including that line sharing and sub-loops are excluded from the QPAP payment structure because the performance measures for them are diagnostic in nature, but as the ROC OSS collaborative changes measures from diagnostic to a firm benchmark

or parity standard, they would be included in the QPAP. If the dispute in Qwest's comments is over "all", as it appears, and if by "all", Qwest means other than EELs, sub-loops and line sharing, then there appears no disagreement. Still, over the life of the QPAP as new services emerge in conjunction with diagnostic measures, these services may be added to the QPAP for penalty purposes. For example if a diagnostic PID exists for special access, the Commission is not foreclosing the likelihood that that PID may become a benchmark or parity measure. The six-month review process is the designated forum for consideration of adding new performance measures to the QPAP.

3. Cooperative testing. Antonuk rejects Covad's proposal for a cooperative testing performance measure that minimizes CLEC trouble reports for xDSL LINE loops they order from Qwest. (Covad said Qwest has not complied with its agreement to perform acceptance testing in cooperation with Covad for all xDSL loops that Covad leases; cooperative testing would turn up defective loops before Covad has to submit trouble reports to Qwest after installation.) Antonuk said Covad should raise the issue in whatever forum is created to identify, discuss and resolve performance measure issues.

4. Adding a new PID -- PO-15D -- to address due date changes. Antonuk rejects this Covad proposal because Covad did not propose a standard for this currently diagnostic measure and, therefore, there is no basis for payment calculation under the QPAP.

5. Including PO-1C preorder inquiry timeouts in Tier I. Antonuk rejects this AT&T proposal because the QPAP already provides compensation for preorder response time measures, that Antonuk believes is adequate for now. He finds that, if the ROC-OSS test finds a large enough number of timeouts to cause concern about the impact on the preorder response times, then the issue should be revisited.

6. Adding change management measures. Antonuk finds it appropriate to add the two change management measures that Qwest agreed to include in the QPAP (GA-7, timely outage resolution, and PO-16, release notifications). They are diagnostic now and after benchmarks are established by the ROC-OSS collaborative they will be added as "high" Tier 2 measurements.

7. Adding a software release quality measure. Antonuk recommends that WorldCom's proposed RQ-3 PID, that measures the quality of Qwest's software releases by determining the number of releases that require amendment, suspension or retraction within 14 days of implementation, be considered for inclusion on the agenda for the first 6-month review of the QPAP.

8. Adding a test bed measurement. As it is a measure under development Antonuk finds it premature to decide whether WorldCom's proposed PO-19 (test environment responsiveness) should be included in the QPAP.

9. Adding a missing-status-notice measure. Antonuk rejects WorldCom's proposal to add a performance measure to track missing status notices in anticipation of Qwest experiencing a problem (like Verizon did in NY) of failing to provide these notices.

C. Aggregating the PO-1A (pre-order IMA-GUI response times) and PO-1B (pre-order FDI response times) performance measures. Antonuk agrees with Qwest that an agreement was reached in the PEPP collaborative to collapse the 7 individual transaction measurements contained in each of these PIDs into two for purposes of the QPAP, and he supports that agreement.

D. Measure weighting.

1. Changing measure weights. Antonuk recommends adopting the measure weighting initially proposed in the QPAP and not adopting either the weighting

increases sought by CLECs for certain "high-value" services (collocation, LIS trunks, UDIT, unbundled loops, resold DS-1 and DS-3) or the weighting decreases Qwest sought in return (residence & business resale, 2-wire loops, analog loops).

2. Eliminating low weighting. Antonuk rejects CLECs' proposals to eliminate the "low" weighting designation altogether.

3. LIS trunks weighting. Antonuk rejects AT&T's proposal to increase the weighting of LIS trunk measures.

Qwest comments

Qwest's comments summarize the content of Antonuk's Report and proffer no changes on measure weights.

E. Collocation payment amounts.

As evidence demonstrates that Qwest accepts the proposal proffered by the CLECs in the ROC-PEPP collaborative and that the proposal reflects the Michigan approach in regard to collocation payments, Antonuk rejects the New Mexico Staff's suggestion that the QPAP reflect either the Michigan or Georgia approach to determining collocation payment amounts. The incorporation of this proposal in the QPAP responds to the New Mexico Staff's concern.

Qwest comments

Qwest incorporates the "days late" collocation payment proposal into the QPAP (at 6.3).

F. Including special access circuits.

WorldCom requests inclusion of special access circuits in the performance measures while ELI/Time Warner/Xo considered payments important due to CLEC use of special access to provide local exchange service. Qwest asserts there is agreement by the ROC-OSS collaborative to drop special access circuits from discussions. Because the evidence

demonstrates that most special access circuits at issue here were provided under Qwest's interstate FCC tariffs, Antonuk concludes that such circuits do not merit QPAP inclusion as PID performance measures, as requested by ELI/Time Warner/XO Utah and WorldCom. Unless inappropriate barriers exist that have the practical effect of requiring tariff purchases where interconnection purchases should be available, Antonuk reasons that the FCC should address failures to meet tariff requirements.

WorldCom comments

WorldCom asserts that Antonuk's *Report* errs in reasoning that because CLECs purchase the majority of special access trunks from federal tariffs, they should seek remedies at the FCC. WorldCom asserts that because the FCC has long held it will consider discriminatory and anticompetitive RBOC conduct as part of the public interest test, states should address such alleged conduct as part of 271 authority that addresses backsliding; this may occur concurrent with FCC efforts. WorldCom adds that inclusion of special access is under consideration in Texas. WorldCom also notes, that only 10 percent of traversing traffic need be interstate for a CLEC to order federally tariffed special access. WorldCom adds that the New York PSC found special access services critical to business in their state. WorldCom mentions how other states' actions consider special access in performance reporting. As for service quality, there is no federal-state conflict, there are no federal service quality standards and neither Congress nor the FCC has taken regulatory actions on "intrastate access" service quality. WorldCom concludes that it is appropriate for the Commission to approve reasonable performance measures for special access.

Commission preliminary finding: Based on WorldCom's comments, the Commission finds that it is premature to make a preliminary decision based on Antonuk's *Report* and WorldCom's comments. Instead, merit exists in receiving comments on WorldCom's suggestions and on Colorado's recent resolution. The Commission invites comment on how the Colorado Commission resolved the same issue (see Colorado Commission, Decision No. R01-997-I, Docket No. 011-041T, Issue No. 54, Issues September 26, 2001, at pages 79-82), and why that resolution is not relevant here. Comments should also address the relevance of FCC-regulated special access rates vis-à-vis this Commission's deregulation of special access except for IXC facilities connecting a POP and an ILEC's CO.

Comments on Commission's preliminary report The only commenter, Qwest, concurs with Antonuk that the Commission lacks jurisdiction given the percent of special access circuits that are purchased from interstate tariffs. The FCC has exclusive jurisdiction to address special access related performance issues. If the Commission would impose on Qwest obligations and remedies different from those that are interstate, the Commission

would interfere with FCC authority and such action is inconsistent with the filed rate doctrine. Qwest adds that the FCC has complaint procedures. Under the public interest requirement, that includes PAP, the New York PSC found no need to consider special access. Unless special access facilities involve significant "local exchange service by CLECs," in which case they may convert to UNEs, the FCC expressed legal and policy concerns about applying 251(c)(3) to such circuits. Qwest also notes that at AT&T's urging the FCC began a rulemaking on whether it should adopt a select group of performance measures and standards to evaluate how ILECs provide special access services; in its petition, AT&T recognized that the FCC has unique responsibility and special access problems cannot be addressed adequately by state commissions. Qwest asserts that because this FCC proceeding addresses the role of states, including the same issue in the QPAP is of greater concern. Qwest adds that the FCC questions the costs and benefits of providing meaningful special access measures in lieu of UNE purchases. Qwest concludes that the Commission should not veer from Antonuk's resolution.

Commission's finding: The Commission finds that it is not timely to require Qwest to include in the QPAP, for penalty purposes, PIDs for special access circuits. This final decision does not rule out the likelihood of a future change in this policy. Subsequent decisions must be informed and timely vis-a-vis ongoing FCC investigations, actions taken by other state Commissions and state-specific circumstances. Opportunities will emerge to revisit this decision and the above unanswered questions may be revisited in subsequent processes.

G. Proper measure of UNE intervals.

Antonuk rejects Covad's argument to base QPAP payments on the service intervals of SGAT Exhibit C (the standard interval guide) instead of the PID-established intervals. His rejection stems from his finding that there is, as was discussed in the UNE workshop, consistency between the PID and Exhibit C.

H. Low-volume CLECs.

Antonuk rejects Covad's argument that the QPAP's design primarily compensates high-volume CLECs at the expense of low-volume ones. He finds that Qwest provides credible and unrefuted evidence that the QPAP would not serve to under-compensate smaller volume CLECs. Second, in regards to Covad's objection to the QPAP provision that gives Qwest a "free miss" each month in the case of CLEC's with small order volumes, Antonuk also finds that a yearly rolling average will correct the "rounding down" problem of this provision; however, as a yearly rolling average does not solve the issue of escalating payments for consecutive-month misses, escalation that applies in any month where any miss occurs for low-volume CLECs where the annual calculation shows Qwest violated the applicable requirement will solve that problem. He concludes that the QPAP should incorporate these changes.

Qwest comments

Qwest implements Antonuk's decision into the QPAP (Section 2.4) but makes minor adjustments to Antonuk's calculation to determine missed performance measures for benchmark standards where low CLEC volumes are such that a 100% performance result would be required to meet the standard. Whereas Antonuk concludes that Qwest use 12 months of performance results to determine if the miss in the current month should be waived, Qwest seeks to clarify the language such that it will use the current month's results, plus a sufficient number of prior consecutive month's performance data so that a 100% performance result would not be required to meet the standard.

Commission preliminary finding: The Commission invites comment on the language submitted by Qwest as described above.

Comments on Commission preliminary report MTA and Qwest filed comments.

Although related MTA comments were reviewed earlier (see I. A. 6), MTA again notes its skepticism that the QPAP provisions are sufficient to meet the "meaningful and significant incentive" test in low-volume situations. As low volumes render each occurrence more significant to small CLECs, MTA recommends an "expedited dispute resolution process" to address low volume and other situations that arise in the QPAP for which non-standard solutions are preferable and more equitable. Qwest asserts that it modifies Antonuk's recommendation because inclusion of the prior 11 months of performance results may not solve the "small numbers problems." With a 90%

benchmark, the minimum number of CLEC "business units" to avoid a requirement of perfection is ten. Although it is likely to reach the requisite number of data points with less than 11 months of accumulated performance, in rare cases it may be necessary to include more than 11 months. Qwest's modification of Antonuk's recommendation would "pull data" from only the necessary number of months of performance results.

Commission's finding: It is unclear to the Commission what kind of non-standard solutions MTA suggests and, for that matter, what other CLECs may pursue. The Commission believes the 6-month review process that serves to review the addition/deletion of performance measures should suffice. If it does not suffice, then the two-year review of the adequacy of the QPAP to induce Qwest to perform is another alternative. Because MTA ties its response here to that in Section LA.6 (supra, "Excess payments in low-volume states"), the Commission refers to its response in that section. The Commission agrees with MTA about the need for an expedited dispute resolution process to speedily resolve disputes over wholesale issues between Qwest and CLECs, however that process, as discussed earlier in LA.6, is not a re-opener for CLECs to circumvent the payment mechanisms for CLECs collectively or individually, as noted earlier, that aspect of MTA's proposal is denied. Once the Commission approves the QPAP, its basic elements, such as this compensation provision for low-volume CLECs, will not be subject to change in the "expedited dispute resolution process" fashion that MTA recommends as an option for larger penalty payments.

III. STRUCTURE TO DETECT AND SANCTION POOR PERFORMANCE AS IT OCCURS

A. 6-month plan review limitations (Section 16).

The QPAP (Section 16) provides for the occasions when the QPAP may be amended. Antonuk finds Qwest's QPAP to limit reviews similarly to how the Texas PAP and the Colorado PAP limits reviews. AT&T had noted that the New York and Texas plans allow any aspect to be examined at six-month intervals and urged the same in

consideration of the public interest. Qwest objects to opening the QPAP generally to amendments. Antonuk reviews what revisions the Colorado Special Master's Report allows at 6 month and at 3 year intervals. The purpose of the latter review is to determine the PAP's effectiveness at "inducing compliant performance." He finds this process should be adopted (Report, p. 61). Antonuk reasons that due to uncertainty on the continued role of the ROC in performance measure development and administration, the Texas arbitration provision is therefore appropriate to assure that the QPAP meets the applicable standards without unduly exposing Qwest to indeterminate increases in its financial exposure. He also recommends three changes to the QPAP review section:

1. Instead of allowing Qwest to veto recommendations, provide for normal SGAT dispute resolution procedures in the event that there is disagreement with a six-month review process recommendation regarding the addition of new measures to the QPAP payment structure.
2. Recognize and support multi-state efforts (should they occur) to create a Tier 2-backed method and an administrative structure for resolving QPAP disputes.
3. Provide for biennial reviews of the QPAP's continuing effectiveness for the purpose of allowing state commissions to regularly report to the FCC on the degree to which there are adequate assurances that Qwest's local exchange markets remain open.

Qwest comments

Qwest adds language to the QPAP (16.1) to allow arbitration to resolve disputes over the addition of new measures arising out of the six-month review; this is as provided for in the SGAT. Qwest amends the QPAP to allow six-month reviews to be conducted collectively (16.1). As Antonuk's Report recommends a two-year review, Qwest amends the QPAP (16.2) to read in part: "Two years after the effective date of the first FCC 271 approval of the PAP, the participating Commissions may conduct a joint review by a independent third party to examine the continuing effectiveness of the PAP as a means of inducing compliant performance."

AT&T comments

AT&T claims Antonuk did not provide a definitive solution to the issue of who controls the 6-month review process. AT&T objects to the existing 6-month review provisions that give Qwest control over whether any changes will be made or even addressed. AT&T seeks instead to shift control of the 6-month review process away from Qwest and recommends the approaches of the Colorado commission and of Utah Staff, both of which clearly provide that the state commission is the decision-maker when it comes to QPAP changes being addressed in the 6-month review process.

MCC comments

The MCC agrees with a two-year review cycle over the long term but if performance measures and penalties are to be updated successfully, MCC prefers an annual review for each of the first three years of the PAP and a thorough review upon three years' effectiveness.

Commission preliminary finding: The QPAP calls for reviews every six months for the purposes of determining: (1) whether performance measurements should be added, deleted or modified; (2) whether to change benchmark standards to parity standards; and whether to modify the weighting and/or tiers assigned to measurements. A major review by an independent third party of the continuing effectiveness of the QPAP is scheduled for two years after the QPAP takes effect. In addition, there is a provision that provides that the QPAP will be available to CLECs until Qwest eliminates its Section 272 affiliate, at which time the Commission and Qwest will review the continuing necessity of the QPAP. The same provision calls for the QPAP to be rescinded if Qwest exits the interLATA market. The Commission addresses each of Antonuk's recommendations for changes to the QPAP review section below:

Limitations on reviews (Section 16.1): Antonuk approves the Qwest QPAP language regarding limitations of the 6-month reviews to performance-measure related issues. The Commission generally agrees with Antonuk's recommendation, but finds the Commission should retain the discretion to add other topics related to performance measurements and criteria for measurement reclassification to the 6-month reviews just in case it becomes necessary to respond to circumstances that may arise as experience is gained with the operation of the QPAP. The Commission directs Qwest to revise Section 16.1 to add the following provision to this section:

The Commission retains the right to add topics and criteria other than those specifically listed here.

Comments on Commission preliminary finding Qwest recommends that the Commission adopt Antonuk's recommendation, which was based on his recognition that the FCC approved Texas-based plans provide well-defined criteria for six-month reviews. Qwest objects to the Commission's suggested language as giving broad, unlimited discretion to

the Commission to add any topic to the 6-month reviews, whether or not it is related to performance measurements or their classifications.

AT&T and MTA agree with the Commission's preliminary finding that it retain the discretion to add topics and criteria to the six-month reviews. AT&T claims there is precedent in Qwest's region for this finding because Wyoming PSC, the Colorado hearing examiner, the Colorado PUC special master, and the Utah Staff all advocated the same Commission discretion. AT&T adds that the FCC has recognized state commissions' role in administering and creating performance plans.

MTA recommends the Commission broaden its recommended language here to enable other parties as well as the Commission to raise any issues related to performance assurance at the six-month review or at any other time. MTA suggests the Commission hold CLEC forums at which Qwest and CLECs can discuss problems. MTA argues it is essential for the Commission to maintain change control over the QPAP, including establishing new enforcement mechanisms, to ensure Qwest maintains the actions it has taken to open up its local service markets to competition.

Commission's finding: The Commission believes it is necessary to revise and clarify its preliminary finding on the issue of topics for the 6-month review. While it is the Commission's expectation that performance measures as described in the existing QPAP review provision will be the only topics for discussion at these reviews, the Commission finds that the QPAP must provide the Commission with discretion to broaden the review to respond to circumstances that may arise as experience is gained with the operation of the QPAP. Regarding Qwest's argument that the FCC has approved several Texas-based plans that included this existing review provision, the Commission responds again that the FCC has recognized that individual state plans may vary and that states have a role in creating, administering and enforcing PAPs. Regarding MTA's suggestion that parties other than the Commission be able to add topics to the review agenda, the Commission responds that the Commission will set the agenda for the reviews, but that agenda-setting process is likely to occur in a multistate collaborative process with participation from

representatives of state commissions, Qwest, CLECs and other interested parties. Regarding MTA's suggestion that the Commission sponsor periodic CLEC forums, this issue was resolved in the Commission's recent report on the Montana CLEC forum. The Commission agrees that it should maintain "change control" over the QPAP, as discussed below.

Dispute resolution (Section 16.1): Antonuk recommended turning to the SGAT dispute resolution procedure at SGAT section 5.18.3 when parties participating in the 6-month review cannot agree whether new performance measures should be added to the QPAP. The SGAT dispute resolution procedure focuses on the use of formal arbitration to settle disputes. Antonuk's reasoning for this recommendation centered on the uncertainty of a continued role in performance measure administration by the Regional Oversight Committee acting on behalf of the state commissions. Antonuk preferred, and proposed, that state commissions set up a joint, multistate dispute resolution process. The Commission supports the recommendation that a multistate process be established and funded and will work toward that end. However, underlying this support for a multistate dispute resolution process is the Commission's finding that it is the Commission's responsibility to ensure the effectiveness of the QPAP and to resolve disputes arising out of it. For that reason, the Commission rejects Antonuk's recommendation that disputes resulting from the QPAP review process be handled pursuant to the SGAT dispute resolution procedure. Rather, unless and until a multistate dispute resolution process is established, the Commission finds that the Commission will resolve disputes arising out of the QPAP reviews.

Comments received on Commission's preliminary report Qwest disagrees with the preliminary finding and prefers the current QPAP language that requires the use of AAA arbitration as described in SGAT section 5.18.3 for resolution of disputes concerning the addition of new performance measurements to the plan. (Changes other than addition of new measurements resulting from the 6-month review would require Qwest's agreement. This issue is discussed later in this report.) Qwest argues that AAA arbitration is quick, inexpensive, avoids litigation delays and is suited to resolution of issues that might

involve multiple jurisdictions. AT&T and MTA support the Commission's preliminary finding. AT&T asserts there is significant authority in FCC 271 decisions to support the Commission's tentative decision to handle QPAP-related disputes, including those arising from 6-month reviews. MTA argues that disputes over addition of performance measures, or disputes over any QPAP change at all, should not be subject to the SGAT dispute resolution process, but should be brought to the Commission. MTA asserts the Commission has primary jurisdiction for ensuring Qwest's continued compliance with Section 271. MTA proposes the Commission establish an expedited dispute resolution process along the same lines as the PSC arbitration process already in place, only using expedited time frames. MTA urges the Commission to retain its responsibility for QPAP dispute resolution even if it joins a multistate effort to conduct QPAP oversight activities, and not to cede its authority to a multistate group.

Commission's finding: The Commission affirms its preliminary finding. As it is the Commission's responsibility to administer and oversee the operation of the QPAP, the responsibility to resolve disputes arising out of 6-month reviews resides with the Commission. The Commission continues to support the establishment of a multistate effort to conduct QPAP oversight activities, including dispute resolution arising out of the 6-month reviews, with the understanding that any participating state commission could act independently on issues where it differs from the multistate decision or recommendation. Regarding MTA's suggestion that the Commission develop an expedited dispute resolution procedure, the Commission responds that it supports development of a multistate process to conduct QPAP-related dispute resolution and urges Montana CLICs and other interested parties to participate in that process. As for wholesale service dispute resolution in general, the Commission notes that any party may submit at any time a petition for rulemaking that proposes an expedited dispute resolution procedure.

Biennial review of the QPAP: Antonuk recommended the Commission review the QPAP's continuing effectiveness every two years instead of after three years. MCC recommended an annual review in order to update performance measurements and

penalties, with a thorough review after three years. The Commission adopts Antonuk's recommendation for a thorough review every two years because the 6-month reviews will provide sufficient opportunity to address MCC's concern regarding updates related to performance measurements.

Other issues in Section 16 not addressed by Antonuk:

References to multistate reviews: The language in the 11/6/2001 version of the QPAP (Section 16.1) refers to multistate joint QPAP reviews. Because it is not known at this time whether such a multistate process will be established, the Commission finds the language should be revised to refer only to this Commission. A new provision should be added to state that nothing in the QPAP prohibits the Commission from joining a multistate effort to conduct QPAP reviews and developing a process whereby the multistate group would have the authority to act on the Commission's behalf.

Initial 6-month review: The first sentence of Section 16.1 provides that the first 6-month review will occur six months after Qwest obtains Section 271 approval from the FCC for the one of the nine states that participated in the multistate QPAP workshops. This language appears to contemplate a multistate review process that is not yet in place. The Commission finds this language should be modified to provide for the first 6-month review to occur six months after the date Qwest obtains Section 271 approval from the FCC in Montana, unless the Commission agrees to a different date as a result of establishment of a multistate QPAP review process.

Qwest's agreement to changes: Section 16.1 continues to require that Qwest agree to any QPAP changes, except for the addition of new performance measures where disputes will be resolved elsewhere. Antonuk seemed to reject that position and Qwest indicated in its comments it had incorporated Antonuk's findings. The Commission finds that QPAP changes are subject to Commission approval and do not require Qwest's agreement.

Comments on Commission preliminary report Qwest, AT&T and MTA submitted comments. Qwest argues the Commission has no authority under the Telecommunications Act or under state law to impose changes to the terms of the QPAP without Qwest's consent and that doing so would raise due process concerns. Qwest claims that allowing the Commission to unilaterally amend the QPAP would violate the contract law principle that makes unenforceable a contract which provides one party the right to modify it. Qwest reiterates its position that the QPAP is a voluntary offering, not a required one. AT&T comments that, with all the relevant precedent supporting state commission control of performance assurance plans, it agrees with the Commission's tentative decision to strike the language at Section 16.1 that would require Qwest's agreement to any QPAP changes, except for those related to additions of performance measures. MTA objects to QPAP Section 16.1 if the language in that section precludes the Commission from exercising change control and gives Qwest the exclusive right to determine if and when QPAP changes will be made.

Commission's finding: The Commission continues to find that QPAP change control should rest with the Commission, not with Qwest. Qwest's argument that the QPAP is voluntary and is not required as a condition of 271 approval by the FCC ignores two facts: (1) this Commission will not recommend that the FCC grant Qwest's 271 application unless Qwest has in place a performance assurance plan approved by this Commission; and (2) no 271 application has been submitted to and approved by the FCC without inclusion of a PAP as a safeguard against backsliding after 271 entry. Qwest's insistence on maintaining the QPAP requirement that gives Qwest veto power over any QPAP change, except for additions of performance measurements, would make a mockery of the multistate collaborative approach this Commission envisions for QPAP reviews because Qwest could and would nix any change not to its liking. Similarly, if the QPAP were revised to require mutual agreement by Qwest and CLECs electing the QPAP, there would likely be issues where mutual agreement was not possible, with the result being an unworkable process that failed to resolve issues at all. The Commission finds, as it did in the preliminary report, that it is its responsibility to administer the QPAP and oversee its operation. The Commission, whether acting on its own or as a

member of a multistate QPAP oversight group, will develop a QPAP review process that ensures the due process rights of Qwest and CLECs alike are protected.

B. Monthly payment caps (Section 13.9).

Antonuk agrees with CLECs that Qwest should not be allowed to place Tier I payments, that exceed a monthly cap, into escrow and found there is no basis to relieve Qwest of its obligation to pay amounts up to the annual cap.

C. Sticky duration (permanently freezing base QPAP payments at an escalated level).

Antonuk rejects Z-Tel's proposal for sticky duration as inappropriate, disingenuous, and draconian.

D. Low volume critical values.

Antonuk rejects Z-Tel's and WorldCom's proposal to apply the lower critical value of 1.04 to all low volume measures and not just the subset of them that was agreed to by compromise of most of the parties in the PEPP collaborative. (The PEPP agreement had decreased the default critical value from 1.65 to 1.04 for certain low-volume measures and increased it to varying levels above 1.65 for progressively larger volume measures.)

E. Applying the 1.04 critical value to 4-wire loops.

Antonuk rejects AT&T's inclusion of assertion that 4-wire loops were supposed to be included as part of the 1.04 critical value compromise in the PEPP collaborative. He finds insufficient evidence to support AT&T's argument or to conclude that there is a very high rate of use of 4-wire loops for delivering high-value services; however, he finds that if, during a QPAP review proceeding, there is evidence that more than 75% of 4-wire loops are used for high-value services, the issue should be reconsidered.

F. Measures related to low-volume, developing markets (Section 10).

Antonuk rejects Z-Tel's proposal to replace the \$5,000 per month aggregate payment to all CLECs with a minimum payment of \$1,000 to individual CLECs for individual measures. (The QPAP provides for minimum payments of at least \$5000 per month for noncompliant service in cases where aggregate CLEC volumes range between 11 and 99 orders.) Antonuk also rejects Covad's suggestion that all xDSL products be included in this higher-payment scheme for low-volume, developing markets.

G. Minimum payments.

Antonuk revises the QPAP to require annual payments to CLECs of \$2,000 for each month in the year in which Qwest missed any measure applicable to low-order-volume CLECs (annual order volume of 1200 or less), less what was paid in QPAP payments to such CLEC. (For example, if Qwest paid a qualifying CLEC \$5,000 in QPAP payments, but there were 9 months in the year in which Qwest failed to meet a Tier 1 measure for that CLEC, the added amount that Qwest must pay at the end of the year to that CLEC would be $9 \times \$2,000 - \$5,000 = \$13,000$.) Antonuk concludes that minimum payments should not be applied on a per measure basis. His proposed minimum payment calculation must be performed at the end of each year.

Qwest comments

Although Qwest vigorously disagrees with the need for any additional payment opportunities for small CLECs it agrees to Antonuk's making an annual minimum payment based on the number of months in which Qwest fails to meet performance standards and revises the QPAP (6.4) accordingly.

Commission preliminary finding: The Commission seeks comment on Qwest's revisions to the QPAP.

Comments on Commission preliminary report The MCC comments that whereas minimum payments are not necessary, as Qwest maintains, because the QPAP is changed to make annual minimum payments based on the number of months in which Qwest fails to meet performance standards, the language revisions are acceptable. Qwest adds that in

a Washington PUC case, neither WorldCom, AT&T, nor Covad objects to Qwest's implementation of this recommendation.

Commission's finding: The Commission finds merit in and accepts Qwest's revisions to the QPAP.

H. 100% caps for interval measures.

Antonuk rejects CLEC proposals to eliminate the QPAP provisions that cap payments at 100% on interval measures. (For example, a 3-day actual average interval for 100 events that are subject to a 2-day interval would produce a miss of 150%, but under the QPAP, the miss would be capped at 100%.)

AT&T comments

AT&T claims that Antonuk misunderstood the CLEC position on this issue as being that the per-occurrence scheme when applied to interval measurements should measure the number of individual misses and then assign a severity level to each miss. Based on this misunderstanding, according to AT&T, Antonuk then criticizes the CLECs for their failure to provide evidence about the number and severity of Qwest misses on interval measures. AT&T agrees with Z-Tel's argument that it is inappropriate to try to introduce the number of misses into an interval measure that does not use the number of misses to measure performance, but instead relies on the time interval taken by Qwest to provide service. AT&T comments that CLECs and Qwest all recognize that very poor Qwest performance to CLECs and the use of the per-occurrence QPAP scheme can result in the number of payment occurrences exceeding the number of CLEC orders in a month. AT&T states the issue is whether the payment occurrences should be capped at the number of CLEC orders. Qwest says they should, because it would not make sense to pay CLECs on more orders than they actually submitted in a month. AT&T says no, because the worse Qwest's performance is, the more Qwest should pay. AT&T reiterates its argument that the 100% cap on interval measures protects Qwest against its own poor performance to CLECs.

Commission preliminary finding: The Commission adopts Antonuk's recommendation.

Comments on Commission preliminary report AT&T requests reconsideration of the Commission's preliminary finding that there should be a 100% cap on the number of payment occurrences for interval measures. AT&T adds that since the time of the Commission's preliminary finding on this issue, the FCC has provided some guidance

that supports AT&T's argument that there should be no cap. A per occurrence payment mechanism similar to the one in the QPAP, but without a 100% cap on the number of payment occurrences, is part of the SBC/Ameritech Merger Agreement and SBC sought permission to add the 100% cap. The FCC's response to SBC's request was:

SBC first argues that the performance gap (sic) calculated in the second step should be limited to 100%. To do otherwise, SBC claims, would require the company to pay on more than the actual number of data points, i.e., applying a 200% performance gap to 150 data points would cause the company to pay on 300 data points. Capping the performance gap at 100% would reduce the example payment to \$135,000. I find this argument unpersuasive. Failing the performance standard by a wide margin, which is often within SBC's control, creates a large performance gap. A large performance gap does not mean SBC pays on more than the actual number of data points, as SBC argue. Rather, SBC would simply be paying for a larger disparity on the specified number of occurrences.

AT&T adds that the arguments the FCC finds unpersuasive are the same ones that Qwest makes and while the FCC eventually approved SBC's 100% cap, the approval was granted for reasons of "administrative efficiency" not that there could be more payment occurrences than orders. The FCC granted SBC's request because the Texas PUC approved such a plan with a 100% cap. AT&T argues in "this situation" administrative efficiency has no role and it urges the Commission to follow the FCC's guidance and not cap the number of payment occurrences at the number of orders. AT&T would delete the following from Section 8.2.1.2, Step 2:

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%.

Commission's finding: The Commission finds merit in affirming its preliminary decision, for the time being. However, this decision is a candidate for review no later than in the first two-year review of the sufficiency of the QPAP to induce the right behavior. If in addition to providing lesser quality service to wholesale customers relative to retail customers there is a significant disparity, then the need for appropriate penalties shall be revisited.

I. Assigning severity levels to percent measures.

Antonuk rejects Z-Tel's proposed payment formula that bases QPAP compensation on percent measures more proportional to the relative size of the "miss" involved. He found Qwest's QPAP adequate for now, but notes proposals like this one could be addressed fully in future QPAP review and amendments proceedings.

IV. SELF-EXECUTING MECHANISM

A. Dispute resolution (Section 18).

Antonuk rejects Qwest's proposal to add a dispute resolution provision specifically applicable to the QPAP that applies the general SGAT dispute resolution provisions to disputes arising only under certain QPAP sections. He found that the general SGAT dispute resolution sections apply as well to the QPAP section of the SGAT.

Qwest comments

Qwest states to incorporate Antonuk's recommended dispute resolution language into the QPAP (6.4).

Commission preliminary finding: Antonuk recommends, and Qwest has implemented, language that requires use of the SGAT dispute resolution procedure at section 5.18, which focuses on formal arbitration, to resolve disputes over the meaning of QPAP provisions and how they should be applied. The Commission rejects this recommendation because it is the Commission's responsibility to oversee and administer the operation of the QPAP. Therefore, dispute resolution concerning the meaning and application of QPAP provisions appropriately reside with the Commission.

Comments on Commission preliminary finding Qwest, AT&T, MTA and NCC

commented. Qwest disagrees with the Commission's finding and points out that SGAT Section 5.18 specifically states it is not intended to limit the Commission's or FCC's lawful authority and provides parties with the option of taking disputes to a court, agency or regulatory authority with jurisdiction.

AT&T agrees with the Commission's tentative decision and cites as support the same argument AT&T made regarding resolution of disputes arising out of the 6-month review process, which is the claim there is sufficient authority in FCC 271 decisions and other plans that support the Commission's finding.

In its comments on Section III.A.3 of the preliminary report, MTA agrees with the tentative finding in this report section that the Commission administer the operation of the QPAP and manage dispute resolution over its provisions. MTA recommends establishment of an expedited Commission dispute resolution process.

MCC recommends the Commission adopt a formal dispute resolution procedure using formal arbitration similar to interconnection and UNE arbitrations and require arbitration agreements to be filed with the Commission. MCC notes that parties could not use arbitration to modify the QPAP and asserts only the FCC or Commission has that authority.

Commission's finding: The Commission affirms its preliminary finding. It is the Commission's responsibility to oversee and administer the QPAP, including resolving disputes over the meaning and application of QPAP provisions. Given that finding, it is not appropriate then for these disputes to be handled using the SGAT dispute resolution process, which provide for processes that do not include the Commission. It would be possible for the Commission to develop either a formal arbitration process of its own for this purpose, as MCC recommends, or an expedited dispute resolution process, as MTA recommends. At this time, however, the Commission intends to pursue the same multistate approach for QPAP dispute resolution as it plans for QPAP reviews, audits and administration of performance measurements. (In such a process, each state commission will preserve its right to act independently on issues where it may differ from the multistate group's decisions.) It seems unlikely that disputes over the meaning or application of the QPAP could be Montana-specific, but in that event, it may be necessary to resolve the dispute on a Montana-only basis.

B. Payment of interest.

Antonuk finds that the QPAP should provide for interest on late QPAP payments at the prime rate published daily.

Qwest comments

Qwest includes in the QPAP (11.1) the use of the "prime rate" to reflect the time value of money.

AT&T comments

AT&T recommends that the interest rate on late payments be whatever was set by the state commission in a Qwest rate case. (In the last Qwest general rate case, Docket 88.12.15, Order 5398a, the Montana PSC set Qwest's rate of return on equity at 12.5%.)

Commission preliminary finding: The Commission finds Antonuk's recommendation to be reasonable and adopts it.

C. Escrowed payments.

Antonuk includes in the QPAP provisions for one party to the QPAP to require the other party to make payments into escrow where the requesting party can show cause, perhaps on grounds similar to those provided by the Uniform Commercial Code for cases of commercial uncertainty.

D. Effective dates.

1. Initial effective date. Antonuk agrees with Qwest that the QPAP effective date should be when Qwest gains 271 entry approval in a state and he revises the QPAP to require Qwest to provide monthly QPAP reports as if the QPAP became effective on October 1, 2001.

Qwest comments

Qwest is unopposed to providing reports for information reasons, but it finds unnecessarily complicated the requirement that it report information as if the QPAP were effective on October 1, 2001. Since no CLIC has opted into the QPAP, Qwest intends to provide Tier 2 reports and aggregate Tier 1 reports to Commissions and parties in this QPAP proceeding beginning with November

271 payment reports and continuing until Qwest gains (271) approval from "the state."

AT&T comments

AT&T changes its position from the workshops, where it argued for implementation of the QPAP upon approval by the state commission, to agreement with the Utah Staff which has recommended QPAP implementation at the time Qwest files its Section 271 application at the FCC.

MCC comments

Just as the Colorado hearing examiner recommends effectiveness after 271 authority but that Qwest be required to generate "mock reports" in the interim for PUC staff review, the MCC holds that while the Report fails to mention when to implement the plan it should be immediate.

Commission preliminary finding: The Commission agrees with Antonuk's recommendation that the QPAP become effective on the date Qwest's application for 271 approval in Montana is approved by the FCC, but that Qwest immediately begin filing with the Commission and CLECs monthly "mock reports," with no monetary penalties attached, as if the QPAP (reflecting this Commission's findings) was in operation now. In this way, the Commission and CLECs will gain useful information about the operation of the QPAP prior to its actual implementation.

2. "Memory" at effective date. Antonuk rejects AT&T's proposal that when the QPAP becomes effective, Qwest should begin payments as if it had been in effect since the PSC action to approve it. As for his reasoning, Antonuk adds that the very reason cited by the FCC in support of the adoption of a PAP is the need for assurance that local exchange markets will remain open after Qwest receives the power to provide in-region InterLATA service.

AT&T comments

AT&T disagrees with Antonuk's finding on this issue and calls it "illogical, implausible and ILEC-biased."² AT&T points out that, under Antonuk's proposal, if Qwest is providing substandard service in the months prior to QPAP implementation, it will be wiped off the books once the QPAP becomes effective.

MCC comments

The mock reports should not serve as memory once Qwest receives 271 entry authority.

² AT&T's Response to the Liberty Consulting Group's QPAP Report (November 7, 2001), p. 41.

Commission preliminary finding: The Commission agrees with Antonuk, Qwest and MCC that Qwest will have a clean slate as of the date of QPAP effectiveness.

Commission's finding: The Commission affirms the preliminary finding because no participant commented on it.

3. QPAP effectiveness if Qwest exits interLATA market. Antonuk rejects the proposal made by AT&T and ELI/Time Warner/XO Unid that the QPAP would continue to operate even if Qwest exited the in-region interLATA market.

Commission preliminary finding: To restate the effect of Qwest's intent as reflected in Antonuk's resolution: if interLATA entry is profitable, Qwest will make Tier 1 payments to CLECs and Tier 2 payments to a state, but if Qwest finds interLATA entry unprofitable, it will exit the interLATA market and cease making Tier 1 and 2 payments for any discriminatory service it provides to CLECs. The Commission seeks comment on why Qwest's right to cease making Tier 1 and, or, Tier 2 payments is consistent with congressional intent in the Telecommunications Act of 1996. The Commission seeks comment on whether any state recommendations to the FCC and any recent FCC approved 271 filings prohibit a RBOC from terminating its performance assurance plan concurrent with the RBOC's independent decision, or FCC requirement, to exit the interLATA market.

Comments on Commission preliminary report MCC and Qwest filed comments. MCC comments that competition can only be preserved by continuing the QPAP and that competition cannot exist without competitors. In this regard The 1996 Act could not be clearer:

*To promote competition and reduce regulation in order to secure
Lower prices and higher quality services for American telecommunications
Consumers and encourage the rapid deployment of new
Telecommunications technologies.*

MCC comments that once the QPAP is established and approved by this Commission, it only has the right to alter or terminate the plan. Any party should be "permitted to petition" the Commission for a change in the plan if it files a complaint. Qwest could petition to terminate the plan if it exits the interLATA market. However, it should make no difference that Qwest later exits the market: Qwest's participation in the interLATA market could be profitable and it could sell its interLATA carrier to another.

Qwest comments: that Section 271 of The 1996 Act is the quid pro quo for the right to provide in-region interLATA service. Qwest adds there is no justification to require QPAP's extraordinary self-executing payments to CLECs if Qwest is not providing in-region interLATA service. Further, in the absence of the QPAP, CLECs have recourse to other legal remedies for actual violations of state or federal law. Qwest is not aware of any state recommendation or FCC-approved 271 filing that prohibits a BOC from withdrawing its PAP if it exits the interLATA market.

Commission's finding: The Commission finds merit in MCC's comments: the intent of Congress is clear. Allowing Qwest to withdraw its QPAP upon exit, for whatever reason, from the interLATA market appears inconsistent with Congressional intent. If and when Qwest decides to exit the interLATA market, it will be appropriate to allow Qwest to petition the Commission, if it so chooses, to withdraw the QPAP. Qwest's QPAP obligations will continue until Commission action on a petition favors Qwest's request to discontinue the PAP.

E. QPAP inclusion in SGAT and interconnection agreements.

Amend agrees with WorldCom that Qwest must address the question of how the QPAP should be made a part of the SGAT. He also asserts that there Qwest should clarify the scope of what a CLEC with an interconnection agreement would be required to elect. He directs Qwest to address these issues in its comments on his Report.

Qwest comments:

Qwest asserts the QPAP will be included as Attachment K to the SGAT. Qwest adds that if a CLEC wishes to opt into the QPAP, it must do so through an amendment to its interconnection agreement which must include at a minimum, both Attachment K and Attachment B in lieu of other contractual standards and remedies. Additional elections depend on the specifics of the interconnection agreement.

Commission preliminary finding: The Commission requests participants to comment on Qwest's proposal for the method by which CLECs will opt into the QPAP. In addition, the Commission finds that a second sentence should be added to this provision (13.2) as follows:

CLECs may seek amendments to their interconnection agreements to include the QPAP as soon as the Commission approves the QPAP, with the understanding that monetary penalties will not apply until the date Qwest receives Section 271 approval from the FCC.

Comments on Commission preliminary finding Qwest suggests amending the recommended language to clarify that no provision of the QPAP, including monetary penalties, will apply until Qwest receives Section 271 approval. AT&T proposes additional language to be inserted after the Commission's language:

CLECs may seek amendments to their interconnection agreements to include the QPAP and the related Performance Indicator Definitions (PIDs) as soon as the Commission approves the QPAP, with the understanding that monetary penalties will not apply until the date Qwest receives Section 271 approval from the FCC. CLECs will not be required to accept any other terms from the Qwest SGAT in order to incorporate the QPAP into their interconnection agreements. If at any time during the term of such interconnection agreements, the remedies under the QPAP are not available to CLECs (e.g., if Qwest has not obtained 271 approval from the FCC yet), then all terms and conditions in their interconnection agreements that may provide remedies to CLEC shall be available. At all times, remedies under interconnection agreements shall remain available for matters not addressed by the QPAP.

Commission's finding: The Commission agrees with Qwest's suggestion that language be added to clarify that no QPAP provision, not just those requiring monetary penalties, will apply until the date Qwest wins 271 approval from the FCC. The Commission also finds merit in the language proposed by AT&T that would not require CLECs to adopt SGAT terms into their interconnection agreements in order to elect the QPAP and would require that remedies available to CLECs under their interconnection agreements will continue to be available until Qwest obtains 271 approval and the QPAP remedies take effect. It may not be necessary to include the final sentence of AT&T's proposed language because it may be stated elsewhere, either in the QPAP or in the SGAT. The Commission directs Qwest to submit language for this provision in its QPAP compliance filing that incorporates the Commission's findings here.

F. Form of payment to CLECs.

Antonuk rejects WorldCom's suggestion that Qwest make QPAP payments by cash or check; he accepts Qwest's provision that makes payments bill credits. A cash-equivalent transfer is required by Antonuk when there is insufficient amount due CLEC to offset the credit. Antonuk declined to address Covad's request for no offset if payments are due for unrelated debts of CLECs. He also asserts that the QPAP require Qwest to provide credit information in substantially the same format Qwest provides (Exh S-9-QWE-CTI-4).

Qwest comments

Qwest asserts to include a provision committing Qwest to provide payment information substantially similar to that which parties were apprised of (see QPAP 11.2).

Commission preliminary finding: The Commission invites participants' comments on the language submitted by Qwest at Section 11.2.

Comments on Commission's preliminary report AT&T and Qwest comment on the form of payments issue. AT&T notes that the Colorado Commission requires payment by cash or check, which Qwest did not subsequently dispute.⁹ AT&T does not take issue with the new Colorado language found in CPAP §12.2 which reads: "All payments (under the PAP) shall be in cash. Qwest shall be able to offset cash payments to CLEC with a bill credit applied against any non-disputed charges that are more than 90 days past due."

Qwest asserts that before the Washington State UTC neither AT&T, WorldCom nor Covad objected to Qwest's "format" and the issued should remain settled.

Commission's finding: The Commission finds merit in Antonuk's resolution which appears to differ from the approach used in Colorado to the extent "cash" and "cash equivalent" payments differ, that bills are 90 past due versus 30 days due and that the amount that would otherwise be credited is in dispute.

⁹ See *Findings on Motion for Modification and Clarification of the Colorado Performance Assurance Plan, In the Matter of the Incorporation into Alternative Approaches for a Qwest Corporation Performance Assurance Plan in Colorado*, Division No. 001-1142-1, Docket No. 011-0417 (rel. November 5, 2001) at p. 20.

V. ASSURANCES OF REPORTED DATA'S ACCURACY

Qwest cites the following as assurances that the performance data underlying the QPAP will be reliable: (1) measures will be audited twice by the time the QPAP is effective; (2) the QPAP includes a root-cause analysis provision; (3) the QPAP includes a risk-based audit program; (4) CLECs may request raw data from Qwest in order to verify data and may request audits of individual performance measures; and, (5) the QPAP provides for audits of Qwest's financial system used to calculate CLEC payments.

A. Audit program.

Antonuk expects that states will jointly oversee the QPAP auditing function, with each state retaining the ability to make sure its particular needs and circumstances are addressed. His recommendations regarding the adoption of an integrated audit program includes the following QPAP amendments:

- Providing for a transparent Qwest process for changing the systems, processes, methods and activities of Qwest's measurement regimen and allowing an opportunity for others to challenge such changes.
 - The independent auditor should meet quarterly with Qwest to learn of changes made in Qwest's measurement regimen. The auditor would then assess the materiality and propriety of any changes and reports to commissions. Other parties would make the auditor aware of their concerns about changes.
- The QPAP should adopt a programmatic approach that allows both pre-planned and a needed testing of Qwest's measurement regimen.
- Approval of Qwest's acceptance of a two-year planning cycle to be conducted under the auspices of the participating commissions with detailed planning recommendations to be made by an outside auditor selected by the commissions and retained for two-year periods.

- A recommendation that the auditor also determine the need for individual audits proposed by CLECs that are not otherwise addressed in the current cycle plan.
- Allowing states to perform additional auditing if the joint approach is not sufficient.
- Using Tier 2 payments to states to pay audit program costs. Qwest should fund the costs of the first 2-year cycle in advance, with the amount to be refunded once Tier 2 payments accumulate. If Tier 2 payments aren't enough to pay for program, then half of the cost will come from Tier 1 escalated payments and half from Qwest.

Qwest comments

Qwest submits the following comments and QPAP revisions on the "Audit Program." (1) While Qwest asserts to include Antonuk's required audit provisions in the QPAP, Qwest includes other "key concepts" that Antonuk excludes. (2) Qwest adds to the QPAP a section (15.1.3) requiring that the independent auditor coordinate audits to avoid duplication and to not impede Qwest's ability to meet other requirements in the QPAP. (3) Qwest is hopeful that states participate in a common audit, and prefers requiring common audits. (4) Qwest adds it is imperative that audit plans and operations not impede Qwest's day-to-day performance under the QPAP regime. (5) Qwest expresses concern with how disputes arising from audits will be processed. As regards CLEC proposed audits, Qwest asserts that Antonuk did not propose a "materiality decision criteria" and notes to add such criteria as the basis for an audit: small discrepancies alone would not warrant and emphasis added on a reasonable basis for an audit. (6) Qwest asserts to add a provision disallowing audits during the pendency of dispute resolutions. (7) Last, and arguably consistent with QPAP 14.4, Qwest adds a provision that a CLEC may not propose auditing data older than three years (see QPAP 15.3).

Commission preliminary finding: For resource and efficiency reasons, the Commission agrees with Antonuk's recommendation that state commissions should jointly oversee the QPAP auditing function in a manner that allows each participating state to act independently on issues where it might differ from the other states. If such a joint regulatory oversight group is formed by some or all of the Qwest states in order to conduct their QPAP review and auditing responsibilities, the Montana Commission likely will participate. However, QPAP Section 15 (concerning the audit program) is currently written as if there is a multistate oversight regime already in place and, therefore, does not take into account the possibility that states will not form a joint oversight body and the Commission will conduct its QPAP audit responsibilities on its own. Other provisions of Section 15 inappropriately dictate the method by which the multistate commission oversight group will resolve audit-related disputes and appeals of disputes. Additionally, the current Section 15 contains provisions that limit the Commission's

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Commission preliminary finding: For resource and efficiency reasons, the Commission agrees with Antonuk's recommendation that state commissions should jointly oversee the QPAP auditing function in a manner that allows each participating state to act independently on issues where it might differ from the other states. If such a joint regulatory oversight group is formed by some or all of the Qwest states in order to conduct their QPAP review and auditing responsibilities, the Montana Commission likely will participate. However, QPAP Section 15 (concerning the audit program) is currently written as if there is a multistate oversight regime already in place and, therefore, does not take into account the possibility that states will not form a joint oversight body and the Commission will conduct its QPAP audit responsibilities on its own. Other provisions of Section 15 inappropriately dictate the method by which the multistate commission oversight group will resolve audit-related disputes and appeals of disputes. Additionally, the current Section 15 contains provisions that limit the Commission's

discretion to determine the procedure, scope, timing and conduct of audits. The Commission revises Section 15.1 through 15.4 below to address these concerns.

15.1 Audits of the PAP shall be conducted in a two-year cycle under the auspices of the participating ~~Commissions~~ Commission in accordance with a detailed audit plan developed by an independent auditor and approved by the Commission retained for a two-year period. The participating ~~Commissions~~ Commission shall select the independent auditor with input from Qwest and the 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 pursuant to Section 15.1.4.~~

15.1.2 The initial audit plan shall be conducted over two years, with audit periods subsequent to the initial audit to be determined by the Commission. The Commission will determine the scope of and procedure for the audit plan, which, at a minimum, will identify the specific performance measurements to be audited, the specific tests to be conducted, and the entity to conduct them. The initial audit plan will give priority to auditing the higher risk areas identified in the QSS report. The two-year cycle will examine risks likely to exist across that period, and the past history of testing, in order to determine which combinations 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 more likely to require follow-up in the second year.

15.1.3 ~~The Commission will attempt to coordinate its audit plan shall be~~ coordinated with other audit plans that may be conducted by other state commissions so as to avoid duplication. The audit shall be conducted so as to ~~shall not~~ shall 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 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 Commission ~~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 not make CLEC-affecting changes in the performance measurement and reporting system without Commission approval. Qwest may make non-CLEC-affecting changes to its management processes to enhance their accuracy and efficiency more accurate or more efficient in performance 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 system.

management processes. 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 deems it appropriate, to other participants. The Commission may review in the QPAP review process the substance of any discretionary changes made by Qwest pursuant to this section.

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 PAF, 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 Commission will resolve any dispute by. 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. Audit findings will include: (a) general applicability of findings and conclusions (i.e., relevance to CLECs or jurisdictions other than the ones causing the 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 per-discretionary 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 audit of the QPAP 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. If Tier 2 funds are not sufficient to cover audit costs, the Commission will develop an additional funding method to include contributions from CLECs' Tier 1 payments and from Qwest.

Comments on Commission preliminary findings Qwest, AT&T, TA and MTA commented. Qwest comments it has agreed to a multistate audit process, not separate state audits, and therefore generally objects to Commission-modified language that would implement a Missouri-specific audit. Qwest objects to Commission-modified language at

15.1 and 15.1.2 (that deletes the requirements for a two-year audit cycle), to the deletion of 15.1.1 (establishing the multistate auditor selection process), to the modifications to 15.1.3 (requiring the Commission to coordinate its audit plan with those of other states), and to the deletion of 15.1.4 (delegating audit dispute resolution to a multistate committee of commissioner representatives). Qwest objects to Commission-amended language at 15.2 that requires Qwest to obtain Commission approval before making "CLEC-affecting changes" to the performance measurement and reporting system because it does not define the term "CLEC-affecting" and could prohibit Qwest from making necessary changes to report data. Qwest objects to the Commission's amendments of 15.3 that provide for Commission resolution of audit-related disputes rather than turning to the provisions of QPAP Section 18. Qwest recommends the Commission revisit its tentative decision to delete the provision in Section 15.4 that would provide for the use by the Commission of a portion of Tier 1 escalated payments to help fund the Commission's QPAP oversight activities.

AT&T seeks reconsideration of the tentative finding to add language to Section 15.4 that allows the Commission to fund some audit costs with CLECs' Tier 1 payments if Tier 2 funds are not sufficient to pay audit costs. AT&T proposes instead this language:

If Tier 2 funds are not sufficient to cover audit costs, the Commission will develop an additional funding method to include contributions from CLECs' Tier 1 payments and from Qwest. The Commission reserves the right to use Tier 1 escalation payments due to CLECs to fund audit cost shortfalls. Should Tier 1 escalation payments be used to fund audits, after the completion of the audit, future Tier 2 payments will be used to reimburse CLECs that had their Tier 1 escalation payments directed to audit funding.

TA argues the QPAP audit section is flawed because there is no provision that requires Qwest to cooperate with audits by supplying requested information to the auditor. TA claims its concern arises from its firsthand experience with Qwest, which TA says occurred when Qwest denied TA's billing consultant access to pertinent information. TA recommends adding language to prohibit Qwest from obstructing the auditor, to prohibit Qwest from managing the audit process, to give the auditor the right to determine information needs, and to require Qwest to have billing and operational records

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for two years. TA comments that, in order to ensure the independence of the auditor, the Commission must select and guide the auditor.

Citing CLEC comments at the Montana CLEC forum that audits are fine, but that the performance measurements themselves may not be capturing the correct performance, NTA recommends the Commission retain authority to review what is being measured, as well as how it is measured and audited.

Commission's findings: The Commission revises its preliminary findings regarding the QPAP audit section somewhat in an effort to clarify its intentions. First, the responsibility to determine the scope and procedure of the audit program, and for resolving disputes over audit decisions, rests with the Commission. The Commission will not approve QPAP provisions that limit or eliminate the Commission's ability and discretion to carry out its auditing responsibilities. It would not be prudent at this time to establish the exact parameters of the audit program in a way that would hamstring the Commission's ability to fashion a program that meets its needs in the future. Second, the Commission fully supports the establishment by state commissions of a multistate QPAP oversight program, which this Commission envisions as including: ongoing administration of performance measures; joint 6-month and 2-year QPAP reviews, as well as resolving disputes arising out of those reviews; and the audit program; and any QPAP-related dispute resolution. However, the QPAP needs to include a "fallback" provision that will allow the Commission to act on its own in the event efforts to establish a multistate oversight group are not successful, or that the Commission declines to participate in it for some reason. The Commission will not approve provisions in this section that dictate the manner in which the multistate group of commissions, if established, will resolve audit disputes because that is a matter for the participating state commissions to decide. Third, the Commission revises a preliminary finding and approves the provision in the current version of the QPAP that allows Qwest to make discretionary changes to its performance measuring and reporting system, but continues to affirm for the Commission the right to review as part of the 6-month review process –

and possibly to disapprove -- changes to the performance measuring and reporting systems that Qwest has made.

Regarding Qwest's and AT&T's comments related to Section 15.4 (paying for audit expenses), the Commission affirms its preliminary finding, which provides that Tier 2 funds will be used to pay audit costs, but if they are insufficient to cover the costs, the Commission will develop a method to supplement Tier 2 funds with contributions from CLECs' Tier 1 payments and from Qwest. The Commission prefers not to specify at this time in what manner it will obtain contributions from Tier 1 payments and from Qwest so that, in the event it becomes necessary to do so, the Commission's options will not be limited.

In response to TA's concern that the QPAP does not contain a provision that requires Qwest to cooperate with the auditor, the Commission notes that there are QPAP provisions that require Qwest to provide raw performance data to CLECs and to the Commission, as well as record retention requirements. The Commission has no reason to believe Qwest will not cooperate with the auditor and expects Qwest will provide the records necessary for the audit to the auditor.

MTA's suggestion that the Commission should retain the right to review what is being measured by the performance measurements included in the QPAP is addressed in Section III.A of this report regarding the scope of the 6-month reviews.

Rather than rewriting this section to accomplish these objectives, the Commission directs Qwest to submit revisions to the current version of the QPAP to incorporate the Commission's findings.

B. PSC access to CLEC raw data (Section 14.2).

Antonuk rejects AT&T's suggestion that this provision, that allows a PSC to request CLEC specific raw data from Qwest, be eliminated. Antonuk recommends adding QPAP language related to confidentiality concerns.

C. Providing CLECs their raw data.

Antonuk finds that upon request Qwest should provide raw data to CLECs as soon as possible. He declines to set a deadline. He finds that the QPAP should require Qwest to allow payments to be recalculated retroactively for 3 years and it should require Qwest to retain sufficient records to demonstrate fully the basis for its calculations for long enough to meet this potential recalculation obligation. Thus, Antonuk finds it sufficient that Qwest maintain records in a readily usable form for one year while remaining records are retained in an archived format. He finds that the QPAP should require Qwest to ~~submit~~ CLEC-specific data in a form that will allow CLECs to understand and verify them.

Qwest comments

Qwest states to include in the QPAP (14.2) a provision that modifies slightly that recommended by Antonuk. As for the provision of raw data to CLECs, Qwest incorporates into the QPAP (14.4) a requirement that documents be retained.

Commission preliminary finding: The Commission agrees with Antonuk's recommendations, but asks participants to comment on the relevant QPAP language submitted by Qwest.

Comments on Commission preliminary report In response to the Commission's request for comments on the QPAP language, Qwest asserts that AT&T, WorldCom and Covad did not object to this language when they had the opportunity to do so in the Washington QPAP proceeding.

Commission's finding: The Commission accepts Qwest's proposed language.

D. Penalties for late and/or inaccurate QPAP reports.

Antonuk recommends revising the QPAP to impose a penalty if Qwest neglects to file QPAP information on a measure of $1/5^{\text{th}}$ the amount for failure to file a QPAP report at all (subject to a cap equal to the daily amount for failure to file any report). He finds that the best way to deal with report accuracy is to include the issue when formulating audit plans. For late QPAP reports, he finds that Qwest should pay \$500/day for a report filed in the second week after it's due, \$1000/day in the third week and \$2000/day for anything later than that. (The QPAP allows Qwest to request a waiver of late report payments.)

Qwest comments

Qwest includes in the QPAP (14.3) payment obligations consistent with Antonuk's Report.

VI. OTHER ISSUES

A. Prohibiting QPAP payment recovery in rates.

Antonuk rejects AT&T's proposal adding that the FCC and state commissions can decide the issue.

AT&T comments

AT&T continues to argue that the Commission should mandate that Qwest may not recover QPAP costs from ratepayers. In addition, AT&T proposes language for a new provision to be added to the QPAP that explicitly prohibits Qwest from including QPAP payments as expenses in any Qwest revenue requirement or reflecting them in increased rates to CLECs.

Commission preliminary finding: As for the recovery of QPAP payments in rates, the Commission agrees with Antonuk as to jurisdiction and finds that no such recovery is allowed in rates this Commission regulates.

Comments on Commission's preliminary report Since the Commission asserts jurisdiction on this matter AT&T asks that the following language, which is found in other FCC plans and that Qwest agrees is appropriate, be included in the QPAP:

§ 13.10 Any payments made by Qwest as a result of the PAP should not: 1) be included as expenses in any Qwest revenue requirement, or 2) be reflected in increased rates to CLECs for services and facilities provided pursuant to Section 251(c) of the Telecommunications Act of 1996 and priced pursuant to Section 252(d) of the Telecommunications Act of 1996.

In its comments, Qwest asserts that because the Commission states to agree with Antonuk Qwest's recovery of QPAP costs from ratepayers should not be addressed in the QPAP.

Commission's finding: The Commission finds merit in and accepts AT&T's recommendation to insert the above 13.10 language into the QPAP. While the reference to Qwest's agreement is not apparent, the intent is consistent with the Commission's policy on cost recovery.

B. No-admissions clause (Section 13.4.1).

Antonuk finds that the QPAP restriction in this section does not constrain the use of the information contained within QPAP reports so there is no need to delete the clause.

C. Qwest's responses to FCC-initiated changes.

Qwest proposed 3 QPAP changes that were prompted by informal suggestions from the FCC: (1) eliminating 2 families of OP-3 sub-measurements so that no missed order would go uncompensated; (2) removing the adjustment for two commission's rate orders (not Montana); (3) making two changes in the statistical values used to test Tier 2 parity. No one objected to these proposals so Antonuk adopted them.

Qwest comments:

Qwest asserts to make appropriate deletions to the QPAP (7.2, but also see Attachment, footnote 4 and Attachment 3).

D. Specification of state commission powers (Section 12.3).

This section allows a state commission to recommend to the FCC that Qwest's 271 authority be revoked in the event Qwest reaches the annual cap. As it does not add to any power Commission do not already have, Antonuk eliminates this provision as it might be construed to limit a commission's authority to respond to circumstances that may arise other than in the QPAP.

Qwest comments

Qwest strikes from the QPAP Section 12.3 cited here.

Commission preliminary finding: The Commission agrees with Antena's resolution.

Commission's finding: The Commission affirms its preliminary finding.

E. Issue deferred to QPAP from Final Report on Checklist Item # 4 – Unbundled Loops

Qwest's delays in making these loops available and the impact on competition led to the following conclusion in the Commission's preliminary report:

Issue 4 – Commission Preliminary Finding

The Commission agrees with the facilitator's findings regarding the need for expeditious provision of infrequently ordered unbundled services. The Commission considers the fact that comparatively few of these loops were ordered does not necessarily indicate the losses to competition that may have occurred. The Commission will consider whether this issue should be added to the post-entry performance plan considerations. (p. 43).

In its comments, Qwest argues that it is unnecessary to consider infrequently ordered services in QPAP because of the special request process (SRP) already approved by the facilitator. The Commission's final report finds:

[i]t is clear from many sources that Qwest has made substantial improvements in the provisioning of wholesale service and technical support for CLEC wholesale ordering activities including for the specific UNEs at issue here. The Commission's concern was over the time it appears to have taken for new or infrequent services to be provisioned and provisioned correctly by Qwest and the possible impact this may have on competition, especially the competition represented by smaller companies which may be more likely to be active over a sustained period in Montana. Once a product or service is well-developed and part of the performance measures there are means in the QPAP for monitoring performance and parity. The Commission agrees with Qwest that the procedures detailed in Exhibit F (of the SCAT) concerning the special request process go far to alleviating the Commission's concern over the impact of provisioning in the case of infrequently ordered UNEs. In addition, as a consequence of the CLEC Forum held January 9, 2002, parties have agreed to discuss and make proposals concerning processes on how Qwest and small CLECs can improve interaction. The Commission defers final closure of this issue pending the outcome of those discussions.

The Commission invites comments on what it might do to facilitate better interaction between companies and therefore competition over the long-term in Montana. If the Commission should develop an expedited complaint procedure to resolve wholesale service disputes, what might it look like? If the Commission sponsors meetings, perhaps modeled on the CLEC Forum where parties can discuss issues and possibly resolve them prior to going to a complaint or dispute process, should they be, for example, annual or quarterly? How long would this need to go on e.g., one year after Qwest receives 271 approval, or two years?

Comments received on wholesale service dispute issue Qwest, AT&T and MTA commented. Qwest claims the issue of developing an expedited complaint procedure for wholesale service disputes is irrelevant to the QPAP discussion and, at any rate, would require a rulemaking to implement. Regarding the idea of Commission-sponsored forums for CLECs and Qwest to discuss wholesale service issues, Qwest notes this is an issue in the Montana CLEC forum proceeding upon which Qwest will provide comments.

AT&T states it does not support a Montana-specific CLEC forum because it believes Qwest's change management process will provide a region-wide process for all CLECs to raise and resolve wholesale issues. According to AT&T, that process as currently designed allows parties to pursue dispute resolution at a state commission. AT&T supports development by the Commission of an expedited complaint procedure for wholesale disputes and attached to its comments a proposed procedure that AT&T says is modeled after the Colorado Rules on Accelerated Complaints. AT&T also comments on long-term PID administration and attaches as an exhibit its comments on this subject that were submitted to the RDC-OSS technical advisory group.

MTA refers to the recommendation it made in the Montana CLEC forum proceeding that the Commission hold regularly scheduled forums like the CLEC forum to bring Qwest and Montana CLECs together to address issues. MTA also reiterates its call for an expedited dispute resolution process at the Commission, and supports the idea of an

expedited complaint process at the Commission for QPAP issues that would result in a Commission decision in 30 to 60 days.

Commission finding: This issue was resolved in the Commission's April 3, 2002 CLEF Forum Report.

F. QPAP language issues not addressed in Antonuk's Report

The Commission has reviewed the QPAP language in the current 11/6/2001 version and makes the following preliminary findings.

Section 2.1.1: This provision should be modified to reflect the finding that Tier 2 payments will be paid by Qwest into an interest-bearing escrow account set up by Qwest to hold the Montana Special Fund monies, and will not be paid to the state general fund. Every year, the Commission will determine whether the money in the Special Fund exceeds the amount of money the Commission expects to spend to perform its QPAP-related activities. If there is an amount in excess of what the Commission determines is necessary, the Commission will direct Qwest as to its disposition. (The Commission's direction will be to deposit the excess in the state general fund.)

Comments received on Commission preliminary report Qwest declines to support a Tier 2 special fund that holds Tier 2 payments for unspecified purposes.

Commission's finding: The Commission reverses its finding and directs no change to this provision at Section 2.1.1.

Section 7.5: Everything after the first sentence should be deleted. The text to be deleted refers to the circumstance that would occur if the Commission was statutorily unable to direct the use of Tier 2 payments.

Comments received on Commission preliminary report Qwest objects to the Commission's deletion of text subsequent to the first sentence because the deleted text contains a fallback provision that Tier 2 funds would be paid into the state general fund if the Commission lacked the statutory authority to receive or administer these payments.

Commission's finding: The Commission reverses its finding and directs no change to Section 7.5.

Section 10.3: Delete this provision entirely. The scope of the 6-month reviews is addressed in Section 16.

Section 11.3: Revise as follows:

A Special Fund shall be created for the purpose of funding the Commission's auditing, administration and oversight of the QPAP (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 QPAP. Nothing in this section prohibits the Commission from joining with other state commissions in a multistate effort to conduct and develop a method for joint funding for some or all of these activities.

Comments received on Commission preliminary report Qwest prefers retaining the language in this section that says the Commission will try to join a multistate effort for QPAP oversight.

Commission's finding: The Qwest-established "special fund" for the Commission's QPAP oversight activities contemplated in this provision and in 11.3.1, 11.3.2 and 11.3.3 appears to run afoul of Montana law because the Commission must obtain legislative authority to use these funds. The Commission will seek the necessary legislative authority. In light of this statutory requirement, however, these provisions with references to a special fund are inappropriate and must be removed from this section. The Commission continues to find that, consistent with the 11.3 language it suggested in the preliminary report, this provision must be revised to provide that the Commission will create a special fund for the general purpose of conducting its QPAP oversight activities, and that nothing in the QPAP prevents the Commission from joining with other state commissions to fund on a multistate basis their QPAP oversight activities that are conducted jointly. The Commission reiterates that it supports the current effort to establish a multistate approach to QPAP oversight activities. Qwest is directed to submit revisions to this section in accordance with the Commission's findings.

Sections 11.3.1 and 11.3.2: These provisions should be revised to reflect the current circumstances where this Commission will be acting on its own in its QPAP oversight activities, rather than participating in a multistate effort.

Commission's finding: See the Commission's finding regarding Section 11.3. Both of these provisions should be deleted.

Section 13.1: This provision should state that the QPAP will be effective on the date Qwest receives section 271 approval from the FCC for Montana.

Commission's finding: No participant commented on this finding. The direction to Qwest is unchanged.

CONCLUSION

The Commission directs Qwest to submit for Commission review a revised version of the 11/6/2001 QPAP that incorporates the findings in this report. Any preliminary findings that are not further addressed in this report are affirmed. All revisions made to the 11/6/2001 version must be interlined and/or underlined as appropriate so that changes are readily identifiable. The QPAP compliance filing must be submitted to the Commission no later than April 30, 2002.

BY THE MONTANA PUBLIC SERVICE COMMISSION

GARY FELAND, Chairman

JAY STOVALL, Vice Chairman

BOB ANDERSON, Commissioner

MATT BRAINARD, Commissioner

BOB ROWE, Commissioner

ATTEND:

Ronald J. Simmons
Commission Secretary

SEAL:

Decision No. C02-399

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 011-041T

IN THE MATTER OF THE INVESTIGATION INTO ALTERNATIVE APPROACHES
FOR A QWEST CORPORATION PERFORMANCE ASSURANCE PLAN IN COLORADO.

**DECISION ON REMAND
AND OTHER ISSUES PERTAINING TO
THE COLORADO PERFORMANCE ASSURANCE PLAN**

Mailed Date: April 10, 2002

Adopted Date: March 27, 2002

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I. BACKGROUND

A. Decision No. R02-41-1 granted Qwest's Motion for Remand of Specified Colorado Performance Assurance Plan (CPAP or Plan) issued to the Special Master, Professor Phil Weiser. The Remand included the following four issues:

- 1) the Commission's reservation of the right unilaterally to change the CPAP (CPAP §§ 18.1 et seq., 19.1);
- 2) the escalation clause for Tier 1 payments [CPAP § 4.1];
- 3) the inclusion of a monitoring measure for special access services; and
- 4) the definition of CLEC-affecting change [CPAP § 14.1].

The special access issue was remanded for the limited purpose of deriving solutions for monitoring Qwest's special access services performance. The remand of the definition of CLEC-affecting change was for the limited purposes of making the CPAP language more practicable and for refining the definition of CLEC-affecting change.

B. On February 19, 2002 the Special Master submitted a Supplemental Report and Recommendation (Supplemental Report) on the remand issues and various CPAP implementation issues. The six parts of the Supplemental Report address: 1) requirements for data management processes; 2) change management requirements; 3) the escalation function; 4) the special access issue; 5) the changeability of the CPAP; and 6) assorted implementation issues.

C. Decision No. R02-173-I allowed participants to file comments on the Supplemental Report. Qwest; Joint CLECs comprised of AT&T Communications of the Mountain States, Inc. (AT&T), TCG Colorado, WorldCom, Inc. on behalf of its regulated subsidiaries (WorldCom), and Covad Communications Company (collectively, Joint CLECs); Time Warner Telecom of Colorado LLC (Time Warner); and the Colorado Office of Consumer Counsel (OCC) filed comments.

D. On March 27, 2002 the Commission held a decision meeting. This Decision addresses the remanded issues and the implementation issues. The Decision follows a similar format as previous CPAP orders: a synopsis of the Special Master's recommendation and a synopsis of the decision are given. Next, there is a recitation of the arguments in support of and against the recommendation, and then the Commission's reasoning for accepting or denying the recommendation.

II. INTRODUCTION

A. In this decision the Commission outlines a CPAP that, in its substance and execution, largely tracks the Final Report and Recommendation and the Supplemental Report and Recommendation of the Special Master. The participants in this docket display general agreement on the structure and principles of the CPAP.

B. This Order modifies and clarifies the CPAP where warranted. Fundamentally, however, this Order reaffirms the integrity of the CPAP initially recommended by the Special Master and modified by the hearing commissioner in Decision Nos. R01-997-1 and R01-1142-1. This final recommended CPAP, embodied in the SGAT language of Attachment A to this Decision, represents this Commission's best effort - with ample input from all parties - to ensure that Qwest performs its interconnection and unbundling obligations under the federal Telecommunications Act of 1996 (the Act) after receiving in-region, interLATA authority under § 271.

C. Based on the Commission's decision with respect to the remand issues, new recommended SGAT language accompanies this Decision as Attachment A. This is the operative SGAT language Qwest must adopt before this Commission will recommend to the Federal Communications Commission (FCC) that it grant Qwest § 271 authority.

III. REMAND ISSUES

A. Requirements For Processes Used To Generate Data Measurement, Collection, And Reporting

1. Supplemental Report and Recommendation (SR&R at 1-3; 10)

a. The Special Master recommends a two-prong approach for requirements for Qwest's processes used to generate data measurement, collection, and reporting. If relevant data can be replicated under the old approach (non-fundamental change), then Qwest must note all changes on a public website, the Auditor shall evaluate all changes Qwest made to decide which, if any, should be scrutinized with reconstruction of data. If relevant data cannot be replicated (fundamental change), then before making any fundamental changes: 1) Qwest shall notify the Auditor and request an evaluation of the change; 2) the Auditor will inform the Commission if the change is permissible; 3) the Commission will have 15 days to take action to prevent the change. If no action is taken by the Commission, Qwest shall be allowed to make the change after the 15 day period. If the Auditor concludes the change would be adverse to the integrity of the data, then Qwest would be prohibited from making the change.

b. The Special Master further recommended the applicable penalty when Qwest fails to comply with this provision. If Qwest makes a fundamental change (i.e., data

CONTINUATION

[5.]

cannot be replicated) without following the process, then a \$100,000 fine would be payable to the Special Fund. If Qwest cannot replicate reliable data, then the Independent Monitor shall use CISC data to determine applicable payments, interest, and any late payments penalties. If Qwest fails to document changes accurately on the website, then a \$2,500 fine for each failure would be payable to the Special Fund.

c. The Special Master suggested that the sound practice for introducing PIDs should be to work through a collaborative forum before bringing a proposed PID addition or change to the Commission. The preferred approach should also be to introduce new PIDs as "diagnostic" measures, allowing for some reporting of actual data before determining the relevant standard and appropriate penalties.

2. Decision

a. We accept the Special Master's recommendation on the two-prong approach for fundamental and non-fundamental changes to Qwest's Performance Measurement and Reporting System.

3. Discussion (Qwest Comments at 2-4. Qwest SGAT §§14.1-14.3 at 13, deleted § 14.3 at 14, and deleted § 18.9 at 24. Joint Comments at 3-6.)

a. Qwest endorses the Special Master's recommendation with four minor proposed modifications: 1) Qwest has made minor changes to Sections 14.1 and 14.2 to conform the

language that refers to Qwest's Performance Measurement and Reporting System more accurately to describe the processes Qwest uses to collect and report data; 2) Qwest asserts that the Commission should establish a 7-day deadline for the Auditor to act on changes that cannot be replicated; 3) Qwest should have the ability to appeal any decision by the Auditor to disallow the change; and 4) the Commission should make it clear that in the event approval for a change is denied, Qwest should not be liable for any inaccuracies in the data that result from an inability to obtain approval for the change.

b. Qwest also contends that the Special Master clarified that he did not intend to have FIDE and CMAP changes included in the Change Management Plan (CMP). Accordingly, Qwest argues that, references to the CMP in Sections 14.3 and 14.3 should be eliminated. Further, Qwest states that § 14.3 presumes that the parties would obtain pre-approval from an outside source, and therefore should be stricken.

c. The Joint CLECs indicate that they were not clear how the Supplemental Report and Recommendation treats CLEC-affecting changes to Qwest's performance measurement system. They assert that the language proposed in their comments concerning changes to Qwest's data measurement, data collection and data reporting processes is consistent with the Special Master's recommendation.

d. Qwest's proposed language more closely reflects the Special Master's recommendation. We address each of Qwest's four proposed "minor" modifications in turn. We accept Qwest's changes to §§ 14.1 and 14.2. The additional description of Qwest's Performance Measurement and Reporting System will be inserted. This description more accurately describes the underlying programs, tables and calculations used by Qwest in the generation of CPAP reports. This should not be an exclusive list. Therefore, the descriptive list should be preceded by the phrase "defined to include" rather than "defined to be". This allows for the addition of other elements in the future if the need should arise.

e. The March 27 decision meeting revealed the need for clarification in § 14.1. The Special Master recommended that Qwest be allowed to post all changes to its reporting system to a change log on a public website. We now clarify that this website should be easily accessible and dedicated to the CPAP so that CLECs, Office of Consumer Counsel, Commission Staff and other interested parties, including members of the public, will not have trouble locating the information. We suggest a site similar to the Change Management website, located at www.qwest.com/wholesale/cap. There should be straightforward links to the CPAP monthly performance reports, monthly payment reports, the change log, the Auditor's reports and other CPAP-

related information. There should also be a confidential or password-protected part of this site that contains the CME individual monthly reports.

f. We do not accept Quest's changes to § 14.3 to impose a seven-day turn around time for the Auditor's report on reporting system proposed changes. Without knowing the amount of work that these analyses might include, we will not impose a seven-day deadline for the Auditor's report to the Commission. The time frames for the Auditor's work can be negotiated in the relevant contract.

g. We partially accept Quest's argument on the right to appeal any Auditor's decision to disallow a change. The Auditor will not be a decision maker under the CPAP. The Auditor will analyze the integrity of the data, and report those findings to the Commission or the Independent Monitor. Therefore, there is no "decision" to appeal. For the purposes of § 14.3, we will allow any interested parties to file comments on the Auditor's report with the Commission no later than seven days into the Commission's 15-day review period. Both the seven day comment period and the Commission's 15-day review period will begin when the Auditor files the report with the Commission and delivers it to Quest. Further, Quest shall post the report on the CPAP website immediately after receiving it from the Auditor. This will allow Quest and other parties the opportunity

likely to file comments on both the proposed change and the Order's findings.

2. We do not accept Qwest's fourth proposed change to the Special Master's recommendation. Qwest's language goes too far in prospectively limiting its liability. If circumstances arise in which Qwest claims errors in the data are the result of a disclosed change, these should be dealt with on a individual case basis with Qwest retaining the burden of proving its position.

3. Order's comments also indicated that the Special Master clarified that RIDs and CPAP changes should not be included in CIP. We agree with this assertion. Qwest's removal of language in § 14.1 and the last two sentences of § 14.2 is appropriate. The language should be countered with the retention of the first sentence in § 14.9, and the inclusion of language in § 14.3.1, discussed later in the Escalation part of this order. (See §§ 14.1, 14.2, 14.3, and 14.9 in Attachments A and B).

5. Regulatory Oversight Over Change Management And CLEC-Affecting Changes

1. Supplemental Report and Recommendation (SR&R at 3-4)

a. Changes that affect CLEC access to Qwest's wholesale systems currently result in a \$1,000 fine per unapproved change. This "one-size-fits-all" approach is

inadequate. At present, there is no Commission approved change management regime with a definition for and sub-categorisation of types of, CLEC-affecting changes. Once the Commission develops and approves a definition and classification regime for CLEC-affecting changes in the Change Management context, the CPAP should be modified accordingly. It should alter the penalty regime set out in § 14.3 to ensure that it is tailored to its dual role in ensuring adherence to the change management rules and compensating CLEC's for any harm from Qwest's failure to do so. The PO-18, GA-7, and PO-16 Performance Indicator Definition (PID) measures and the new payment obligation should not result in more than one payment for the same harm.

2. Decision

a. We accept the Special Master's recommendation on CLEC-affecting changes. Once a tiered definition is agreed to in the Change Management Plan it shall be incorporated into the CPAP. Appropriate penalty levels will be determined and ordered at that time.

3. Discussion (Qwest Comments at 5-8. Joint Comments at 3-6.)

a. Qwest does not agree with the Special Master's recommendation on this issue. Qwest asserts that the Special Master's intent to import the CMP process wholesale into the CPAP was never apparent to Qwest and is highly problematic.

The Special Master's recommendation that Qwest should be accountable for further payments than are already in PIDs PO-16, PO-18 and GA-7 (attendant to the CMP) raises several concerns.

b. Qwest opposes any CPAP provision that would hold Qwest financially liable for every obligation in the CMP regime. Instead, Qwest is willing to include obligations to pay affected CLECs \$1,000 for missing the initial notification requirement and \$250 for subsequent notification requirements for a software release. Qwest asserts, however, that CLECs must be required to demonstrate that they have actually been affected by the failure to issue the notification.

c. Qwest cannot agree to include in the CPAP provisions providing payment obligations for failure to meet product and process notification obligations. Further, Qwest cannot agree to incorporate these new provisions at the six-month review.

d. The Joint CLECs do not separately discuss this issue in their comments. Rather, the Joint CLECs provided a definition of "CLEC-affecting" in their proposed language for § 14.1 that carries through their interpretation of the Special Master's recommendation on this issue.

e. At the conclusion of this entire § 271 process, there will be only two elements left with which to hold Qwest accountable for non-discriminatory treatment in providing

wholesale and resale services to CLECs. These two elements are the CPAP and the CMP. It follows, therefore, that these two plans overlap in many areas of the carriers' business to business relationships. The CMP covers a broad area of systems, products, and processes that, when changed, affect the way CLECs do business with Qwest. It is logical that Qwest should be held accountable for following the CMP timelines and milestones that it agreed to in the CMP redesign process.

f. The CMP redesign team is currently negotiating a leveled approach for defining CLEC-affecting changes, and the associated processes for notification, comments and implementation. When this task is agreed to and implemented by CMP, Qwest shall file this information with the Commission. The Commission will then propose penalties for each CLEC-affecting level, and allow for comments on those proposed penalties. Once comments are received, the Commission will issue an order establishing both the language to be included in the CPAP and the penalty amount(s) for each level. At that time, Qwest will be required to incorporate the language and penalties into the CPAP and into the monthly reports. Once Qwest receives § 271 approval from the FCC, as with all other penalties and payments, Qwest will be required to begin making payments to affected CLECs for these "misses" as well.

g. We agree with the Special Master that the flat \$1,000 fine for unapproved or unnoticed changes that minimally affect CLECs' business is too high. For changes that dramatically affect CLECs' business, the penalty is too low. Without seeing the final outcome from the CMP redesign group, we anticipate penalties ranging from \$100 to \$10,000 consistent with the commercial import of the change.

h. There is no additional language for the CPAP at this time. We do agree with the deletion of the portion of § 14.3 that currently includes the \$1,000 fine for unapproved CLEC-affecting changes. We do not agree to Qwest's proposed changes to PID PO-16.

C. Escalation

1. Supplemental Report and Recommendation (SR&R at 10-12)

a. The Special Master recommended that the escalation of payments not be capped at the six month level. He recommended that payments should continue to escalate for the duration of Qwest's out-of-compliance performance.

b. The Special Master recommended that any continuing escalation after 12 months should be contributed entirely to the Special Fund. This, in his opinion, would protect against a windfall for the CLECs.

c. The Special Master suggested, as noted above, that the sound practice for introducing PIDs should be to work through a collaborative forum before bringing a proposed PID addition or change to the Commission. The preferred approach should also be to introduce new PIDs as "diagnostic" measures, allowing for some reporting of actual data before determining the relevant standard and appropriate penalties.

d. To the extent that a PID continues to trigger an escalating payment past six months, the Special Master recommended that the Commission automatically examine this measure as part of a six-month review to consider whether the failure to comply reflects continuing deficient performance or some quirk resulting from a poorly defined PID.

e. The Special Master further recommended that, once a payment reaches the nine-month mark, the CPAP should provide for an accelerated step-down method. After at least nine months or more of continuing deficient performance, three consecutive months of acceptable performance should bring the base penalty level to that of the six-month mark. After three more consecutive months of acceptable performance (for a total of six consecutive months of complying performance), the payment level should go back to the base amount.

2. Decision

a. We accept the Special Master's recommendation with the exception of the accelerated step-down process.

3. Discussion (Qwest Comments at 12-14. Qwest SCAT § 18.6(2) at 22 and §§ 8.2-8.4 at 8. Joint Comments at 16-18. OCC Comments at 10.)

a. Qwest continues to believe and make arguments that the six-month cap, modeled on the Texas Plan, lies well within the zone of reasonableness established by the FCC for its review of such plans. According to Qwest, the proposed changes by the Special Master would mitigate to some extent, Qwest's concerns about the financial liability associated with unending escalation in payments. Qwest's claim the Supplemental Report does not address head-on what should be done when non-conforming results are caused by PID design rather than a lack of incentive on Qwest's part. If payments are allowed to escalate, Qwest argues, the escalation should be included in the 10% collar endorsed by the Special Master in his recommendation on Changeability.

b. Qwest's proposed language for §§ 18.6 (2), 8.2, 8.3, and 8.4 includes Qwest's retention of a six-month maximum multiplier, the accelerated step down approach, the payment of 100% to the Special Fund after the 12 month

multiplier and the inclusion of the escalated payments beyond the sixth month to be included in the 10% financial collar.

c. The Joint CLECs do not agree that the escalated payments would lead to a windfall beyond the 12-month multiplier. If the PIDs are sufficient to determine if Qwest has met the requirement of the Act, they should also be sufficient to determine if Qwest continues to do so after § 271 entry is granted.

d. The Joint CLECs' position on the Special Master's accelerated step-down is that, it is too precipitous a step-down. For instance, if Qwest has missed a measure bringing them to the 14 month mark and then subsequently has three months of compliance, Qwest would drop all the way back to the six-month mark. Also, the Joint CLECs assert that the SGAT language needs to be more clear that when Qwest is stepped down to the six-month mark, but then is out of compliance again, the escalation process would continue upward for each miss and that Qwest is only eligible for the accelerated step down again after the nine-month mark with three consecutive months of compliance.

e. The Joint CLECs, while they do not necessarily agree with it, have proposed language that mirrors the Special Master's recommendation on escalation.

f. The Office of Consumer Counsel commented on the Escalation issue as well. It states that the OCC continues

to support the escalation of payments clause as ordered by the hearing commissioner. However, the Special Master's recommendation to require a review of escalated payments for six-month reviews and escalated step down procedure is a reasonable compromise to which the OCC has no objection.

g. We accept the Joint CLECs' proposed language for §§ 18.6.1, 8.2 and 8.3 with some minor modifications. We reject the accelerated step-down process.

h. We are exasperated by Qwest's attempt once again to include a six-month cap on the escalation of payments, even with the concessions offered by the Special Master. We do not agree with Qwest that a six-month cap on escalation is reasonable, nor do we agree that the Special Master's recommendation does not address what should be done when non-conforming results are caused by PID design rather than Qwest's lack of incentive.

i. The Special Master has recommended that new PIDs should be introduced through a collaborative forum before bringing those PIDs to the Commission for incorporation into the CPAP. In addition, he states that the preferred approach should be to introduce these PIDs as diagnostic for some time to allow for the reporting of actual data before determining the relevant standard and penalties. This language, inserted in § 18.6.3.

should minimize the likelihood of poor PID design resulting in many months of escalated payments.

j. As for existing PIDs, already agreed to, fully audited, measured, and reported at the Regional Oversight Committee (ROC), we fail to see how Qwest will be able to pass the ROC-Operation Support System (OSS) test, given that it is a military style (i.e., pass or retest) test, if there are these "poorly defined" measures for which Qwest continues to be non-compliant. However, if this happens to be the case, Qwest will be able to argue at the first six-month review for the removal or change of these PIDs since the CPAP language will require, in § 10.6.1:

If, pursuant to Section 8.2, a PID continues to trigger a payment escalation for six months or more, that PID shall automatically be reviewed pursuant to this Section, in order to determine if there are issues with that PID, such as poor definition, that need to be addressed.

k. In our review of the accelerated step-down process recommended by the Special Master, we became increasingly aware from the Joint CLECs' comments, as well as our own Staff's input, that the practical implementation and tracking of such a process would be arduous at best. The current step-down process, without any acceleration, already has the possibilities of step-downs, step-ups, and maintenance of the status quo depending on Qwest's performance in the instant month

and some numbers of previous months for each and every performance measurement for each and every CLEC. The accelerated step-down process would multiply, and complicate, this tracking work. In keeping with the goal of having this Plan be as self-executing and easy to understand as possible, we decline to accept the accelerated step-down process as part of the CMAP.

1. We accept the Special Master's recommendation that if the escalation payments for a particular submeasure continue for more than 12 months, the escalation payments owed to the CLEC will be fixed at 50% of the 12 month payment. This fixed amount will continue until Quest's satisfactory performance for the submeasure, results in Quest paying at the 11 month level. At that point, the process in § 8.2 (the step-down process) will apply. All amounts in excess of the CLEC payments for month 12, will be paid to the Special Fund. The Special Master's original Report and Recommendation dated June 8, 2002, noted:

In an ideal world, the Tier I.X payments should be calibrated to reflect the actual market harm and not simply a very rough basis upon which to award payments. The current state of the record in this proceeding, however, provides no reasonable basis to approximate the actual market harm to companies that suffer deficient performance. Unfortunately, no parties have carefully documented the payments necessary to address different types of harms (such as these examples) and thus the Tier I.X payments reflect merely a very rough and unrefined approximation of what compensation is owed.

The state of the record has not changed since the Special Master made his observation. With no better idea of commercial harm, we cannot even begin to speculate on the appropriate penalty level.

m. At the 12-month point, an affected CLEC will receive \$1,350 for a miss of a Tier 1A submeasure. (The other \$1,350 will be paid to the Special Fund). It seems likely that this \$1,350 covers actual costs of the CLEC for Qwest's failure to perform and most likely, some punitive damages as well. By continuing Qwest's payment responsibility under § 8.2 and just shifting who actually receives the money, Qwest will still have the incentive to fix the problem rather than let it continue.

n. At month 13 and after, the CLEC affected by these escalated misses will still receive 50% of the 12 month payment. It is only the additional 13+-month penalty amounts that will be paid entirely to the Special Fund. For instance, if Qwest has missed a Tier 1A measure for 13 months consecutively (not counting any severity multiplier), an affected CLEC would receive \$1,350 in month 13 and the Special Fund would receive \$1,350 plus \$225, or \$1,575. In month 14 the CLEC would receive \$1,350, and the Special Fund would receive \$1,575 plus \$225, or \$1,800; and so on.

o. There are several sections throughout the CPAP that refer to the escalation payments as 50% to the CLECs and 50% to the Special Fund. These sections have been changed in

Attachments A and B to reflect the above decision. (See Attachments A and B §§ 2.1, 8.3, 10.2, 10.4 and 14.5.)

D. Special Access

1. Supplemental Report and Recommendation (SRR at 12-17)

a. The Special Master recommends that the Commission define the type of special access circuits that would be eligible for monitoring and reporting as either: 1) those used primarily for local services or 2) those used to a nontrivial degree (e.g., 10% for local service).

b. Qwest needs to develop the capability to measure its performance on the relevant pre-ordering, ordering, provisioning, and maintenance and repair functions for special access circuits. Therefore, according to the Special Master the Commission should set forth the scope of any measurement and reporting obligations imposed on Qwest. The relevant set of measures are: PIDs OP-3, OP-4, OP-5, OP-6, OP-15, MR-3, MR-4, MR-7, and MR-8. Also, PIDs PO-5 and PO-9 are relevant measures, unless there is a compelling reason for not doing so. A previous CPAP decision (Decision No. R01-997-I) required Qwest to monitor and report special access services for PIDs OP-3, MR-3, and MR-9. The requirement to measure these should be eliminated because they are not appropriate measures of special access.

c. There are two ways to identify monitored special access circuits: 1) the use of a project field (this would have to be made available in both Qwest's ordering and maintenance and repair systems and the CLECs would need to be responsible for entering the relevant field into both the ordering system and the maintenance and repair system,) or 2) the use of different Access Carrier Name Abbreviation (ACNA) codes to classify use of special circuits as either long distance or local.

d. It is conceivable that the terms for monitoring and reporting on special access circuits will be resolved through business-to-business negotiations. If an agreement is negotiated and is submitted to the Commission, the Special Master recommends that the Commission should determine if that business-to-business agreement has substantially addressed the concerns raised by CLECs, such that there is no need to measure special access services.

e. If a business-to-business agreement is not submitted, the Special Master recommends that the Commission should ask for a joint (Qwest and CLECs) submission of an implementation plan or that the Commission should engage in baseball-style arbitration so that an implementation plan can be adopted.

2. Decision

a. We reject the recommendation to ask for a joint submission of an implementation plan. We also reject the recommendation that the Commission should engage in baseball-style arbitration. Instead, the Commission shall require Qwest to develop the capability to measure and to begin monitoring its performance for special access circuits by use of the project field within 60 days of the mailed date of this order. It is also acceptable if a CLEC and Qwest agree to the use of an ACNA code as long as the CLEC and Qwest also agree to a date certain to develop the capability to measure and to begin monitoring special access circuits through use of the ACNA code.

b. By entering the project field into Qwest's provisioning system or maintenance and repair system, CLECs would be self-certifying that the special access circuit is used for local service.

c. Qwest shall monitor and report special access circuit performance for PIDs OP-3, OP-4, OP-5, OP-6, OP-15, MR-5, MR-6, MR-7, MR-8, and PO-5¹. The standard shall be diagnostic. Qwest shall take only the exclusions listed in the PID for each measure.

¹ We shall not require monitoring and reporting of special access circuits for PO-9. See discussion for EELs.

d. Reports shall be delivered by Qwest to each individual CLEC, the Commission, and the Office of Consumer Counsel at the same time and by the same method it delivers performance reports for the CPAP measures pursuant to § 13.2.

3. Discussion (*Qwest Comments at 14-19. Joint Comments at 18-21. Time Warner Comments at 3-6.*)

a. In order for meaningful assessment of special access circuit performance, Qwest argues that, the standard should be at least 33% local usage.

b. Qwest asserts that the use of the project field method would not allow CLECs to designate when a special access circuit is used by a CLEC in lieu of a UNE. Qwest opposes the ACNA code method because it would require each CLEC to have a separate ACNA code to distinguish special access circuits. According to Qwest, these separate ACNA codes would have to be assigned through Telcordia Practice. Further, Qwest would have to make system changes that could take 90 days or more. Qwest argues that it would not be reasonable to expect it to go back and assign different ACNA codes to the over 306,000 special access circuits installed in Colorado.

c. Qwest contends that, for contractual reasons, there is no opportunity to negotiate a business-to-business agreement. Qwest states it is willing to participate in an informal investigation to determine the need for, and

structure for reporting, information on special access provisioning. As a prerequisite, however, Qwest contends that the CLECs should be required to establish factual predicates about the need for special access measures and their ability to verify the local usage on their special access orders.

d. The Joint CLECs favor the broader (non-trivial) local usage standard suggested by the Special Master. However, AT&T and WorldCom recommend that the Commission adopt a standard specifying that any amount of local traffic would qualify a CLEC's special access order for monitoring of Qwest's performance because exact percentages of local usage cannot currently be determined.

e. The Joint CLECs agree with the Special Master's recommendations on which measures should be designated for special access circuit performance.

f. The Joint CLECs assert that the Commission does not need to choose one of the two methods: project field or ACNA code, for identifying which special access circuits should be subject to monitoring. The Joint CLECs explain that the industry practice of reaching mutual agreement to modify the Access Service Request (ASR) format would apply here. The Joint CLECs prefer the ACNA code method but would not want it imposed on any CLEC which prefers the project field method.

g. The Joint CLECs disagree with the Special Master's suggestion that implementation details be the subject of additional filings or baseball-style arbitration before the Commission. The Joint CLECs are skeptical that business-to-business negotiations might take place because of Qwest's position on EEL conversion.

h. Time Warner favors the broader (non-trivial) local usage standard suggested by the Special Master.

i. Time Warner agrees that PIDs OP-8, MR-3, and MR-9 are not relevant special access measures. Time Warner further agrees with the Special Master's recommendation on relevant special access measures.

j. Time Warner recommends adoption of the project field method because it does not use multiple ACNA codes for its business. Alternatively, Time Warner suggests the Commission could permit CLECs to use either the project field or different ACNA codes.

k. Time Warner does not believe that additional implementation details should be the subject of more filings by parties or be subject to baseball-type arbitration.

l. The comments suggest that the Commission should not expect any business-to-business agreements to be presented to it. The comments imply that it would not be productive for the Commission to subject the parties to

additional process such as joint submission or baseball-style arbitration. Qwest's suggestion that an informal investigation be conducted to determine the need for, and structure of reporting information on special access provisioning ignores that the special access issue was remanded for the limited but specific purpose of devising solutions for monitoring Qwest's special access services performance. We find that the record contains sufficient information to resolve this issue, as set forth in the above decision.

E. Changeability: Review Processes

The Special Master's recommendations for changeability are separated into three areas: 1) review processes, 2) financial collar, and 3) Commission authority and Qwest's right to judicial review.

1. Supplemental Report and Recommendation (SR&R at 17-22)

a. Regarding review processes, the Special Master recommends that the core aspects of the CPAP should be fixed until the three-year review. Therefore, the basic framework subjects that should be off-the-table for six-month reviews are:

- statistical methodology;
- rules regarding the cap (financial collar);
- duration of the CPAP;
- payment regime structure (tiers, base amounts, payment escalation, payment severity, and specified payment and fine amounts);
- legal operation of the CPAP;
- Independent Monitor's operation; and,

- any proposal that does not directly relate to measuring and/or providing payments for non-discriminatory wholesale performance.

Subjects on-the-table at six-month reviews are:

- variance tables may be added for new Tier 1A measures (to the extent possible, new variance tables should follow the method used to create existing variance tables);
- payment amounts may be added for new Tier 2 measures;
- payment amounts may be added for violations of change management requirements (each level would need to be defined and assigned); and,
- the Independent Monitor function may be assigned to an ALJ.

Any subject not deemed "off-the-table" is fair game at the six-month review.

b. The Special Master also recommends that the basic framework of the CPAP, as well as refinement of the payment amounts in order to bring them into line with any evidence of the actual marketplace harm that results from deficient performance, should be revisited at the three-year review and six-year review.

c. The Special Master recommends participating in a region-wide or multi-state forum for maintaining (i.e., modifying, adding, deleting) PIDs after the end of the ROC-OSS test. If the Commission elects to participate in such a forum, he also recommends using monies from the Special Fund to contribute to any administrative costs of such a forum.

d. The Special Master finally recommends the Commission clarify its intent with respect to the six-year review and termination of the CPAP.

2. Decision

a. We accept the Special Master's recommendations on review processes. Core aspects of the CPAP shall be off-the-table at six-month reviews and shall remain fixed until the three-year and six-year reviews.

3. Discussion (Qwest Comments at 19-26. Qwest SCAT § 18.4-18.10 at 21-25. Joint Comments at 21-24. OCC Comments at 6-10.)

a. Qwest raises concerns that the Special Master's use of "presumptively" to describe off-the-table subjects could allow for changes. Qwest asserts that the off-the-table subject of "any proposal that does not directly relate to measuring and/or providing payments for non-discriminatory performance" should not be construed to mean that payment issues would be back on the table. However, Qwest wants the escalation payment limitation to be on-the-table, as an exception to this subject. Qwest asserts subjects that are on-the-table for six-month reviews should be clearly defined and has proposed language for § 18.4 to indicate Staff's report to the Commission is limited the issues that are "clearly" defined in its proposed § 18.6.

b. Qwest argues that the CPAP must require parity standards for measurements for which there is a retail comparative. Qwest proposes language for § 18.6(1) reflecting this.

c. Qwest asserts that the only legitimate provisions that should remain in effect after the six-year review are the Tier 1A payment provisions. Qwest proposed revisions to § 18.10 to clarify this.

d. Qwest argues that a portion of § 7.5, a portion of § 10.6 and all of § 16.9 must be deleted to reflect the changeability recommendations of the Special Master.

e. The Joint CLECs contend that their proposed language changes to §§ 18.6 and 18.7 reflect the Special Master's recommendations on changeability of the CPAP.

f. The OCC does not object to "off-the-table" items being removed from the six-month reviews as long as these items are clearly on-the-table for the three-year review.

g. The OCC supports explicit Commission authority to continue or sunset the plan in its entirety, or to maintain certain aspects of the plan and sunset others. The OCC proposed replacement language for § 18.11.

h. The Joint CLECs' proposed language better captures the recommendations of the Special Master. However, the Joint CLECs do not offer language on the specified

exceptions for the six-month review. We adopt the Joint CLECs' language with the addition of the specified exception language and some minor modifications (see §§ 18.6 and 18.7 in Attachments A and B). We accept Qwest's proposal to delete § 18.8 and part of § 18.9 (see §§ 18.8 and 18.9 in Attachments A and B). We deny Qwest's proposal to delete portions of §§ 7.5 and 10.6 and to delete all of § 16.9. We disagree with Qwest's argument that these changes reflect the Special Master's recommendations on changeability.

i. We concur with the Special Master's recommendation on participation in a multi-state forum for maintaining PIDs after the end of the ROC-OSS test. Section 18.6.1 reflects our concurrence. We are not opposed to using monies from the Special Fund to contribute to any administrative costs of such a forum. However, until the details of a collaborative forum have been worked out, the CPAP shall not include language designating that the Special Fund shall be used to fund the collaborative forum administrative costs.

j. To clarify the Commission's intent with respect to the six-year review and termination of the CPAP, Section 18.11 shall be modified to clarify the sunset of the CPAP. Tier 1A will continue until further order of the Commission. All provisions of the CPAP not related to

continuing the Tier 1A regime will sunset at the end of six years, unless the Commission orders otherwise.

(See § 15.11 in Attachments A and B.)

F. Changeability: Financial Collar

1. Supplemental Report and Recommendation (SR&R at 4-10)

a. The Special Master recommends that the CPAP include a financial collar of 10 percent to be implemented as follows:

- * requires Qwest to calculate separately the payments owed by it under the CPAP that was in effect before changes made at a six-month review;
- * requires Qwest to calculate the payments owed by it under the revised CPAP;
- * authorizes Qwest to scale down the payments to the affected CLECs and to the Special Fund if the revised CPAP would require more than a 10% increase in total payments;
- * requires "above the collar" payments to be made from the Special Fund to any CLEC affected by this mitigation of payments;
- * if the revised CPAP calls for total payments above the collar, then requires the unchanged CPAP be used as the benchmark for purposes of setting a collar for the next six-month period;
- * if the revised CPAP calls for total payments below the collar, then requires the revised be used as the benchmark for setting a collar for the next six-month period.

2. Decision

a. We accept the recommendation to add a 10 percent financial collar.

3. Discussion (Qwest Comments at 19-26. Qwest SCAT § 18.4-18.10 at 21-25. Joint Comments at 21-24. OCC Comments at 6-10.)

a. Qwest contends that its proposed language for § 18.8 reflects the recommendation of the Special Master for the financial collar. The Joint CLECs likewise assert that their proposed language for §§ 18.7.2, 18.7.3, and 18.7.4 reflect the recommendation for the financial collar.

b. Both sets of proposed language reflect the recommendation for the financial collar. We adopt Qwest's proposed language with some modifications because the language is clearer on the calculation and application of the financial collar. We shall add to it language proposed by the Joint CLECs stating:

If the Special Fund does not contain sufficient funds to provide such payments to CLECs, Qwest shall make up the difference. Any funds that Qwest provides to make up the difference will be offset against Qwest's future Special Fund liabilities.

(See § 18.8 in Attachments A and B.) This additional language better reflects the Special Master's intent to use the Special Fund for mitigation of payments to any affected CLEC, while limiting Qwest's liability in a given year.

G. Changeability: Commission Authority And Qwest's Right To Judicial Review

1. Supplemental Report and Recommendation (SR&R at 4-10)

a. According to the Special Master, Qwest's filing of the CPAP sets forth the framework that empowers the Commission to enforce and to modify its terms. Qwest cannot later challenge the terms of its initial filing. Nevertheless, the initial CPAP does not waive later as to challenges by Qwest related to subsequent changes to the CPAP.

b. The Special Master recommends that, if the Commission orders a change on completion of a six-month review of an off-the-table subject without Qwest's consent, the effect of any such change should be automatically stayed during the course of any judicial challenge to the Commission's order. The Special Master states that, at the three-year review, the Commission will not be able to require Qwest to undertake any new obligations. Rather, the Commission will be able to give Qwest the option of filing the new, recommended regime or of keeping the old regime. If Qwest opts not to file the new regime, the Commission can order it (or any aspect of it), subject to judicial review. The Special Master recommends that this order of the Commission not be automatically stayed.

2. Decision

a. The Commission accepts the Special Master's recommendation regarding the automatic stay during any judicial challenges of changes ordered by the Commission at the completion of a six-month review to off-the-table subjects. The Commission agrees with the Special Master that an order requiring changes to the CPAP on completion of the three-year review should not be automatically stayed. The Commission disagrees with the Special Master with respect to treatment of Commission-ordered changes to the CPAP at the three-year review.

3. Discussion (*Qwest Comments at 19-26. Qwest SGAT § 18.4-18.10 at 21-25. Joint Comments at 21-24. OCC Comments at 6-10.*)

a. Qwest proposes language for § 18.5 that indicates that the Commission must commence a proceeding or hearing to resolve disputed issues. Qwest asserts this requirement would preserve a record on appeal.

b. Qwest asserts that the CPAP should clearly state that the Commission cannot order changes to the CPAP that are directly related to measuring and/or providing payments for non-discriminatory performance that are not required under § 251 of the Act. Qwest argues that this category is acceptable if it does not include the words "and/or providing payments" and with the clarification that the category is dependent upon the

requirements of § 251. Qwest proposes language in § 18.6(3) reflecting this.

c. Qwest proposes addition to § 18.6 of a general reservation of rights provision to provide assurance that Qwest is not subject to a claim of waiver upon appeal at the six-month review.

d. Qwest agrees with the recommendation automatically to stay during judicial review changes to off-the-table subjects ordered by the Commission upon completion of a six-month review. The language proposed by Qwest for § 18.7 reflects this agreement. Qwest disagrees with the Special Master that there should not be an automatic stay of changes ordered by the Commission after completion of a three-year review. The language proposed by Qwest for § 18.9 reflects this disagreement.

e. Qwest argues that all changes that are approved upon appeal should be limited to the 10% financial cap. Qwest proposes language for §§ 18.7 and 18.9 reflecting this.

f. The Joint CLECs contend that their proposed language changes for §§ 18.7.1 and 18.10 reflect the Special Master's recommendations.

g. The OCC objects if the Special Master's recommendation is that the CPAP contain no explicit authority

for the Commission to impose new obligations at the three-year review. According to the OCC, the current CPAP provides that payment amounts can be revised and that the basic framework of the CPAP can be modified at the three-year review. The OCC asserts that this language gives the Commission authority to impose new obligations at that time.

h. The Commission adopts the Special Master's recommendation concerning the automatic stay of a Commission decision, arising from a six-month review, which changes an off-the-table aspect of the CPAP. Because the Commission's authority here is a *sui generis* mixture of federal and state authority, the automatic stay provision provides a reasonable brake on the Commission's authority. The netherworld of state commission exercise of federal remedial authority should not be used indiscriminately to ratchet a performance regime. The stay provision is limited in scope, duration and purpose. An automatic stay should be invoked rarely, if ever, yet provides valuable assurance that the limits contained in Section 18.7 will be observed. The provision implements, and gives effect to, specific contract language (*i.e.*, Section 18.7) which limits the areas which can be changed at a six-month review. If the Commission determines that it will change an off-the-table area notwithstanding Section 18.7, the automatic stay is an appropriate constraint, particularly because it will not be

involved unless there is judicial review of the Commission's decision. In permitting the automatic stay provision, we emphasize in the strongest possible terms that a provision of this type is not appropriate or reasonable in any other setting or circumstance. This process is sui generis, and so is the automatic stay provision. We do not expect to see, and will not approve, an automatic stay provision in any other situation (see § 12.7.1 in Attachments A and B).

1. We now turn to the Special Master's Recommendation concerning the procedure to be used following a three-year review and to Qwest's proposal for an automatic stay of an order arising from a three-year review, which changes the CPAP. We adopt neither the Special Master's suggested process nor Qwest's requested automatic stay. In our view, a Commission order arising from the three-year review is just that, a Commission order. As with any other Commission order, Qwest or any other party can accept the order or can institute a judicial review action. There are established processes for obtaining a stay of a Commission order when judicial review is sought. Thus, we find that the Special Master's recommendation adds an unnecessary element of process. Further, at the three-year review, all aspects of the CPAP can be reviewed and changed. This distinguishes the three-year review (which has no limit on what can be changed) from the six-month review (which has such a

limit) and supports our conclusion that an automatic stay of a three-year review order is neither appropriate nor reasonable (see § 18.10 in Attachments A and B).

IV. ASSORTED IMPLEMENTATION ISSUES

A. Variance Factors And The One Free Miss Rule, Missing Variance Factors, And Other Variance Issues

1. Supplemental Report and Recommendation (SR&R at 4-6)

a. The Special Master recommends that the current variance table be changed because it uses two rules where one would do. The current table includes lower than otherwise appropriate variance amounts on the understanding that Qwest was permitted "one free miss" before it would be required to pay CLECs for deficient performance. The "one free miss" rule makes sense for performance measures that rely on a benchmark to set the standard for performance, but is redundant for parity measures where the variable table itself provides for the necessary "slack factor." The Commission should remove the one free miss rule from the CPAP, and from its use in Tier 1A, Tier 1B and Tier 1C, except where used in association with performance measures in which a benchmark sets the standard. The variance table should be adjusted to reflect this change.

b. The Special Master goes on to say that this variance table method is not a perfect step. To address the lack

of ~~discretion~~ in this method, he recommends that the Plan include a provision that uses for a "shadow method" of calculation of ~~payments~~ for small sample sizes (i.e., 1-30) based on the ~~parameter~~ ~~that~~ in Tier 1B. In practice, this means that the ~~data~~ will be provided with the results calculated using both the variance factor method and the shadow method, and will ~~receive~~ payments based on whichever one is more beneficial to ~~them~~.

c. During the course of meetings with Qwest and other parties on these remand issues, the Special Master learned of certain variance factors that were missing for several parity measures contained in Tier 1A. For the long term, he recommends that, where a variance factor has yet to be calculated or where there are not sufficient data to use in developing one, the relevant Tier 1A measures should rely on the same statistical methodology used for Tier 1B and Tier 1C (that is contained in §§ 4 and 5 of the Plan). For the short term, he recommends additions for these known missing factors.

d. Finally, in a step to guard against the lack of predictability for Qwest that results from these changes, § 10.1, which governs the special severity for Tier 1A, should be amended to provide for payments on the lower of the amount generated by the old variance factor method (with the one free

miss rule) and the new variance factor method as set forth in his recommendation.

2. Decision

a. We accept the Special Master's recommendations as to the variance factors.

3. Discussion (Qwest Comments at 8-9. Qwest SCAT §§ 6.2 and 6.4 at 5, Table 2 at 4-5, and § 10.3 at 9. Joint Comments at 6-10.)

a. Qwest's language for §§ 6.2 and 6.4 and Table 2 conforms with the Special Master's recommendations and is accepted with minor modifications for clarification as contained in Attachments A and B.

b. The Joint CLECs agree with the Special Master's recommendations as well, but their proposed language does not follow the recommendation as clearly as Qwest's, with the exception of § 10.3.

c. In Qwest's comments on § 10.3, Qwest asserts that the Special Master inadvertently referred only to Tier 1A measures here, and should have included Tier 1B measures. Qwest has provided language that refers to both.

d. The Joint CLECs do not make this assertion nor do they include Tier 1B in their proposed language for this section.

e. We agree with the Joint CLECs, and will use their proposed language with minor modifications for this

articles. The inclusion of Tier 1B in this new comparison method of the old variance factor table and the new table makes no sense. The variance factors are only used in the CPAP's statistical methodology for Tier 1A measures and, therefore, Tier 1B measures should not be included in this new method for comparison of variance tables (see § 10.3 in Attachments A and B).

B. Language Clarification

1. Supplemental Report and Recommendation (SR&R at 7-8)

a. The Special Master makes several recommendations regarding language clarifications through out the CPAP. These recommended changes are to §§ 4.1, 4.2, 5.2, 6.1, 6.3, 7.1, and 13.6.

2. Decision

a. We accept the Special Master's recommended changes to all these CPAP sections. (See Attachments A and B at §§ 4.1, 4.2, 5.2, 6.1, 6.3, 7.1, and 13.6.)

3. Discussion (Qwest Comments at 9. Qwest SGAT § 4.2 at 1, § 5.2 at 3, § 6.1 at 3, § 6.3 at 5, § 7.1 at 5-6, and § 13.6 at 12. Joint Comments at 10-11.)

a. No party objects to the recommended changes of the Special Master for this clarifying language. Qwest provided proposed language in its comments that conforms to the recommendations. In §§ 6.3 and 7.1 Qwest adds clarifying phrases

for reference to the Special Master's recommendations. We accept these additions.

b. In its proposed language for § 13.6, Qwest adds the sentence:

If an audit is in progress, Qwest is not precluded from revising the reported data without incurring the payments required by Sections 13.4 and 13.5 if the audit is focused on a different area of performance measurement.

We do not agree with this addition. This language confuses the understanding of the section and will not be allowed.

C. Computation Issue Regarding Zone 1 And Zone 2

1. Supplemental Report and Recommendation (SR&R at 8-9)

a. The Special Master recommends that the CPAP follow the suggestion of the rural-based CLECs and the model set out in the multi-state PAP, that is: combine zone 1 and zone 2 for purposes of statistical testing. Specifically, he recommends adding the following sentence to the last paragraph of § 4.3:

When performance submeasures disaggregate to zone 1 and zone 2, the CLEC volumes in both zones shall be combined for purposes of statistical testing.

He also recommends deleting the last sentence of § 5.1 and modifying § 7.5 as follows:

For purposes of severity and duration penalties (Tier 1Y), a "measure" shall be at the most granular level of product-reporting disaggregation, except where otherwise specified. For purposes of statistical

comparison and occurrence calculation, a measure shall be at the most granular level of product-reporting disaggregation, except where otherwise specified.

2. Decision

a. We accept the Special Master's recommendation.

3. Discussion (Qwest SGAT § 4.3 at 5, § 5.1 at 3, and § 7.5 at 7. Joint Comments at 11.)

a. Qwest's proposed SGAT language agrees with the recommendation, except for the addition of the word "these" in § 4.3. The Joint CLECs believe that the sentence recommended for addition to the last paragraph of § 4.3 should instead be added to the last paragraph of § 4.2.

b. In earlier efforts to clarify language on this matter it seems the language added to § 7.5 was inconsistent with language included in § 5.1. We correct that inconsistency now. We disagree with the CLECs that the additional sentence be added to the last paragraph of § 4.2. Section 4.3 deals with sample sizes smaller than 30, and § 4.2 deals with sample sizes greater than or equal to 30. Because this combination "follows the suggestion of rural-based carriers," we conclude that the sentence should be added to § 4.3. (See §§ 4.3, 5.1, and 7.5 in Attachments A and B).

D. Unnecessary Measures

1. Supplemental Report and Recommendation (SR&R at 9)

a. The Special Master recommends that PIDs PO-3A-2 and PO-3B-2 be excluded from the CPAP because these measures are calculated and reported on a 14-state basis.

2. Decision

a. We accept the Special Master's recommendation.

3. Discussion (Qwest SGAT Appendix A at 33.)

a. No party objects to the recommended exclusion. PIDs PO-3A-2 and PO-3B-2 will be deleted from Appendix A of the recommended SGAT language.

E. Establishment Of The Special Fund

1. Supplemental Report and Recommendation (SR&R at 9)

a. The Special Master recommends that the Commission designate a specific employee to direct Qwest how to manage the escrow fund set up for this purpose.

2. Decision

a. We accept the Special Master's recommendation.

3. Discussion (Qwest Comments at 10. Qwest SGAT § 10.4 at 9.)

a. Qwest agrees with the Special Master and recommends that the administration of the Special Fund should be addressed in a Memorandum of Understanding (MOU) that would include provisions for auditing the disbursement process and payment of expenses and taxes from the fund. Qwest proposes language for addition to § 10.4 reflecting its recommendation.

b. The Commission and Qwest shall enter into a MOU for administration of the Special Fund which shall identify: individuals authorized access to the account; disbursement and auditing procedures; provisions for fund expenses and tax liabilities to be paid from fund assets; and other provisions necessary for administration and operation of the fund. The CPAP will be part of a contract between Qwest and a CLEC, not Qwest and the Commission. Therefore, we reject Qwest's proposal to add language to the CPAP to reflect this. Once the MOU is negotiated and signed by representatives of Qwest and the Commission, it will be a public document available for the CLECs and any other interested party to review.

F. Miscellaneous Administrative Issues

1. Supplemental Report and Recommendation (SR&R at 9-10)

a. With respect to reports listing CLEC-specific performance results, the Special Master recommends that

the Commission order Qwest to file such reports upon request by Commission Staff so that Qwest can share information with the Staff that would otherwise be confidential and proprietary to the individual CLECs.

b. With respect to the reporting of necessary payments, the Special Master recommends that Qwest be permitted to provide CLECs with this information via secure websites. He recommends changing § 13.2 as follows:

Qwest shall deliver the individual monthly report to the Commission and the Office of Consumer Counsel via email by posting the CLEC results to a secure website and posting the aggregate results to the Qwest wholesale website on or before the last business day of each month following the relevant performance period.

c. The Special Master recommends that Qwest be authorized to use wire transfers, as opposed to checks, to make disbursements when so directed by the Commission.

2. Decision

a. We accept the Special Master's recommendation in concept, but change the language in §§ 12.2 and 13.2 to align more clearly with the Commission's filing requirements and to allow for more protection to the CLECs in the disbursement of payments.

3. Discussion (Qwest SGAT § 13.2 at 11 and § 13.2 at 11. Joint Comments at 11-15.)

a. Qwest's proposed language for § 13.2 allows for the posting of the CLEC-specific results to a secure website and of the aggregate results to the Qwest Wholesale Website, as recommended by the Special Master.

b. The Joint CLECs propose additional language that includes a recitation of part of our rule on confidentiality, 4 CCR 723-16. We do not believe this citation is necessary for the CPAP. The reports shall be filed and treated in accordance with the Commission's procedures concerning confidential and proprietary data unless an individual CLEC agrees in writing, filed with the Commission, that reports concerning it are not confidential. No further protection, beyond that already provided by Commission rule, is necessary.

c. Section 13.2 will be changed to state that Qwest is required to file with the Commission "one hard copy and one electronic copy in an Excel format of all CLEC individual monthly reports under seal and one hard copy and one electronic copy in an Excel format of the state aggregate report in the public file." This will afford Staff of the Commission, the Independent Monitor, and the Auditor access to the report data in a format that can be used for further analysis. The

Commission will establish a docket in which all CPAP-related filings will be made (see § 12.2 in Attachments A and B).

d. As recommended by the Special Master, § 12.2 should allow Qwest the opportunity to make cash disbursements to CLECs and the Special Fund through the means of electronic transfers. We agree with this option, and require additional language be included in this section to give the CLECs some protection from potential discriminatory treatment. The pertinent part of § 12.2 should read as follows:

However, once Qwest and CLEC agree on a method of payment (i.e., wire transfer or check), Qwest shall not change the method of payment without the permission of CLEC.

(See § 12.2 in Attachments A and B).

G. Legal Operation Of The CPAP

1. Supplemental Report and Recommendation (SR&R at 11)

a. The Special Master recommends that § 16.6 be changed to state that Tier 1X ^{and Tier 1Y} payments to a CLEC are in the nature of liquidated damages. As now written, there is no mention of Tier 1Y payments. The Special Master also recommends that § 16.7 be clarified to state that only the relevant finder-of-fact can judge what amount, if any, of payments under the CPAP should be offset from any judgment in favor of a CLEC in a related action.

2. Decision

a. We accept the Special Master's recommendation. We adopt Qwest's proposed language for § 16.6. We adopt the Joint CLECs' proposed language for § 16.7.

3. Discussion (Qwest Comments at 10-11. Joint Comments at 15.)

a. Qwest agrees with the recommendation and proposes language to specify Tier 1Y payments in § 16.6. Qwest notes that § 16.6, which is expressly directed to the mechanism for seeking approval for CLEC recovery of contractual damages, contains a requirement to offset payments to CLECs. Qwest further notes that § 16.7 refers to a different offset. According to Qwest, this is intended to address non-contractual recovery by the CLEC for the same harm for which it received payments under the CPAP. Qwest has proposed language be added to § 16.7 as follows:

With respect to contractual damages sought pursuant to Section 16.6, CLEC must offset any award with any payments made under this CPAP.

b. The Joint CLECs contend the language they propose for §§ 16.6 and 16.7 captures the intent of the Special Master.

c. We conclude that Qwest's proposed language for § 16.6 captures the Special Master's recommendation and is satisfactory. The language proposed by Qwest for § 16.7

However, is in consistent with the Special Master's recommendation. The Joint CLECs' language for § 16.7 is acceptable because it captures the Special Master's recommendation.

H. Addition Of New Measures For EELS

1. Supplemental Report and Recommendation (SR&R at 10)

a. The Special Master recommends that the CPAP be revised in the near future to include obligations related to Enhanced Extended Loop (EEL). Specifically, the following submeasures, for which Qwest currently is measuring and reporting EELs, should be added to the CPAP: PIDs OP-3, OP-4, OP-5, OP-6, OP-15, MR-5, MR-6, MR-7, and MR-8. He further recommends that Qwest should also be required to include submeasures for pre-order activities for EELs by measuring and reporting EELs for PIDs PO-5 and PO-9, unless Qwest provides a compelling reason not to do so. The EEL submeasures should be included as Tier 1A. The statistical methodology that contemplated for loops in Sections 4 and 5 could be used for EEL submeasures until a set of variance factors can be developed for the EEL submeasures.

2. Decision

a. We accept the recommendation. Submeasures for EELs should be considered for addition to the CPAP at the

first six-month review. The Commission prefers, to the extent possible, that Qwest develop variance factor tables for the EEL submeasures for consideration at the first six-month review.

3. Discussion (Qwest Comments at 11.)

a. Qwest contends that EEL disaggregation for PID PO-5, Firm Order Confirmations (FOCs) on Time, should be added at the six-month review, because the measurement needs to be developed and a standard needs to be identified. Qwest estimates the development work will take three to four months. Qwest commits to beginning the development process with a goal of producing data for use at the six-month review.

b. Qwest argues that EEL disaggregation for PID PO-9, Timely Jeopardy Notices, should not be added. Qwest asserts that the two-way communication (between a CISC and Qwest) associated with the provisioning of such designed services takes the place of the jeopardy notice.

c. The Commission acknowledges and approves of Qwest's willingness to undertake development to disaggregate PID PO-5 for EELs and to begin producing data to be considered at the first six-month review. We accept Qwest's reasoning for not disaggregating PID PO-9 for EELs and shall not require this disaggregation at this time.

i. Other

1. Qwest Request to Address Possibility of Federal Wholesale Service Quality Rules (Qwest Comments at 11-12)

a. As framed by Qwest, the issue is whether the CPAP needs to recognize, and to take into account, the FCC's wholesale service quality rules and remedies to avoid Qwest's having to pay both CPAP payments and remedies under federal rules.

2. Decision

a. The Commission denies Qwest's proposal to add language to the CPAP to account for federal wholesale service quality rules because no such rules have been promulgated by the FCC.

3. Discussion (Qwest Comments at 11-12. Qwest SGAT § 16.4 at 17-18.)

a. This issue was not addressed in the Special Master's Supplemental Report. Qwest raised this issue for the first time in its comments on the Supplemental Report. Qwest proposed language to be added to § 16.4, which, it asserts, prevents Qwest from having to pay both CPAP payments and remedies under federal rules.

b. The Commission agrees that, as a theoretical matter, the CPAP should recognize, and take into account, federal wholesale service quality rules to avoid Qwest's paying

twice for the same performance. This would treat state wholesale service quality rules and federal service quality rules in a similar manner. However, the FCC has not yet promulgated any federal wholesale service quality rules. Thus Qwest's proposal is premature. When and if the FCC promulgates federal service quality rules, the Commission can consider whether or not to amend the pertinent sections of the CPAP.

J. Acceptance Of The CPAP

1. Qwest shall file, within seven calendar days of the mailed date of this Order, a statement verified by the Senior Vice President of Policy, or a corporate officer of similar or higher rank having authority to make the verification, indicating either acceptance or non-acceptance of the Colorado Performance Assurance Plan contained in this decision and its Attachments and approved by the Commission. The Qwest verified statement shall state clearly and unambiguously whether Qwest accepts the CPAP contained in this decision and its attachment. If the verified statement is not clear and unambiguous, the Commission will assume that Qwest does not accept the Commission-approved CPAP and will recommend to the Federal Communications Commission that Qwest has not complied with the public interest requirements of § 271.

2. The Commission finds that this clear statement is necessary to have Qwest's acceptance or non-acceptance on record.

as soon as possible. If Qwest does not accept the CPAP contained in this decision and its Attachments, the Commission will consider what additional proceedings, if any, are necessary with respect to the Commission's investigation into Qwest's compliance with § 271. As the hearing commissioner and the entire Commission has made abundantly clear, Qwest acceptance of this Commission-approved CPAP is the sine qua non of a favorable Commission recommendation to the FCC. There will be no additional changes to the CPAP (other than to correct typographical errors and to make nonmaterial clarifying changes). Therefore, Qwest's failure to accept the Commission-approved CPAP may well result in no further Commission proceedings, or in substantially changed Commission proceedings, before the Commission makes its recommendation to the FCC.

V. ORDER

1. It is Ordered That:

i. Before receiving a favorable recommendation of § 271 compliance, Qwest will implement the CPAP consistent with this Order and Attachment A, including Appendices A and B, hereto. Attachment A contains the actual SGAT language that must be adopted by Qwest and implemented as the CPAP for this Commission favorably to recommend § 271 compliance. The recommended SGAT language in Attachment A reflects decisions

from the original CPAP Orders, as well as any modifications ordered here. Attachment B reflects the changes, in redline, made to Attachment A of Decision No. R01-1142-I.

2. Qwest shall file, within seven calendar days of the mailed date of this Order, a statement verified by the Senior Vice President of Policy, or a corporate officer of similar or higher rank having authority to make the verification, indicating either acceptance or non-acceptance of the Colorado Performance Assurance Plan contained in this decision and its Attachments and approved by the Commission. The Qwest verified statement shall state clearly and unambiguously whether Qwest accepts the CPAP contained in this decision and its attachments.

3. Time Warner filed an objection to the decision of the hearing commissioner remanding the four specific areas of the CPAP to the Special Master. That motion is denied as moot.

4. Sua Sponte, we will strike the phrase in § 10.1 that reads "Beginning 60 days after the Commission's adoption of this CPAP," as extraneous. Qwest has provided mock reports since December, 2001 and is required to continue to do so as ordered in R01-1142-I. These reports should now incorporate the decisions in this order as applicable. Once Qwest receives FCC approval from the FCC for Colorado, actual payments to the State and the Special Fund shall begin.

ORDER is effective immediately on its

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 26

CONTINUATION

[6]

COLORADO PERFORMANCE ASSURANCE PLAN RECOMMENDED SGAT LANGUAGE

1.0 Introduction

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

2.0 Plan Structure

2.1 The CPAP is a tiered remedy plan. Qwest shall be subject to self-executing payments to CLEC for Tier 1 submeasures, identified in Appendix A, which generate both Tier 1X and 50% of Tier 1Y payments (described in Sections 7.0 and 8.0). Qwest shall be subject to self-executing payments to the Tier 2 Special Fund for the following: (1) Tier 2 submeasures (identified in Appendix A), (2) Tier 1Y payments not owed to the CLEC (described in Section 8.3), and (3) payments for missing Tier 1A or Tier 1B submeasures by more than 50% (described in Section 10.3).

3.0 Performance Measurements

3.1 The performance standards for each measure and submeasure are identified in Appendix A. This Appendix A places the Performance Indicator Definitions ("PIDs") in Tier 1A, Tier 1B, Tier 1C or Tier 2.

4.0 Statistical Methodology

4.1 Qwest will be in conformance with Tier 1A, Tier 1B, Tier 1C and Tier 2 benchmark submeasures 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.

4.2 For Tier 1B and Tier 1C parity submeasures, 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 CLEC. For the purpose of this Section, the Qwest results will be the Qwest monthly retail results as specified in the PIDs filed with the CPAP as approved by the Colorado Public Utilities Commission ("Commission"). The modified z-test shall be applicable if the CLEC sample size is greater than or equal to 30 for a given submeasure. For testing submeasures for which the sample size is less than 30,

COLORADO PERFORMANCE ASSURANCE PLAN RECOMMENDED SGAT LANGUAGE

1.0 Introduction

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

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2.1 The CPAP is a tiered remedy plan. Qwest shall be subject to self-executing payments to CLEC for Tier 1 submeasures, identified in Appendix A, which generate both Tier 1X and 50% of Tier 1Y payments (described in Sections 7.0 and 8.0). Qwest shall be subject to self-executing payments to the Tier 2 Special Fund for the following: (1) Tier 2 submeasures (identified in Appendix A), (2) Tier 1Y payments not owed to the CLEC (described in Section 8.3), and (3) payments for missing Tier 1A or Tier 1B submeasures by more than 50% (described in Section 10.3).

3.0 Performance Measurements

3.1 The performance standards for each measure and submeasure are identified in Appendix A. This Appendix A places the Performance Indicator Definitions ("PIDs") in Tier 1A, Tier 1B, Tier 1C or Tier 2.

4.0 Statistical Methodology

4.1 Qwest will be in conformance with Tier 1A, Tier 1B, Tier 1C and Tier 2 benchmark submeasures 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.

4.2 For Tier 1B and Tier 1C parity submeasures, 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 CLEC. For the purpose of this Section, the Qwest results will be the Qwest monthly retail results as specified in the PIDs filed with the CPAP as approved by the Colorado Public Utilities Commission ("Commission"). The modified z-test shall be applicable if the CLEC sample size is greater than or equal to 30 for a given submeasure. For testing submeasures for which the sample size is less than 30,

Qwest will use a permutation test to determine the statistical significance of the difference between Qwest and CLEC results.

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

$$Z = \text{DIFF} / \sigma_{\text{DIFF}}$$

Where:

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

M_{Qwest} = Qwest average or proportion

M_{CLEC} = CLEC average or proportion

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

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

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

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

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., $M_{\text{CLEC}} - M_{\text{Qwest}}$.

4.3 For parity submeasures where the number of data points is less than 30, 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, 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 randomly subdivided 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 (alpha), the significance level of the test, the hypothesis of no difference is not rejected, and the test is passed. Alpha = 0.05. For

individual month testing for performance measurements involving LIS trunks and DS-1 and DS-3 that are Unbundled Dedicated Interoffice Transport, Resale, or Unbundled Loops (performance measurements: OP-3D/E, OP-4D/E, OP-5, OP-6-4/5, MR-5A/B, MR-7D/E, and MR-8) with sample sizes of 1-10, $\alpha = 0.15$. When performance submeasures disaggregate to zone 1 and zone 2, the CLEC volumes in both zones shall be combined for purposes of statistical testing.

5.0 Critical Z-Value

5.1 The following table shall be used to determine the Critical z-value for Tier 1B and Tier 1C parity submeasures when the CLEC sample size is greater than or equal to 30. It is based on the monthly business volume of the CLEC for the particular performance submeasures for which statistical testing is being performed.

TABLE 1: CRITICAL Z-VALUE

CLEC volume (Sample size)	Critical Z-Value
30-150	1.645
151-300	2.0
301-600	2.7
601-3000	3.7
3001 and above	4.3

5.2 When the CLEC sample size is greater than or equal to 30, Qwest's performance to a CLEC for a Tier 1B or Tier 1C parity submeasure will be considered conforming in a month when the z-score calculated pursuant to Section 4.2 is equal to or less than the appropriate critical z-value identified in Section 5.1, Table 1.

6.0 Tier 1A Parity Calculations

6.1 For Tier 1A, which includes the measures that are most critical and most likely to be relied on most heavily by smaller competitors, the average performance Qwest gives CLEC in the current month shall be compared to the average of prior six months retail performance, subject to a variance factor (standard performance). The average retail performance over the prior six months shall be calculated by summing the six individual monthly numerator values and dividing that amount by the sum of the six individual monthly denominator values. The variance factor shall modify that standard average according to the variance table listed below in Table 2. This table captures the variability of the data and seeks to minimize the impact of smaller sample sizes on the ultimate calculation.

TABLE 2: VARIANCE FACTORS

CLEC volumes	OP-3 LIS	OP-3 UBL ¹	OP-4 LIS	OP-4 UBL ¹	OP-6 LIS	OP-6UBL	OP-5	NP-1 ¹
1-5	25	25	18	14	24	28	20	
6-15	18	18	12	10	16	18	12	
16-22	16	14	9	8	15	15	10	
23-30	15	13	8	7	14	14	9	
31-40	13	11	7	7	12	12	8	
41-60	11	9	6	6	10	10	7	
61-90	9	7	5	6	8	8	6	
91-150	5	5	4	5	6	6	5	
151-300	5	4	3	4	4	4	4	
301-500	4	3	2	3	3	3	3	
501-1000	3	2	2	2	2	2	2	
1001-1500	2	1	1	1	1	1	1	
1501-2000	1	0.5	0.5	0.5	0.5	0.5	0.5	
2000+	0	0	0	0	0	0	0	
Measure Type	%	%	Days	Days	Days	Days	%	
Modification	Subtract	Subtract	Add	Add	Add	Add	Subtract	
CLEC volumes	MR5-LIS	MR5-UBL ²	MR6-LIS	MR-6-UBL	MR7 ³	MR-8 ³	PO-9b	NI-1 ⁴
1-5	22	28	220	500	28	28	20	0.64
6-15	16	18	180	300	18	18	12	0.64
16-22	15	15	150	220	15	15	10	0.64
23-30	14	14	130	200	14	14	9	0.64
31-40	13	12	110	160	12	12	8	0.64
41-60	11	10	90	150	10	10	7	0.64
61-90	9	8	70	140	8	8	6	0.53
91-150	7	6	60	130	6	6	5	0.42
151-300	5	4	50	120	4	4	4	0.31
301-500	4	3	40	110	3	3	3	0.23
501-1000	3	2	30	100	2	2	2	0.17
1001-1500	2	1	20	50	1	1	1	0.11
1501-2000	1	0.5	10	25	0.5	0.5	0.5	0.05
2000+	0	0	0	0	0	0	0	0
Measure Type	%	%	Mins	Mins	%	%	%	%
Modification	Subtract	Subtract	Add	Add	Add	Add	Subtract	Add
CLEC volumes	OP-5 L/S	OP-6 L/S	MR-3 L/S	MR-6 L/S	MR-7 L/S	MR-11	MR-12	
1-5	22	12	22	500	25	16	500	
6-15	17	6	12	400	18	9	300	
16-22	13	5	9	300	14	7	250	
23-30	11	4	8	250	12	6	200	

10-40	10	3	6	200	10	5	175
41-60	8	3	5	175	8	4	150
61-80	7	2	4	150	7	3	125
81-100	5	2	4	125	5	2	100
101-120	4	1	3	120	4	2	75
121-140	3	1	2	90	3	1.5	50
141-160	2	.7	1.5	60	2	1	40
161-180	1.5	.6	1	30	1.5	.75	25
181-200	1.25	.5	.75	25	1.25	.5	15
201-220	1	.25	.5	20	1	0	0

Measure Type	%	Days	%	Mins	%	%	Mins
Measurement	Add	Add	Subtract	Add	Add	Subtract	Add

* Except Analog, 2-wire non-loaded, and ADSL qualified loops.

* MR3-UBL's variance table also applies for MR3-UBL calculations.

* MR3-UBL's column applies both for LIS trunks and Unbundled Loops (UBL)

* On 11-1, the variance table only applies in instances where the parity comparison applies – i.e., Qwest's tracking rates exceed 1%, as the appropriate comparison for that measurements is the retail analog or a 1% standard, whichever is higher.

* The first failure will not result in any penalty. Each subsequent failure will constitute a "miss" for purposes of triggering a payment.

6.2 For any Tier 1A benchmark performance submeasure where the CLEC volume is 10 or below, Qwest shall be allowed to miss one occurrence before being subject to any payments for non-conforming performance. That is, if CLEC volume is ≤ 10 and the number of occurrences is ≤ 1 there is no payment made. For all Tier 1A parity performance submeasures with sample sizes of 1-30, Qwest shall calculate and report payments based upon both the Table 2 variance factors and the permutation test as set out in Section 4.3. CLEC shall receive the higher of the payment based upon variance factors or the payment based upon permutation testing.

6.3 Qwest's performance to a CLEC for a Tier 1A submeasure will be considered conforming in a month when the CLEC performance result is better than or equal to the Qwest standard performance result as defined in Section 6.1.

6.4 For any Tier 1A measure where variance factors have not been developed or where there are insufficient data to develop such factors, the relevant measures shall rely on the same statistical methodology used for Tier 1B and Tier 1C, as set forth in Sections 4.0 and 5.0 of this Plan, to determine performance results.

7.0 Tier 1X: Calculation of Payments to CLEC for Tier 1A, 1B and 1C Submeasures

7.1 Unless otherwise specified in this Section 7.0 or in Appendix A, payments to CLEC under the CPAP are to be made on a per occurrence basis. The formulas set forth below shall be used to determine the total number of occurrences upon which Qwest is required to make payments to CLEC.

For percentage submeasures, the CPAP uses the following formula:

$$\text{CLEC Occurrences} = \text{Absolute value of (CLEC result - standard)} \\ \text{multiplied by CLEC volume.}$$

For interval submeasures, the CPAP uses the following formula:

$$\text{CLEC Occurrences} = \text{Absolute value of ((CLEC result - standard)/standard)} \\ \text{multiplied by CLEC volume.}$$

For the above formulas, for Tier 1A parity submeasures, the standard is the average of the prior six months retail performance adjusted by the relevant variance factor in Section 6.1, Table 2. For Tier 1B and Tier 1C parity submeasures, the standard is the current month retail performance, as adjusted for sample size and variance in accordance with Sections 4 and 5. For Tier 1A, Tier 1B and Tier 1C submeasures with a benchmark, the standard is the benchmark.

7.2 For interval submeasures, the number of occurrences shall not exceed the CLEC volume for the particular submeasure.

7.3 If Qwest fails to meet the applicable standard for Tier 1 submeasures, Qwest shall make a per occurrence payment to CLEC as specified in Table 3 below, unless different payment provisions for the applicable Tier 1 submeasure are set forth in Appendix A.

TABLE 3: PER OCCURRENCE PAYMENT AMOUNTS

Tier 1A	\$ 225.00
Tier 1B	\$ 75.00
Tier 1C	\$ 25.00

7.4 To account for the severity of a missed standard, the base payment shall be multiplied by the factor in Table 4 according to the following formula:

$$\text{Base Payment} = (\text{per occurrence payment}) \times (\text{occurrences}) \\ \text{Total Payment} = (\text{base payment}) \times (\text{severity multiplier})$$

The severity multiplier for each measure is obtained by calculating the difference between the CLEC result and the standard performance for that measure, and then looking up the multiplier on Table 4. For Tier 1A, the standard performance is the average of prior six month retail performance with the variance calculation. For Tier

1B and 1C, the standard performance is the current month retail performance. For FIDs that do not have retail equivalents, the benchmark targets shall be used.

The severity penalty shall be derived from the base payment even where the monthly payment has been increased under the minimum payment rule or the additional penalty for ongoing poor performance.

TABLE 4

For Percentage measures		For Interval Measures	
Between	Multiplier	CLEC Performance*	Multiplier
0-4.99%	1	$1 < x < 2$	1.1
5%-9.99%	1.1	$2 \leq x < 3$	1.2
10-14.99%	1.2	$3 \leq x < 4$	1.3
15-19.99%	1.3	$4 \leq x < 5$	1.4
20-24.99%	1.4	$5 \leq x < 6$	1.5
25-29.99%	1.5	$6 \leq x < 7$	1.6
30-34.99%	1.6	$7 \leq x < 8$	1.7
35-39.99%	1.7	$8 \leq x < 9$	1.8
40-44.99%	1.8	$9 \leq x < 10$	1.9
45-49.99%	1.9	$10 \leq x < 11$	2.0
50-54.99%	2.0	$11 \leq x < 12$	2.1
55-59.99%	2.1	$12 \leq x < 13$	2.2
60-64.99%	2.2	$13 \leq x < 14$	2.3
65-69.99%	2.3	$14 \leq x < 15$	2.4
70-74.99%	2.4	$15 \leq x < 16$	2.5
75-79.99%	2.5	.	.
80-84.99%	2.6	.	.
85-89.99%	2.7	.	.
90-94.99%	2.8	$39 \leq x < 40$	4.9
95%-100%	2.9	40 or over	5

*calculated in days or hours, depending on measure

7.5 Geographically, all measures should only include Colorado statistics. For purposes of reporting, the data will be displayed in the most granular disaggregation possible and will be rolled up to overviews as appropriate. For purposes of minimum payments, a "measure" shall be the highest level of aggregation, i.e. PO-5, OP-4, MR-4, and so forth. For purposes of severity and duration penalties (Tier 1Y), a "measure" shall be at the most granular level of disaggregation, except where otherwise specified. For purposes of statistical comparison and occurrence calculation, a "measure" shall be at the most granular level of disaggregation, except where otherwise specified. If it turns out that CLECs seem to have data that are spread out over the disaggregated "sub-measures" in such a way that this approach leads to consistently small sample sizes (less than 10 in particular, but less than 30 will be considered), yet there is a way in which the samples could be effectively

aggregated to create more meaningful sample sizes, then the Commission will consider aggregation during the six-month review.

8.0 Tier 1Y: Calculation of Payments

8.1 Qwest's non-conforming performance for Tier 1 submeasures shall be subject to escalating per occurrence payments. For Billing measures in Tier 1C, duration escalation is subject to a \$5,000 per measure cap in month one, increasing by a maximum of \$5,000 per month to a maximum per measure cap of \$30,000. The duration function does not include the severity factor calculated in Tier 1X when doubling (or tripling, etc.) the base payment.

8.2 The second continuous month of non-conforming performance for a particular submeasure will require the total per occurrence payment before severity to be multiplied by two. On the third continuous month, the total per occurrence payment before severity will be multiplied by three. The escalation will proceed along these lines until Qwest's wholesale performance meets the relevant standard. At that point (i.e., on the first month of acceptable performance following non-conforming performance), Qwest's per occurrence payment shall "step down" to the next level. If Qwest's next month's performance does not meet the applicable standard for the same submeasure, the payment will remain at the stepped down level and will then step up again if the non-conforming performance continues the following month. Alternatively, if Qwest's performance for the submeasure continues to conform to the standard, the per occurrence payment will step down each month until it reaches the original per occurrence payment.

8.3 For the first 12 months of escalated payments on a particular submeasure discussed in Section 8.2 above, Tier 1Y payments shall be divided between the CLEC and the Tier 2 Special Fund. Fifty percent (50%) of Tier 1Y payments shall be paid to CLEC, and 50% of Tier 1Y payments shall be paid to the Special Fund, as set forth in Section 10.4. If the escalation payments for a particular submeasure continue for more than 12 months, the escalation payments owed to the CLEC will be fixed at 50% of the 12 month level. This fixed amount will continue until Qwest's satisfactory performance for that submeasure results in Qwest paying at the 11 month level. At that point, the process in Section 8.2 will apply. All amounts in excess of the CLEC payments for month 12 will be paid to the Special Fund.

9.0 Minimum Payments to CLEC

9.1 For smaller CLECs, there is a minimum per measure payment for Tier 1A of \$600 and for Tier 1B of \$300. If the otherwise applicable payment is below this amount, the minimum payment shall apply. If the measure is one which falls into Tier 1A for some products, and Tier 1B for other products, and if any of the violations incurred that month for that measure were in Tier 1A, then the Tier 1A minimum payment shall apply rather than the 1B payment. In any month in which no payment is owed, the minimum payment will not apply.

9.2 For purposes of minimum payments, a smaller CLEC is a CLEC with less than or equal to 100,000 lines in service in Colorado (of whatever type – facilities-based, resale, UNE loops (including shared lines) and so forth). Upon adopting the CPAP and at six month intervals after that, a CLEC must certify to the Commission, with notification to Qwest, that it should be designated as a smaller CLEC in order to benefit from the minimum payment. Any CLEC that does not certify that it is below the minimum lines in service requirement shall not be eligible for the minimum payment.

10.0 Tier 2 Payments to the Special Fund

10.1 Tier 2 performance submeasures and corresponding base payments are set forth in Appendix A.

10.2 Tier 1Y payments not owed to the CLEC (as described in Section 8.3) shall be considered Tier 2 payments, and shall be paid to the Tier 2 Special Fund.

10.3 When an individual submeasure in either Tier 1A or Tier 1B, using CLEC aggregate results, is missed by at least 50% of the applicable standard for two or more consecutive months, Qwest shall pay to the Tier 2 Special Fund \$25,000 for each Tier 1A submeasure missed and \$8,000 for each Tier 1B submeasure missed. A Tier 1A miss shall be determined with CLEC aggregate results by comparing the method identified in Section 6.1 using the variance factors in Table 2 and the variance factors in Table 5 below.

TABLE 5: VARIANCE FACTORS (WITH ONE FREE MISS RULE)

CLEC volumes	OP-3 LIS	OP-3 UBL ¹	OP-4 LIS	OP-4 UBL ¹	OP-6 LIS	OP-6UBL
1-5	21	18	15	10	20	20
6-15	17	15.5	11	8.5	16	16
16-22	16	14	9	8	15	15
23-30	15	13	8	7	14	14
31-40	13	11	7	7	12	12
41-60	11	9	6	6	10	10
61-90	9	7	5	6	8	8
91-150	5	5	4	5	6	6
151-300	5	4	3	4	4	4
301-500	4	3	2	3	3	3
501-1000	3	2	2	2	2	2
1001-1500	2	1	1	1	1	1
1501-2000	1	0.5	0.5	0.5	0.5	0.5
2000+	0	0	0	0	0	0
Measure Type	%	%	Days	Days	Days	Days

Modification	Subtract	Subtract	Add	Add	Add	Add		
CLEC volumes	MR5-LIS	MR5-UBL ²	MR6-LIS	MR6-UBL	MR7 ³	MR-8 ³	PO-9b	NI-1 ⁴
1-5	18	20	180	300	20	20	14	0.64
6-15	16	16	180	240	16	16	12	0.64
16-22	15	15	150	220	15	15	10	0.64
23-30	14	14	130	200	14	14	9	0.64
31-40	13	12	110	160	12	12	8	0.64
41-60	11	10	90	150	10	10	7	0.64
61-90	9	8	70	140	8	8	6	0.53
91-150	7	6	60	130	6	6	5	0.42
151-300	5	4	50	120	4	4	4	0.31
301-500	4	3	40	110	3	3	3	0.23
501-1000	3	2	30	100	2	2	2	0.17
1001-1500	2	1	20	50	1	1	1	0.11
1501-2000	1	0.5	10	25	0.5	0.5	0.5	0.05
2000+	0	0	0	0	0	0	0	0
Measure Type	%	%	Mins	Mins	%	%	%	%
Modification	Subtract	Subtract	Add	Add	Add	Add	Subtract	Add

¹ Except Analog, 2-wire non-loaded, and ADSL qualified loops.

² MR-5 UBL's variance table also applies for MR3-UBL calculations.

³ MR-7 & 8's column applies both for LIS trunks and Unbundled Loops (UBL)

⁴ On NI-1, the variance table only applies in instances where the parity comparison applies -- i.e., Qwest's blocking rates exceed 1%, as the appropriate comparison for that measurement is the retail analog or a 1% standard, whichever is higher.

When the variance factors in Table 5 are used, for any performance submeasure where the CLEC volume is ten or below, a performance submeasure will not be considered missed for the purposes of Section 10.3 until the number of payment occurrences is >1 (the one free miss rule). If the method of determining conformance in Section 6.1 using the variance factors in Table 2 or the variance factors in Table 5 with the one free miss rule results in a conclusion of conformance, then for the purposes of Section 10.3, the performance measurement is considered met. If both methods described in this Section result in a performance measurement miss, Qwest's payment obligation, if any, in this Section shall be the lesser of the payment amounts determined using the two methods.

10.4 All Tier 2 payments (including Tier 1Y payments not owed to the CLEC, as set forth in Section 8.3), any special payments assessed by the Monitor, and the 50% share of payments for inaccurate reporting not self-corrected by Qwest) shall be paid into a Special Fund that Qwest shall keep in an interest-accruing bank account ("Tier 2 Special Fund" or "Special Fund").

10.5 This Special Fund shall pay for the Independent Monitor at least until the first three-year review. When there are insufficient funds in the Special Fund for this purpose, Qwest shall advance the necessary funds.

10.6 Other potential uses for this fund include: paying a technical advisor for the Commission's CPAP Revision process; paying a consultant for the three-year review; and, if the Commission so decides, paying for additional audits of Qwest's performance measurement and reporting, and paying other administrative expenses.

10.7 Upon implementation of the CPAP, the Commission shall decide how to use the remainder of this fund. The uses shall be competitively neutral efforts in the telecommunications field that do not benefit Qwest directly.

11.0 Cap on Tier 1 and Tier 2 Payments

11.1 There shall be an annual cap of \$100 million on payments for performance under the CPAP. The cap shall apply to Tier 1X, Tier 1Y, and Tier 2 payments as explained in Section 11.3.

11.2 The following shall not count toward the annual cap: any penalties imposed by the Independent Monitor to maintain the integrity of the CPAP; any penalties imposed by the Commission; any penalties imposed directly by the CPAP for failure to report, failure to report timely, or failure to report accurately; any liquidated damages under another Interconnection Agreement; any interest payments; and any damages in an associated action.

11.3 Tier 1Y and Tier 2 penalties shall be subject to a monthly cap of 1/12 of the annual cap of \$100 million. Following is a description of how the monthly cap shall work:

If the total payments (Tier 1X, 1Y, 2) do not exceed the monthly cap, Qwest shall make all payments.

If the total payments (Tier 1X, 1Y, 2) do exceed the monthly cap, Qwest shall pay all Tier 1X payments (even if they alone exceed the monthly cap). Other than Tier 1X and payments specified in Section 11.2, Qwest shall not make payments in excess of the monthly cap. The balance in excess of the monthly cap shall roll forward and be paid when Qwest's total monthly penalties are below the monthly cap, whenever that occurs (even if that should take longer than a year).

In a month in which Qwest's total payment is below the monthly cap, any deferred payments plus interest will be due, but only to the extent that the deferred payments do not cause the total monthly payment to exceed the monthly cap. In the event all Tier 1Y and Tier 2 payments cannot be made in any month due to the monthly cap, Qwest will pay Tier 1Y payments first (up

to the monthly cap) and then, from the remaining money, pay Tier 2 payments (up to the monthly cap).

The deferred payments shall be paid with interest on the relevant amount. The interest rate shall be equal to twice the Commission prescribed customer deposit rate.

If Qwest wishes to make any Tier 1Y and Tier 2 payments over and above the monthly cap in order to avoid paying interest on the deferred amount, it may do so.

11.4 If Qwest payments equal or exceed the annual cap for two years in a row or equal or exceed 1/3 of the annual cap in a combination of two consecutive months, the Commission shall have the authority to open a proceeding to request Qwest to explain the non-conforming performance and show that it did not result from Qwest's failure to avoid reasonably foreseeable risks. If the Commission concludes that Qwest failed to act in a prudent manner to avoid reasonably foreseeable consequences, the Commission may raise the cap to the amount which Qwest would have paid in the higher of the prior two years, may ask the Federal Communications Commission ("FCC") to halt Qwest's long distance marketing authority for a particular interval, may levy a fine, and/or may take other appropriate action.

12.6 Timing and Form of Payment

12.1 All Tier 1 payments to CLEC and all Tier 2 payments to the Special Fund shall be made on the last business day of the month following the due date of the performance measurement report for the month for which payment is being made.

12.2 All payments shall be in cash. Qwest shall be allowed, after obtaining the individual agreement of CLEC, to make such cash payments through the use of electronic fund transfers to CLEC and the Special Fund. However, once Qwest and CLEC agree on a method of payment (*i.e.*, wire transfer or check), Qwest shall not change the method of payment without the permission of CLEC. Qwest shall be able to offset cash payment to CLEC with a bill credit applied against any non-disputed charges that are more than 90 days past due.

12.3 Qwest shall provide monthly payment information at the same time that the performance reports are due. Monthly payment information shall include the payment calculations.

12.4 In the case of late payments, Qwest shall pay interest to CLEC and to the Special Fund, as applicable, calculated at twice the Commission prescribed customer deposit rate, on the amount in question. Should Qwest demonstrate to the relevant CLEC or to the Independent Monitor that it overpaid, it shall be able to deduct from future payments any past overpayment, along with interest calculated at the Commission prescribed customer deposit rate for the amount in question.

13.0 Reporting

13.1 Qwest will provide the Commission and CLECs opting into the CPAP with a monthly report of Qwest's performance for the PIDs. These reports shall contain any carry-over payment amounts and calculations as well as the current month's information. Qwest will collect, analyze, and report performance data for these PID measurements. Qwest will store such data in easy-to-access electronic form for three years after they have been produced and for an additional three years in an archived format. Any failure to follow these requirements shall be treated as a violation of the CPAP integrity requirements discussed in Sections 17.5 and 17.8.

13.2 On or before the last business day of each month following the relevant performance period, Qwest shall post the individual CLEC monthly reports to a secure part of the CPAP website and the aggregate state report to the public part of the CPAP website. In addition, Qwest must officially file with the Commission, one hard copy and one electronic copy in an Excel format, of all CLEC individual monthly reports under seal and one hard copy and one electronic copy in an Excel format of the state aggregate report in the public file. If CLEC requests a hard copy of its individual report, Qwest should make that hard copy available at no cost to CLEC.

13.3 In the case of late reporting, Qwest shall make a payment to the Special Fund of \$500 per calendar day for each day the report is late. This amount represents the total payment for missing a reporting deadline, rather than a payment per report and does not count against the cap described in Section 11.1. This payment shall begin on the report due date and continue until the report is actually distributed.

13.4 If any inaccurate reporting is revealed by any annual audit, Commission audit or mini-audit, Qwest shall make any payments due to the CLEC as a result of the inaccurate reporting plus an additional payment of 50% of the amount due as a result of the underpayment. Half of the 50% payment shall be paid into the Tier 2 Special Fund, and half shall be paid to the CLEC.

13.5 In addition to the Section 13.4 payment, if as a result of an inaccurate report, any bill over \$25,000 is adjusted upwards by 25% or more, Qwest shall also incur a late reporting payment as set forth in Section 13.3. This payment shall begin on the report due date and shall continue until the day the discrepancy is resolved.

13.6 If a discrepancy is revealed solely by Qwest, and Qwest self-corrects the discrepancy prior to the monthly payment being due, no additional liability shall be assessed. If Qwest self-corrects the erroneous reports before an audit on the relevant measurements in question begins but after the relevant payment is made, it shall be responsible for paying the additional amount owed due to the non-conforming performance as well as interest on this amount at the rate of two times the Commission prescribed customer deposit rate.

13.7 If a discrepancy is revealed by a Qwest-CLEC data reconciliation process or any other inquiry, Qwest shall pay the additional amount owed as well as interest on any late additional amount at the rate of three times the Commission prescribed customer deposit rate.

13.8 If a Qwest-CLEC data reconciliation process forces Qwest to adjust its payment upwards three months in a row, Qwest must pay the additional amount and an additional penalty to Tier 1Y as if the discrepancy had been revealed by an audit (see Section 14.12) for that third month and for each consecutive month that the CLEC reveals additional payments via data reconciliation.

13.9 If a Qwest-CLEC data reconciliation process forces Qwest to adjust its payment upward five times in a calendar year, Qwest must pay the additional amount and an additional penalty to Tier 1Y as if the discrepancy had been revealed by an audit for that fifth month and for all other months in that calendar year that the CLEC reveals additional payments via data reconciliation.

14.0 Audits of Performance Results

14.1 Qwest shall carefully document any and all changes that Qwest makes to the Performance Measurement and Reporting System. This change log shall be displayed on a public website dedicated to the CPAP. The Performance Measurement and Reporting System is defined to include at least: elements of Qwest's Regulatory Reporting System that constitute the data collection programs (*i.e.*, the software code used by Qwest to determine which data fields are used and how they are used), the underlying data extracted by the data collection programs and data reference tables (*e.g.*, USOC tables, wire center tables, *etc.*, used in the calculation of measurements), the data staging programs (programming code used to organize and consolidate the data), the calculation programming (the code used to implement the formula defined for a measurement), and the report generation programs (including the report format and report file creation). This change log shall contain, at a minimum, a detailed description of the change (in plain English); the effects of the change, the reason for the change, the dates of notification and of implementation, and whether the change received Commission approval. Qwest shall also record if the change is fundamental or non-fundamental (see Sections 14.2 and 14.3).

14.2 Qwest shall be allowed to change the Performance Measurement And Reporting System as defined in Section 14.1 in ways that are non-fundamental (*i.e.*, system changes for which the relevant performance data can be replicated under the old approach) without preapproval, but shall promptly record these changes on the change log. Omitted or inaccurate changes shall result in Qwest being required to pay a \$2500 fine, plus interest at the Commission prescribed customer deposit rate accrued from the time the change took effect. The payment shall go to the Tier 2 Special Fund and does not count against the annual cap described in Section 11.1.

14.3 Before making any changes to the Performance Measurement and Reporting System in a manner whereby the relevant data cannot be reconstructed under the prior approach (i.e., a fundamental change to its measurement system), Qwest shall record the proposed change to the change log and notify the Auditor retained for the purpose of auditing performance measurements under this CPAP to request an evaluation of the proposed change. The Auditor will evaluate the impact of the proposed change and report, in writing, the results of that evaluation to the Commission and Qwest. Qwest shall immediately post the Auditor's report on the public CPAP website. Upon receiving the report of the impact evaluation from the Auditor, the Commission shall have 15 days to take action to prevent Qwest from making such change and to decide on a process for resolving the issue. During the first seven day period following the filing and recording of the Auditor's report, interested parties may file comments on the proposed change and Auditor's report. If the Commission takes no action on the issue during the 15 day period, Qwest shall be free to make the proposed change.

If Qwest makes a fundamental change pursuant to this Section without obtaining approval, it shall be liable for \$100,000 payable to the Special Fund. If Qwest cannot reproduce reliable performance data, the Independent Monitor shall determine what payments are due based upon the data collected by the affected CLECs along with any appropriate interest and late payment penalties.

14.4 Qwest shall keep a record of all exclusions (i.e., those allowed by the PIDs, authorized by the Commission or otherwise excluded for any reason) and of each basis for each exclusion. Such records shall be kept in easy-to-access electronic format for three years and an additional three years in an archived format.

14.5 As part of the data reconciliation process, CLEC shall have the right to request access to the raw, excluded data and business rules or other basis relied upon by Qwest to exclude the data from the most recent month's report. The records and data must be turned over, in a mutually-agreeable format within two weeks of the request.

14.6 An independent audit of the results of the performance submeasures identified in Appendix A and the financial payments calculated based upon Qwest's performance results shall be performed annually. The first audit shall begin one year after the effective date the CPAP, and the second and third annual audits shall begin one year after the completion of the prior year's audit. Qwest shall pay for the first three audits; thereafter, the Commission shall determine whether the audits shall be paid by the Special Fund or by Qwest. The annual audit shall encompass both the performance reports and payment amounts. The audit shall include at least the following: (1) problem areas requiring further oversight as identified in the previous audit(s); (2) any submeasures changed or being changed from a manual to electronic system; (3) the accuracy of the measurements and reports designated in Tier 1A; (4) submeasures responsible for 80% of the payments paid by Qwest over the prior year (to the extent that they are not covered by the Tier 1A audit); and (5) whether Qwest

is exercising a proper duty of care in evaluating which, if any, performance results can be properly excluded from its wholesale performance requirements.

14.7 A thorough scrutiny of Qwest's measurement and reporting system shall not be required for the annual audit. If, after examining the structure of the performance and measurement system, receiving input from CLECs, examining exclusions made by Qwest, and evaluating the nature of any changes, as well as some representative examples, the Auditor can confidently conclude that the measurement and reporting system is reliable, the Auditor need not perform a more extensive audit.

14.8 The Auditor shall be chosen by the Commission, with input from Qwest, CLECs, and other interested persons. The Auditor shall perform all of the auditing functions described above for the first three years. Any interested person may petition the Independent Monitor to disqualify the Auditor based upon gross neglect of duties, incompetence, or a significant conflict of interest. The Auditor shall respond to the petition within a reasonable time. The Independent Monitor shall then be authorized, in its discretion, to open a proceeding to consider the petition for disqualification.

14.9 CLEC may request a mini-audit of the performance measurement results covering Qwest's performance to CLEC for any submeasures. However, a CLEC will not be allowed to commence such an audit unless and until (1) CLEC has requested access to the raw data and business rules and attempted to meet with Qwest to attempt data reconciliation for any discrepancies by presenting its own version of the data calculation and comparing it to Qwest's to demonstrate the areas in which Qwest allegedly erred, and (2) Qwest and CLEC are unable to reach agreement about any alleged discrepancy through the Qwest-CLEC data reconciliation process. Qwest must provide the necessary expertise and work in good faith to attempt to answer CLEC concerns. Qwest's experts must be available for requested meetings to take place within 10 business days of the CLEC request, but Qwest may attempt to resolve the issue over the phone or via email before holding a face-to-face meeting.

14.10 Upon CLEC request, data files of the CLEC raw data, or any subset thereof, and business rules or other basis used to generate the reports as part of the data reconciliation process will be transmitted, without charge, to CLEC, within two weeks of the request, in a mutually acceptable format, protocol, and transmission medium.

14.11 The scope of the mini-audit allowed under this CPAP is limited to the relevant measures and submeasures that were the subject of and determined to be suspect, through the Qwest-CLEC data reconciliation process.

14.12 The mini-audit shall be conducted by the Auditor designated for annual audits, unless CLEC demonstrates to the Independent Monitor good cause that another entity should perform the mini-audit. CLEC shall pay the Auditor's fees and expenses, and CLEC and Qwest shall bear their own costs. If a mini-audit identifies a non-conformance that materially affects the results (material being defined as a

deficiency that requires an additional payment of at least 10% more than the total amount paid on the submeasures examined by the mini-audit) by Qwest, Qwest shall pay the Auditor's fees and expenses. In addition, Qwest shall resolve the identified problems and shall pay any applicable payments under the late payment provisions. Qwest shall also pay other CLECs any appropriate payments and penalties based on problems uncovered in the mini-audit. If the Auditor does not identify any non-conformance, CLEC shall not be allowed to request another mini-audit during the six months after the initial mini-audit request; however, CLEC is nevertheless permitted to request Qwest-CLEC data reconciliation during that time.

14.13 If CLEC proves to the Independent Monitor via the dispute resolution process that Qwest did not work in good faith to resolve the issues prior to the initiation of a mini-audit, the Independent Monitor can shift the Auditor's fees and expenses to Qwest, and the six-month moratorium on mini-audits shall then be waived.

14.14 The Commission reserves the right to choose to conduct an audit itself, with the assistance of an outside Auditor if it chooses. Such an audit shall be paid for through the Special Fund. If the audit reveals any material non-conformance (as defined above) in Qwest's performance reporting, Qwest shall reimburse the costs of the audit and, where appropriate, shall make applicable payments to CLECs or Special Fund as described above.

15.0 Waiver of Payments

15.1 Qwest may seek a waiver of the obligation to make payments pursuant to this CPAP by seeking an exception from the Independent Monitor on any of the following grounds:

- (1) Force majeure, as defined in SGAT Section 5.7 (as to benchmark standards, but not as to parity submeasures);
- (2) A work stoppage (as to benchmark standards, but not as to parity submeasures);
- (3) An act or omission by CLEC that is in bad faith and designed to "game" the payment process; or
- (4) A material failure by CLEC to follow the applicable business rules.

15.2 Any waiver request must contain an explanation of the circumstances that justify the waiver, and any and all relevant documentation relied upon to support the request. To establish that the circumstances warrant granting of a requested waiver, Qwest must show the existence of those circumstances by a preponderance of the evidence. For any such action, Qwest shall be required to pay the disputed credits or place the disputed amount of money into an interest-bearing escrow account until the matter is resolved. CLEC must respond to any such waiver requests within 10

business days and the Independent Monitor shall have 10 business days after the response is filed to rule on the requested waiver, subject to review by the Commission as specified by the Dispute Resolution Process in Section 17.0.

16.0 Limitations

16.1 The payments imposed by the CPAP shall not become available in Colorado until the first day of the second month after Qwest receives Section 271 authority for the State of Colorado. Each CLEC shall have the option of electing the CPAP *in toto* as set forth in this CPAP SGAT or of negotiating an alternative regime with Qwest. The CLECs need not adopt the *Interconnection, Unbundled Network Elements, Ancillary Services, and Resale SGAT* in its entirety in order to adopt the CPAP SGAT. Qwest will not be liable for Tier 1 payments to CLEC until the Commission has approved an interconnection agreement between the CLEC and Qwest which adopts the provisions of this CPAP.

16.2 Qwest's agreement to implement these enforcement terms, and specifically its agreement to make any payments 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. CLEC may not use (1) the existence of this enforcement plan or (2) Qwest's Tier 1 or Tier 2 payments as evidence that Qwest has discriminated in the provision of any facilities or services under Sections 251 or 252 of the Act or has violated any state or federal law or regulation. Qwest's conduct underlying its performance measures, however, is not made inadmissible by this SGAT term. 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 payments under these provisions for the purpose of precluding additional payments or offsetting any payments 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.

16.3 This CPAP contains a comprehensive set of performance submeasures, statistical methodologies, and payment mechanisms that are designed to function together, and only together, as an integrated whole. To elect the CPAP, CLEC must adopt the CPAP in its entirety, into its interconnection agreement with Qwest in lieu of other alternative standards or relief, except as stated in Sections 16.4, 16.6, and 16.7.

16.4 In electing the CPAP, CLEC shall surrender any rights to remedies under state wholesale service quality rules (in that regard, this CPAP shall constitute an "agreement of the parties" to opt out of those rules, as specified in 4 CCR 723-43-10 of those rules) or under any interconnection agreement designed to provide such monetary relief for the same performance issues addressed by the CPAP. The

CPAP shall not limit either non-contractual legal or non-contractual regulatory remedies that may be available to CLEC.

16.5 Whether or not a CLEC opts into the CPAP, Qwest shall be responsible for making payments to the Tier 2 Special Fund including Tier 1Y payments not owed to the CLEC, as set forth in Section 8.3, for the wholesale performance provided to that CLEC.

16.6 Tier 1X and Tier 1Y payments to CLECs are in the nature of liquidated damages. Before CLEC shall be able to file an action seeking contract damages that flow from an alleged failure to perform in an area specifically measured and regulated by the CPAP, CLEC must first seek permission through the Dispute Resolution Process set forth in Section 17.0 to proceed with the action. This permission shall be granted only if CLEC can present a reasonable theory of damages for the non-conforming performance at issue and evidence of real world economic harm that, as applied over the preceding six months, establishes that the actual payments collected for non-conforming performance in the relevant area do not redress the extent of the competitive harm. If CLEC can make this showing, it shall be permitted to proceed with this action. Any damages awarded through this action shall be offset with payments made under this CPAP. If the CLEC cannot make this showing, the action shall be barred. To the extent that CLEC's contract action relates to an area of performance not addressed by the CPAP, no such procedural requirement shall apply.

16.7 If for any reason CLEC agreeing to this CPAP is awarded compensation for the same harm for which it received payments under the CPAP, the court or other adjudicatory body hearing such claim may offset the damages resulting from such claim against payments made for the same harm. Only that relevant finder of fact, and not Qwest in its discretion, can judge what amount, if any, of CPAP payments should be offset from any judgment for a CLEC in a related action.

16.8 If Qwest believes that some Tier 2 payments duplicate payments that are made to the state under other service quality rules, Qwest may make the payments to a special interest bearing escrow account and then dispute the payments via the Independent Monitor. If Qwest can show that the payments are indeed duplicative, it may retain the money (and its interest) that are found to duplicate other state payments. Otherwise the money will go to the Tier 2 Special Fund.

16.9 The Commission shall have the right to modify this plan at any time as appropriate.

17.0 Dispute Resolution Process

17.1 The dispute resolution process specified in this CPAP does not replace or in any way limit, among other things, the processes for resolving interconnection disputes not within the ambit of the CPAP.

17.2 The Commission shall appoint an Independent Monitor to resolve disputes identified in Section 17.5. The salary and expenses of the Independent Monitor shall be paid by the Special Fund. If at any time, the Special Fund does not contain sufficient funds to pay for the Independent Monitor, Qwest shall advance the funds until the Special Fund contains the necessary funds to cover these expenses.

17.3 In the event that any person determines that the Independent Monitor has acted with gross neglect of duties, committed any ethical impropriety, has a significant conflict of interest, or is incompetent to perform the assigned task, the person may contact the Chief Administrative Law Judge (ALJ) of the Commission. The Chief ALJ shall be authorized in its sole discretion to file a petition, to remove the Independent Monitor. The Commission shall rule on the petition within two months, including any hearing that it may hold to resolve disputed facts.

17.4 If the Independent Monitor position is vacant at any time, the parties shall file requests for dispute resolution with the Chief ALJ, who shall then be responsible for fulfilling the duties of the Independent Monitor or designating another ALJ to do so. If the Commission decides during the CPAP Revision Process that it wishes to assign some or all of the Independent Monitor's duties to either the Commission ALJs or to Commission staff persons, it shall be free to do so and the contract with the Independent Monitor shall so provide.

17.5 The Independent Monitor shall be responsible, at least initially, for the following functions, which may be modified by the Commission as it deems appropriate, with input from the parties, and for other responsibilities as set out in the CPAP (see, for example, Section 17.12). The Independent Monitor shall resolve all challenges to the accuracy of any performance measurements or reports, as evaluated through the auditing process in Section 14.0, as well as any disputes over the CPAP integrity requirements (that is, the rules that enable the CPAP to function, such as data collection and retention requirements, maintaining the PIDs as approved, and so forth). If Qwest is repeatedly penalized for failing to meet the performance requirements under any given PID, the Independent Monitor shall have the authority to require Qwest to perform a root-cause analysis. The Independent Monitor shall evaluate, including necessary investigation of, all allegations that Qwest has misinterpreted, wrongly applied, or violated the relevant business rules that govern the applicable payments to be made pursuant to the CPAP. For example, for disputes about whether particular CLEC actions qualify as exclusions from a measure, where such disputes were not settled by the Qwest-CLEC data reconciliation process or an audit, the Independent Monitor shall be authorized to decide what payments should have been made. The Independent Monitor shall also entertain challenges to disqualify the Auditor based upon gross neglect of duties, incompetence, or a significant conflict of interest. The Independent Monitor shall approve or deny permission for a CLEC to bring an overlapping lawsuit for contractual remedies. Finally, the Independent Monitor shall assess any additional penalties under this plan, such as penalties for bringing frivolous disputes.

17.6 The dispute resolution process envisioned by the CPAP provides a means of resolving issues raised by the CPAP reports, payment calculations and processes. This process is akin to the dispute resolution processes that might be established in other Interconnection Agreements, except it applies exclusively to the CPAP.

17.7 The Independent Monitor shall employ a slightly modified version of the Commission's expedited dispute resolution procedure set forth in 4 CCR 723-1-61(k), but if the designated Independent Monitor so chooses, it shall be able to submit any desired material procedural changes to the Commission, which shall solicit comments from all interested persons before making a decision whether to adopt the procedural change. The procedural changes may be limited to a particular dispute or may apply to all future disputes as deemed appropriate by the Commission.

17.8 The CPAP's dispute resolution process shall not be resorted to unless and until the problem is raised at the Vice President – Vice President level at least two weeks before a dispute is submitted to the Independent Monitor. As part of its request for dispute resolution, the party making the request ("complainant") must provide a statement including specific facts that the complainant engaged (or attempted to engage) in good faith negotiations to resolve the disagreement, and that despite these good faith efforts, the parties failed to resolve the issue.

17.9 Insofar as there is a dispute about any business rule or requirement of the CPAP, any ruling issued by the Independent Monitor shall bind all parties unless and until it is reversed or modified by the Commission. If the Independent Monitor's decision is reversed or modified upon review, any payments affected by the Commission's decision must be refunded.

17.10 The Commission's review, while plenary, shall not include consideration of any evidence not presented to the Independent Monitor. Appeals must be filed within five business days of the Independent Monitor's decision, and the opposing party shall have five business days to respond. The Commission shall then have 15 business days to rule on the appeal. A party shall have five business days to seek reconsideration or rehearing and the Commission shall have 10 business days to rule on any such motions. As a term of participation in the CPAP, all decisions after a motion for reconsideration and rehearing are final and shall be appealable to federal court under the standard in the Federal Arbitration Act.

17.11 In all actions before the Independent Monitor, the losing party shall pay all relevant attorney's fees and costs – including monies spent to prove that the problem exists – as determined by the Independent Monitor.

17.12 With regard to requiring payments that were erroneously withheld, the Independent Monitor shall enforce penalties for late payments and inaccurate reporting, as may be applicable. With regard to CPAP integrity requirements, the Independent Monitor shall be able to order the appropriate payments for misreporting

along with the 50% premium, and shall be able to levy an additional payment of up to \$100,000 if the Independent Monitor finds that such action materially affected the payments, was willful, and was taken without any legitimate business justification. Any action by CLEC that materially affects the relevant payments, lacks any legitimate business justification, and can be explained solely as an effort willfully to "game" the CPAP shall be grounds for the Independent Monitor's invalidating all payments received as a result of such actions. In addition, if the Independent Monitor finds it appropriate, CLEC shall be required to pay to Qwest a payment equaling 50% of the amount at issue and shall also be subject to an additional payment amount up to \$100,000. In all actions before the Independent Monitor, the losing party shall pay all relevant attorney fees and costs, including monies spent to prove that the problem exists, as determined by the Independent Monitor.

18.0 Effective Date, Reviews and Termination

18.1 The effective date of the CPAP is the date on which Qwest obtains § 271 approval from the FCC for Colorado. Dates for reviews of the CPAP are calculated from this effective date.

18.2 Reviews of the CPAP occur every six months, commencing with the effective date of the CPAP. Under the six-month CPAP review process, a Commission staff person shall submit a report to the Commission at the five month mark to recommend a series of changes, if any, to the CPAP, noting which of those were agreed to by all parties and which were contested.

18.3 In order to prepare this six-month review report, the relevant Commission staff person (along with any technical advisor the Commission may choose to retain and pay from the Tier 2 Special Fund) shall request feedback on possible changes and shall meet with parties (individually or together) and the Independent Monitor beginning no later than 90 days into the relevant cycle.

18.4 After the Commission staff person submits a six-month review report to the Commission on any suggested changes, parties shall have two weeks to file exceptions to, or comment on, that report. The Commission will rule within four weeks of receiving the parties' exceptions and/or comments on what changes, if any, should be instituted.

18.5 The Commission shall conduct a proceeding to resolve any disputed issues.

18.6 The six-month CPAP review process shall focus on refining, shifting the relative weighing of, deleting, and adding new PIDs; however, the six-month review is not limited to these areas. With the exception of the areas specifically identified in Section 18.7 as eligible for review only at the three-year and six-year reviews, any other part of the CPAP is eligible for review during the six-month CPAP review. After the Commission considers such changes through the six-month process, it shall

determine what set of changes should be embodied in an amended SGAT that Qwest will file in order to effectuate these changes.

18.6.1 If, pursuant to Section 8.2, a PID continues to trigger a payment escalation for six months or more, that PID shall automatically be reviewed during a six-month review pursuant to this Section, in order to determine if there are issues with that PID, such as poor definition, that need to be addressed. In order to minimize this likelihood, the sound practice for introducing PIDs is to work through a collaborative forum before bringing a proposed PID addition or change to the Commission. The preferred approach is to introduce new PIDs as diagnostic measures, allowing for some reporting of actual data before determining the relevant standard and appropriate penalties.

18.7 Parties may suggest more fundamental changes to the CPAP; but, unless the suggestion is highly exigent, the suggestion shall either be declined or deferred until the three-year review. The following areas of the CPAP will be eligible for change only at the three-year and six-year reviews:

- (1) The statistical methodology (Sections 4.0, 5.0 and 6.0) except for additions to the variance tables for new Tier 1A measures;
- (2) The payment caps (Sections 11.0 and 18.8);
- (3) The duration of the CPAP (Section 18.11);
- (4) The payment regime structure (Sections 2.0, 7.0, 8.0, 9.0, 10.1, 10.2, 10.3, and 10.4) except for the addition of payment amounts for new Tier 2 measures and of payment amounts for violations of change management requirements;
- (5) The legal operation of the CPAP (Sections 15.0 and 16.0);
- (6) The Independent Monitor (Section 17.0) with the exception of assignment of the Independent Monitor function to an Administrative Law Judge;
- (7) Any proposal that does not relate directly to measuring and/or providing payments for non-discriminatory wholesale performance.

18.7.1 If, at the conclusion of a six-month CPAP review, the Commission orders a change in any areas identified in Section 18.7 without Qwest's consent, the Commission decision shall be stayed automatically during the course of any judicial challenge up to issuance of a final non-appealable order on the merits. This provision shall not apply if there is no judicial challenge.

18.8 Qwest shall calculate separately, payments owed under the CPAP that do not include changes made at the six-month review ("baseline CPAP") and payments owed under a CPAP revised to reflect changes made at the six-month review ("revised CPAP"). If payments calculated under the revised CPAP are more than 110% of payments calculated under the baseline CPAP, Qwest shall limit payments to the affected CLECs and to the Special Fund to a 10% increase ("10% collar") above the total baseline CPAP payment liability. Any CLEC affected by this limitation of payments shall be eligible for payments above the 10% collar from the Special

Fund. If the Special Fund does not contain sufficient funds to provide such payments to CLECs, Qwest shall make up the difference. Any funds that Qwest provides to make up the difference will be offset against Qwest's future Special Fund liabilities. At any six-month review, if the total payment liability for the revised CPAP is below 110% of the total payment liability for the baseline CPAP for the preceding six month period, the revised CPAP shall become the baseline CPAP for the next six month period, otherwise, the same baseline CPAP shall remain in effect for the next six month period.

18.9 If Qwest or CLEC wishes to modify a PID outside of the six-month review process and before the Three-Year Review set forth in the CPAP, the change must be approved by the Independent Monitor and then also approved by the Commission.

18.10 Thirty (30) months after the effective date of the CPAP, the Commission shall initiate a comprehensive review of the CPAP (the "Three-Year Review") with the assistance of an outside, independent expert. Such expert shall be paid from the Special Fund. When there are insufficient funds in the Special Fund for this purpose, Qwest shall advance the funds. The Three-Year Review shall:

- (1) Seek to refine the payment amounts by developing an evidentiary basis for the harm associated with particular non-conforming wholesale performance and to adjust the CPAP's payment amounts accordingly. Such evidence shall be the only basis for making upward or downward adjustments to the CPAP's payment amounts during the three-year review.
- (2) Evaluate whether there are available economical alternatives to Qwest's wholesale service offerings and whether such alternatives provide competitors with a meaningful opportunity to compete. This process shall thus consider the rationale for removing measures (or submeasures) both based on Qwest's demonstration of its ability to deliver reliable wholesale performance in certain areas and/or the fact that Qwest's critical role in the market as a provider of key wholesale inputs is dissipating to the extent that the Commission can lift performance assurance requirements (either on a measure or submeasure basis).
- (3) Focus on whether some areas -- disaggregated by either product type or geographic area -- no longer need to be measured and/or subject to payments for non-conforming wholesale performance.
- (4) Evaluate whether the revision process should take place at a semi-annual, annual, or other interval.

At the three-year review, the Commission cannot require Qwest, under the authority granted to it under the CPAP, to undertake any new obligations. At the Three-Year Review, if it chooses to do so, the Commission may order changes in the CPAP. The Commission decision shall be effected according to its terms unless stayed by action of the Commission or by action of a court of competent jurisdiction.

18.11 Except as provided in this Section, this CPAP will expire six years from its effective date. Only Tier 1A submeasures and payments will continue beyond six years, and these Tier 1A submeasures and payments shall continue until the Commission orders otherwise. Five and one-half years after the CPAP's effective date, a review shall be conducted with the objective of phasing-out the CPAP entirely. This review shall focus on ensuring that phase-out of the CPAP is indeed appropriate at that time, and on identifying any submeasures in addition to the Tier 1A submeasures that should continue as part of the CPAP.

19.0 Voluntary Performance Assurance Plan

19.1 This CPAP represents Qwest's voluntary offer to provide performance assurance.

APPENDIX A

This appendix lists the submeasures to be included within the Performance Assurance Plan, classified either under Tier 1A, Tier 1B, Tier 1C or Tier 2. All submeasures not otherwise so designated rely on, and incorporate by reference, the Performance Indicator Definitions (PIDs) developed and approved by the Regional Oversight Committee's (ROC) Technical Advisory Group (TAG). For Tier 1A submeasures, the average performance Qwest gives a CLEC in the current month shall be compared to the average of prior six months retail performance subject to a "variance factor" (see Section 6.1, Table 2). In areas where this document suggests a standard that is in dispute (both procedurally and substantively) as part of the Commission's Section 271 review (namely, the standards for collocation, TBD1 (premature disconnects), subloops, conditioned loops and line sharing and line splitting), the standard listed herein is meant as a default standard that would give way in the event that the Commission adopts a different one.

TIER 1A

INTERCONNECTION

Trunk Blocking

NI-1A

LIS Trunks to Qwest Tandem Offices (Percent)

NI-1B

LIS Trunks to Qwest End Offices (Percent)

Provisioning

For LIS Trunks:

OP-3D

Installation Commitments Met (Percent)

OP-3E

Installation Commitments Met (Percent)

OP-4D¹

Installation Interval (Average Days)

OP-6A-4¹

Delayed Days (Average Days)

OP-6B-4¹

Delayed Days (Average Days)

OP-4E¹

Installation Interval (Average Days)

OP-6A-5¹

Delayed Days (Average Days)

OP-6B-5¹

Delayed Days (Average Days)

OP-5

New Service Installation without Trouble Reports (Percent)

Maintenance and Repair

For LIS Trunks:

MR-5A

All Troubles Cleared within 4 Hours (Percent)

MR-5B

All Troubles Cleared within 4 Hours (Percent)

¹ Submeasures for OP-4 are included with OP-6 as "families" OP-4A with (OP-6A-1 & OP-6B-1 combined); OP-4B with (OP-6A-2 & OP-6B-2 combined); OP-4C with (OP-6A-3 & OP-6B-3 combined); OP-4D with (OP-6A-4 & OP-6B-4 combined); and OP-4E with (OP-6A-5 & OP-6B-5 combined). Submeasures within each family share a single payment opportunity with only the submeasure (OP-4 or OP-6A & OP-6B combined) with the highest payment being paid.

MR-6D	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6E	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7D	<i>Repair Repeat Report Rate (Percent)</i>
MR-7E	<i>Repair Repeat Report Rate (Percent)</i>
MR-8	<i>Trouble Rate (Percent)</i>

SWITCHING CUSTOMERS

For Unbundled Loops:

OP-13A	Analog	<i>Coordinated Cuts on Time (Percent)</i>
OP-13A	All Other	<i>Coordinated Cuts on Time (Percent)</i>
OP-7		<i>Coordinated Hot Cut Interval (Percent)</i>
OP-8B		<i>Number Portability Timeliness (Hours:Minutes)</i>
OP-8C		<i>Number Portability Timeliness (Hours:Minutes)</i>
NP-1A		<i>NXX Code Activation (Percent)</i>
OP-17		<i>Timeliness of Disconnects associated with LNP Orders (Percent)</i>
MR-11		<i>LNP Trouble Reports Cleared within 24 Hours (Percent)</i>
MR-12		<i>LNP Trouble Reports-Mean Time to Restore (Hours:Minutes)</i>

OP-13A would not be subject to a severity measurement as part of the Tier 1X calculation. Instead, OP-7 (Coordinated Hot Cut – Unbundled Loop), which will be reconfigured to measure the out-of-service time for a coordinated hot cut, which provide the following particularized severity function:

<u>Hrs Out of Service</u>	<u>Payment</u>
1-1.99	\$225
2-2.99	\$450
3-3.99	\$675
4-4.99	\$800
5+	\$1025

COLLOCATION

Collocation is measured on (1) whether the feasibility studies are completed on time (e.g., within 10 days); (2) whether the installation commitment is met; (3) how many days late is particular feasibility study; and (4) how many days is a particular installation of the requested space. The applicable standard for making collocation space available shall be the CLEC's interconnection agreement, the Commission standard, or the FCC regulation, whichever is applicable. For addressing these issues, the relevant calculations and the associated payments shall be:

<u>Days Late for Feasibility Study</u>	<u>Payment</u>	<u>Days Late For Installation</u>	<u>Payment</u>
1-10	\$45	1-10	\$150
11-20	\$90	11-20	\$300
21-30	\$135	21-30	\$450
31-40	\$180	31-40	\$600
40+	\$300	40+	\$1000

ACCESS TO LOCAL LOOPS

Pre-Order

For Unbundled Loops:

PO-5A-1(b)	IMA Electronic LSRs	FOCs On Time (Percent)
PO-5A-2(b)	EDI Electronic LSRs	FOCs On Time (Percent)
PO-5B-1(b)	IMA Electronic/Manual LSRs	FOCs On Time (Percent)
PO-5B-2(b)	EDI Electronic/Manual LSRs	FOCs On Time (Percent)
PO-5C-(b)	Fax Manual LSRs	FOCs On Time (Percent)
PO-9B		Timely Jeopardy Notices (Percent)

Provisioning

For Unbundled Analog Loops:

OP-3A	non-designed	Installation Commitments Met (Percent)
OP-3B	non-designed	Installation Commitments Met (Percent)
OP-3C	non-designed	Installation Commitments Met (Percent)
OP-3D	designed	Installation Commitments Met (Percent)
OP-3E	designed	Installation Commitments Met (Percent)
OP-4A ¹	non-designed	Installation Interval (Average Days)
OP-6A-1 ¹	non-designed	Delayed Days (Average Days)
OP-6B-1 ¹	non-designed	Delayed Days (Average Days)
OP-4B ¹	non-designed	Installation Interval (Average Days)
OP-6A-2 ¹	non-designed	Delayed Days (Average Days)
OP-6B-2 ¹	non-designed	Delayed Days (Average Days)
OP-4C ¹	non-designed	Installation Interval (Average Days)
OP-6A-3 ¹	non-designed	Delayed Days (Average Days)
OP-6B-3 ¹	non-designed	Delayed Days (Average Days)
OP-4D ¹	designed	Installation Interval (Average Days)
OP-6A-4 ¹	designed	Delayed Days (Average Days)
OP-6B-4 ¹	designed	Delayed Days (Average Days)
OP-4E ¹	designed	Installation Interval (Average Days)
OP-6A-5 ¹	designed	Delayed Days (Average Days)
OP-6B-5 ¹	designed	Delayed Days (Average Days)
OP-5		New Service Installation without Trouble Reports (Percent)

For Unbundled Non-Loaded Loops (2-wire):

OP-3D	Installation Commitments Met (Percent)
OP-3E	Installation Commitments Met (Percent)
OP-4D ¹	Installation Interval (Average Days)
OP-6A-4 ¹	Delayed Days (Average Days)
OP-6B-4 ¹	Delayed Days (Average Days)
OP-4E ¹	Installation Interval (Average Days)
OP-6A-5 ¹	Delayed Days (Average Days)
OP-6B-5 ¹	Delayed Days (Average Days)
OP-5	New Service Installation without Trouble Reports (Percent)

For Unbundled Non-Loaded Loops (4-wire):

OP-3D	Installation Commitments Met (Percent)
OP-3E	Installation Commitments Met (Percent)
OP-4D ¹	Installation Interval (Average Days)
OP-6A-4 ¹	Delayed Days (Average Days)
OP-6B-4 ¹	Delayed Days (Average Days)
OP-4E ¹	Installation Interval (Average Days)
OP-6A-5 ¹	Delayed Days (Average Days)
OP-6B-5 ¹	Delayed Days (Average Days)
OP-5	New Service Installation without Trouble Reports (Percent)

For Unbundled DS1-Capable Loops:

OP-3D	Installation Commitments Met (Percent)
OP-3E	Installation Commitments Met (Percent)
OP-4D ¹	Installation Interval (Average Days)
OP-6A-4 ¹	Delayed Days (Average Days)
OP-6B-4 ¹	Delayed Days (Average Days)
OP-4E ¹	Installation Interval (Average Days)
OP-6A-5 ¹	Delayed Days (Average Days)
OP-6B-5 ¹	Delayed Days (Average Days)
OP-5	New Service Installation without Trouble Reports (Percent)

For Unbundled ISDN-Capable Loops:

OP-3D	Installation Commitments Met (Percent)
OP-3E	Installation Commitments Met (Percent)
OP-4D ¹	Installation Interval (Average Days)
OP-6A-4 ¹	Delayed Days (Average Days)
OP-6B-4 ¹	Delayed Days (Average Days)
OP-4E ¹	Installation Interval (Average Days)
OP-6A-5 ¹	Delayed Days (Average Days)
OP-6B-5 ¹	Delayed Days (Average Days)
OP-5	New Service Installation without Trouble Reports (Percent)

For Unbundled ADSL-Qualified Loops:

OP-3D	Installation Commitments Met (Percent)
OP-3E	Installation Commitments Met (Percent)
OP-4D ¹	Installation Interval (Average Days)
OP-6A-4 ¹	Delayed Days (Average Days)
OP-6B-4 ¹	Delayed Days (Average Days)
OP-4E ¹	Installation Interval (Average Days)
OP-6A-5 ¹	Delayed Days (Average Days)
OP-6B-5 ¹	Delayed Days (Average Days)
OP-5	New Service Installation without Trouble Reports (Percent)

For Unbundled Loops of DS3 and Higher:

OP-3D	Installation Commitments Met (Percent)
OP-3E	Installation Commitments Met (Percent)
OP-4D ¹	Installation Interval (Average Days)
OP-6A-4 ¹	Delayed Days (Average Days)
OP-6B-4 ¹	Delayed Days (Average Days)
OP-4E ¹	Installation Interval (Average Days)

OP-6A-5 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-5 ¹	<i>Delayed Days (Average Days)</i>
OP-5	<i>New Service Installation without Trouble Reports (Percent)</i>

For Sub-Loop Unbundling:

OP-3A	<i>Installation Commitments Met (Percent)</i>
OP-3B	<i>Installation Commitments Met (Percent)</i>
OP-4A ¹	<i>Installation Interval (Average Days)</i>
OP-6A-1 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-1 ¹	<i>Delayed Days (Average Days)</i>
OP-4B ¹	<i>Installation Interval (Average Days)</i>
OP-6A-2 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-2 ¹	<i>Delayed Days (Average Days)</i>

Sub-loops – because sub-loops track loops in all other respects (e.g., have three different intervals in Qwest's Standard Interval Guides depending on the number of sub-loops in an order), OP-3 and OP-4 for this submeasure shall track the approach taken for loops. In particular, the relevant interval (5 days for 1-8 subloops in an order; 6 days for 9-16 in an order; and 7 days for 17+) shall be the standard for OP-3 (i.e., the relevant interval must be met 90% of the time) and the intermediate standard – i.e., 6 days – shall be the relevant interval for OP-4.

For Unbundled Loop Conditioning:

OP-3D	<i>Installation Commitments Met (Percent)</i>
OP-3E	<i>Installation Commitments Met (Percent)</i>
OP-4D	<i>Installation Interval (Average Days)</i>
OP-4E	<i>Installation Interval (Average Days)</i>

Conditioned loops (i.e., accounting for the additional time necessary to "condition" a previously unconditioned loop to make it DSL ready) – the interval, as envisioned by Qwest, is 15 days, which represents the target date for installing the product. Thus, OP-3 shall require that 90% of conditioned loops be installed within the interval, unless a dispatch to the location is necessary. As for OP-4, the relevant installation interval shall be set at 16.5 days, which reflects the recognition that 10% of the conditioned loops will not be installed within 15 days, so that the relevant interval should be marginally greater than the interval.

For Line Sharing/Line Splitting:

OP-3A	<i>Installation Commitments Met (Percent)</i>
OP-3B	<i>Installation Commitments Met (Percent)</i>
OP-3C	<i>Installation Commitments Met (Percent)</i>
OP-4A ¹	<i>Installation Interval (Average Days)</i>
OP-6A-1 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-1 ¹	<i>Delayed Days (Average Days)</i>
OP-4B ¹	<i>Installation Interval (Average Days)</i>
OP-6A-2 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-2 ¹	<i>Delayed Days (Average Days)</i>
OP-4C ¹	<i>Installation Interval (Average Days)</i>
OP-6A-3 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-3 ¹	<i>Delayed Days (Average Days)</i>

Line sharing/Line splitting together –the interval for line sharing and line splitting, which shall be measured on an aggregate basis, is 3 days. Thus, OP-3 shall be that 90% of such loops shall be installed with 3 days. As for OP-4, the relevant installation interval shall be set at 3.3 days, which reflects the recognition 10% of such loops will not be installed within 3 days, so that the relevant interval should be marginally greater than the interval.

Maintenance and Repair

For Unbundled Analog Loops:

MR-3D	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-3E	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-6D	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6E	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7D	<i>Repair Repeat Report Rate (Percent)</i>
MR-7E	<i>Repair Repeat Report Rate (Percent)</i>
MR-8	<i>Trouble Rate (Percent)</i>

For Unbundled Non-loaded Loops (2-wire):

MR-3D	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-3E	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-6D	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6E	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7D	<i>Repair Repeat Report Rate (Percent)</i>
MR-7E	<i>Repair Repeat Report Rate (Percent)</i>
MR-8	<i>Trouble Rate (Percent)</i>

For Unbundled Non-loaded Loops (4-wire):

MR-5A	<i>All Troubles Cleared within 4 Hours (Percent)</i>
MR-5B	<i>All Troubles Cleared within 4 Hours (Percent)</i>
MR-6D	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6E	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7D	<i>Repair Repeat Report Rate (Percent)</i>
MR-7E	<i>Repair Repeat Report Rate (Percent)</i>
MR-8	<i>Trouble Rate (Percent)</i>

For Unbundled DS1-Capable Loops:

MR-5A	<i>All Troubles Cleared within 4 Hours (Percent)</i>
MR-5B	<i>All Troubles Cleared within 4 Hours (Percent)</i>
MR-6D	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6E	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7D	<i>Repair Repeat Report Rate (Percent)</i>
MR-7E	<i>Repair Repeat Report Rate (Percent)</i>
MR-8	<i>Trouble Rate (Percent)</i>

For Unbundled ISDN-Capable Loops:

MR-3D	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-3E	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-6D	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6E	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7D	<i>Repair Repeat Report Rate (Percent)</i>

MR-7E	<i>Repair Repeat Report Rate (Percent)</i>
MR-8	<i>Trouble Rate (Percent)</i>

For Unbundled ADSL-Qualified Loops:

MR-3D	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-3E	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-6D	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6E	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7D	<i>Repair Repeat Report Rate (Percent)</i>
MR-7E	<i>Repair Repeat Report Rate (Percent)</i>
MR-8	<i>Trouble Rate (Percent)</i>

For Unbundled Loops of DS3 and Higher:

MR-5A	<i>All Troubles Cleared within 4 Hours (Percent)</i>
MR-5B	<i>All Troubles Cleared within 4 Hours (Percent)</i>
MR-6D	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6E	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7D	<i>Repair Repeat Report Rate (Percent)</i>
MR-7E	<i>Repair Repeat Report Rate (Percent)</i>
MR-8	<i>Trouble Rate (Percent)</i>

For Sub-Loop Unbundling:

MR-3A	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-3B	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-3C	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-6A	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6B	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6C	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7A	<i>Repair Repeat Report Rate (Percent)</i>
MR-7B	<i>Repair Repeat Report Rate (Percent)</i>
MR-7C	<i>Repair Repeat Report Rate (Percent)</i>
MR-8	<i>Trouble Rate (Percent)</i>

For the MR-3, MR-6, MR-7, and MR-8 measures, the relevant analog product shall be ISDN-BRI.

For Line Sharing/Line Splitting:

MR-3A	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-3B	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-3C	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-6A	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6B	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6C	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7A	<i>Repair Repeat Report Rate (Percent)</i>
MR-7B	<i>Repair Repeat Report Rate (Percent)</i>
MR-7C	<i>Repair Repeat Report Rate (Percent)</i>
MR-8	<i>Trouble Rate (Percent)</i>

For the MR-3, MR-6, MR-7, and MR-8 measures, the relevant analog product shall be Qwest's DSL service, which is also provisioned and treated on a line shared basis.

TIER 1B

Pre-Order

For LSR:

PO-3A-1	IMA & rejected manually	<i>LSR Rejection Notice Interval (Hours:Minutes)</i>
PO-3B-1	EDI & rejected manually	<i>LSR Rejection Notice Interval (Hours:Minutes)</i>
PO-3C	Facsimile	<i>LSR Rejection Notice Interval (Hours:Minutes)</i>

For Resale and UNE-P:

PO-5A-1(a)	IMA Electronic LSRs	<i>FOCs On Time (Percent)</i>
PO-5A-2(a)	EDI Electronic LSRs	<i>FOCs On Time (Percent)</i>
PO-5B-1(a)	IMA Electronic/Manual LSRs	<i>FOCs On Time (Percent)</i>
PO-5B-2(a)	EDI Electronic/Manual LSRs	<i>FOCs On Time (Percent)</i>
PO-5C-(a)	Facsimile Manual LSRs	<i>FOCs On Time (Percent)</i>
PO-8D	(POTS)	<i>Jeopardy Notice Interval (Average Days)</i>
PO-9D	(POTS)	<i>Timely Jeopardy Notices (Percent)</i>

For LNP:

PO-5A-1(c)	IMA Electronic LSRs	<i>FOCs On Time (Percent)</i>
PO-5A-2(c)	EDI Electronic LSRs	<i>FOCs On Time (Percent)</i>
PO-5B-1(c)	IMA Electronic/Manual LSRs	<i>FOCs On Time (Percent)</i>
PO-5B-2(c)	EDI Electronic/Manual LSRs	<i>FOCs On Time (Percent)</i>
PO-5C-(c)	Facsimile Manual LSRs	<i>FOCs On Time (Percent)</i>

For LIS Trunks:

PO-5D	<i>FOCs On Time (Percent)</i>
PO-8C	<i>Jeopardy Notice Interval (Average Days)</i>
PO-9C	<i>Timely Jeopardy Notices (Percent)</i>

For Billing:

PO-7A	IMA-GUI	<i>Billing Completion Notification Timeliness (Percent)</i>
PO-7B	IMA-EDI	<i>Billing Completion Notification Timeliness (Percent)</i>

For Non-Designed Services:

PO-8A	<i>Jeopardy Notice Interval (Average Days)</i>
PO-9A	<i>Timely Jeopardy Notices (Percent)</i>

For Unbundled Loops:

PO-8B	<i>Jeopardy Notice Interval (Average Days)</i>
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Provisioning

For Residential Single Line Service:

OP-3A	<i>Installation Commitments Met (Percent)</i>
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OP-3B	Installation Commitments Met (Percent)
OP-3C	Installation Commitments Met (Percent)
OP-4A ¹	Installation Interval (Average Days)
OP-6A-1 ¹	Delayed Days (Average Days)
OP-6B-1 ¹	Delayed Days (Average Days)
OP-4B ¹	Installation Interval (Average Days)
OP-6A-2 ¹	Delayed Days (Average Days)
OP-6B-2 ¹	Delayed Days (Average Days)
OP-4C ¹	Installation Interval (Average Days)
OP-6A-3 ¹	Delayed Days (Average Days)
OP-6B-3 ¹	Delayed Days (Average Days)
OP-5	New Service Installation without Trouble Reports (Percent)

For Business Single Line Service:

OP-3A	Installation Commitments Met (Percent)
OP-3B	Installation Commitments Met (Percent)
OP-3C	Installation Commitments Met (Percent)
OP-4A ¹	Installation Interval (Average Days)
OP-6A-1 ¹	Delayed Days (Average Days)
OP-6B-1 ¹	Delayed Days (Average Days)
OP-4B ¹	Installation Interval (Average Days)
OP-6A-2 ¹	Delayed Days (Average Days)
OP-6B-2 ¹	Delayed Days (Average Days)
OP-4C ¹	Installation Interval (Average Days)
OP-6A-3 ¹	Delayed Days (Average Days)
OP-6B-3 ¹	Delayed Days (Average Days)
OP-5	New Service Installation without Trouble Reports (Percent)

For Centrex:

OP-3A	Installation Commitments Met (Percent)
OP-3B	Installation Commitments Met (Percent)
OP-3C	Installation Commitments Met (Percent)
OP-4A ¹	Installation Interval (Average Days)
OP-6A-1 ¹	Delayed Days (Average Days)
OP-6B-1 ¹	Delayed Days (Average Days)
OP-4B ¹	Installation Interval (Average Days)
OP-6A-2 ¹	Delayed Days (Average Days)
OP-6B-2 ¹	Delayed Days (Average Days)
OP-4C ¹	Installation Interval (Average Days)
OP-6A-3 ¹	Delayed Days (Average Days)
OP-6B-3 ¹	Delayed Days (Average Days)
OP-5	New Service Installation without Trouble Reports (Percent)

For Centrex 21:

OP-3A	Installation Commitments Met (Percent)
OP-3B	Installation Commitments Met (Percent)
OP-3C	Installation Commitments Met (Percent)
OP-4A ¹	Installation Interval (Average Days)
OP-6A-1 ¹	Delayed Days (Average Days)
OP-6B-1 ¹	Delayed Days (Average Days)
OP-4B ¹	Installation Interval (Average Days)

OP-6A-2 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-2 ¹	<i>Delayed Days (Average Days)</i>
OP-4C ¹	<i>Installation Interval (Average Days)</i>
OP-6A-3 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-3 ¹	<i>Delayed Days (Average Days)</i>
OP-5	<i>New Service Installation without Trouble Reports (Percent)</i>

For PBX Trunks:

OP-3A	<i>Installation Commitments Met (Percent)</i>
OP-3B	<i>Installation Commitments Met (Percent)</i>
OP-3C	<i>Installation Commitments Met (Percent)</i>
OP-3D	<i>Installation Commitments Met (Percent)</i>
OP-3E	<i>Installation Commitments Met (Percent)</i>
OP-4A ¹	<i>Installation Interval (Average Days)</i>
OP-6A-1 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-1 ¹	<i>Delayed Days (Average Days)</i>
OP-4B ¹	<i>Installation Interval (Average Days)</i>
OP-6A-2 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-2 ¹	<i>Delayed Days (Average Days)</i>
OP-4C ¹	<i>Installation Interval (Average Days)</i>
OP-6A-3 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-3 ¹	<i>Delayed Days (Average Days)</i>
OP-4D ¹	<i>Installation Interval (Average Days)</i>
OP-6A-4 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-4 ¹	<i>Delayed Days (Average Days)</i>
OP-4E ¹	<i>Installation Interval (Average Days)</i>
OP-6A-5 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-5 ¹	<i>Delayed Days (Average Days)</i>
OP-5	<i>New Service Installation without Trouble Reports (Percent)</i>

For Basic ISDN:

OP-3A	<i>Installation Commitments Met (Percent)</i>
OP-3B	<i>Installation Commitments Met (Percent)</i>
OP-3C	<i>Installation Commitments Met (Percent)</i>
OP-3D	<i>Installation Commitments Met (Percent)</i>
OP-3E	<i>Installation Commitments Met (Percent)</i>
OP-4A ¹	<i>Installation Interval (Average Days)</i>
OP-6A-1 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-1 ¹	<i>Delayed Days (Average Days)</i>
OP-4B ¹	<i>Installation Interval (Average Days)</i>
OP-6A-2 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-2 ¹	<i>Delayed Days (Average Days)</i>
OP-4C ¹	<i>Installation Interval (Average Days)</i>
OP-6A-3 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-3 ¹	<i>Delayed Days (Average Days)</i>
OP-4D ¹	<i>Installation Interval (Average Days)</i>
OP-6A-4 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-4 ¹	<i>Delayed Days (Average Days)</i>
OP-4E ¹	<i>Installation Interval (Average Days)</i>
OP-6A-5 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-5 ¹	<i>Delayed Days (Average Days)</i>

OP-5

New Service Installation without Trouble Reports (Percent)

For UNE-P (POTS):

OP-3A	Installation Commitments Met (Percent)
OP-3B	Installation Commitments Met (Percent)
OP-3C	Installation Commitments Met (Percent)
OP-4A ¹	Installation Interval (Average Days)
OP-6A-1 ¹	Delayed Days (Average Days)
OP-6B-1 ¹	Delayed Days (Average Days)
OP-4B ¹	Installation Interval (Average Days)
OP-6A-2 ¹	Delayed Days (Average Days)
OP-6B-2 ¹	Delayed Days (Average Days)
OP-4C ¹	Installation Interval (Average Days)
OP-6A-3 ¹	Delayed Days (Average Days)
OP-6B-3 ¹	Delayed Days (Average Days)
OP-5	New Service Installation without Trouble Reports (Percent)

For Qwest DSL:

OP-3A	Installation Commitments Met (Percent)
OP-3B	Installation Commitments Met (Percent)
OP-3C	Installation Commitments Met (Percent)
OP-3D	Installation Commitments Met (Percent)
OP-3E	Installation Commitments Met (Percent)
OP-4A ¹	Installation Interval (Average Days)
OP-6A-1 ¹	Delayed Days (Average Days)
OP-6B-1 ¹	Delayed Days (Average Days)
OP-4B ¹	Installation Interval (Average Days)
OP-6A-2 ¹	Delayed Days (Average Days)
OP-6B-2 ¹	Delayed Days (Average Days)
OP-4C ¹	Installation Interval (Average Days)
OP-6A-3 ¹	Delayed Days (Average Days)
OP-6B-3 ¹	Delayed Days (Average Days)
OP-4D ¹	Installation Interval (Average Days)
OP-6A-4 ¹	Delayed Days (Average Days)
OP-6B-4 ¹	Delayed Days (Average Days)
OP-4E ¹	Installation Interval (Average Days)
OP-6A-5 ¹	Delayed Days (Average Days)
OP-6B-5 ¹	Delayed Days (Average Days)
OP-5	New Service Installation without Trouble Reports (Percent)

For Primary ISDN:

OP-3A	Installation Commitments Met (Percent)
OP-3B	Installation Commitments Met (Percent)
OP-3C	Installation Commitments Met (Percent)
OP-3D	Installation Commitments Met (Percent)
OP-3E	Installation Commitments Met (Percent)
OP-4A ¹	Installation Interval (Average Days)
OP-6A-1 ¹	Delayed Days (Average Days)
OP-6B-1 ¹	Delayed Days (Average Days)
OP-4B ¹	Installation Interval (Average Days)
OP-6A-2 ¹	Delayed Days (Average Days)

OP-6B-2 ¹	<i>Delayed Days (Average Days)</i>
OP-4C ¹	<i>Installation Interval (Average Days)</i>
OP-6A-3 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-3 ¹	<i>Delayed Days (Average Days)</i>
OP-4D ¹	<i>Installation Interval (Average Days)</i>
OP-6A-4 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-4 ¹	<i>Delayed Days (Average Days)</i>
OP-4E ¹	<i>Installation Interval (Average Days)</i>
OP-6A-5 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-5 ¹	<i>Delayed Days (Average Days)</i>
OP-5	<i>New Service Installation without Trouble Reports (Percent)</i>

For DS0:

OP-3A	non-designed	<i>Installation Commitments Met (Percent)</i>
OP-3B	non-designed	<i>Installation Commitments Met (Percent)</i>
OP-3C	non-designed	<i>Installation Commitments Met (Percent)</i>
OP-3D	designed	<i>Installation Commitments Met (Percent)</i>
OP-3E	designed	<i>Installation Commitments Met (Percent)</i>
OP-4A ¹	non-designed	<i>Installation Interval (Average Days)</i>
OP-6A-1 ¹	non-designed	<i>Delayed Days (Average Days)</i>
OP-6B-1 ¹	non-designed	<i>Delayed Days (Average Days)</i>
OP-4B ¹	non-designed	<i>Installation Interval (Average Days)</i>
OP-6A-2 ¹	non-designed	<i>Delayed Days (Average Days)</i>
OP-6B-2 ¹	non-designed	<i>Delayed Days (Average Days)</i>
OP-4C ¹	non-designed	<i>Installation Interval (Average Days)</i>
OP-6A-3 ¹	non-designed	<i>Delayed Days (Average Days)</i>
OP-6B-3 ¹	non-designed	<i>Delayed Days (Average Days)</i>
OP-4D ¹	designed	<i>Installation Interval (Average Days)</i>
OP-6A-4 ¹	designed	<i>Delayed Days (Average Days)</i>
OP-6B-4 ¹	designed	<i>Delayed Days (Average Days)</i>
OP-4E ¹	designed	<i>Installation Interval (Average Days)</i>
OP-6A-5 ¹	designed	<i>Delayed Days (Average Days)</i>
OP-6B-5 ¹	designed	<i>Delayed Days (Average Days)</i>
OP-5		<i>New Service Installation without Trouble Reports (Percent)</i>

For DS1:

OP-3D	<i>Installation Commitments Met (Percent)</i>
OP-3E	<i>Installation Commitments Met (Percent)</i>
OP-4D ¹	<i>Installation Interval (Average Days)</i>
OP-6A-4 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-4 ¹	<i>Delayed Days (Average Days)</i>
OP-4E ¹	<i>Installation Interval (Average Days)</i>
OP-6A-5 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-5 ¹	<i>Delayed Days (Average Days)</i>
OP-5	<i>New Service Installation without Trouble Reports (Percent)</i>

For DS3 and Higher:

OP-3D	<i>Installation Commitments Met (Percent)</i>
OP-3E	<i>Installation Commitments Met (Percent)</i>
OP-4D ¹	<i>Installation Interval (Average Days)</i>

OP-6A-4 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-4 ¹	<i>Delayed Days (Average Days)</i>
OP-4E ¹	<i>Installation Interval (Average Days)</i>
OP-6A-5 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-5 ¹	<i>Delayed Days (Average Days)</i>
OP-5	<i>New Service Installation without Trouble Reports (Percent)</i>

For Frame Relay:

OP-3D	<i>Installation Commitments Met (Percent)</i>
OP-3E	<i>Installation Commitments Met (Percent)</i>
OP-4D ¹	<i>Installation Interval (Average Days)</i>
OP-6A-4 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-4 ¹	<i>Delayed Days (Average Days)</i>
OP-4E ¹	<i>Installation Interval (Average Days)</i>
OP-6A-5 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-5 ¹	<i>Delayed Days (Average Days)</i>
OP-5	<i>New Service Installation without Trouble Reports (Percent)</i>

For UDIT – DS1 Level:

OP-3D	<i>Installation Commitments Met (Percent)</i>
OP-3E	<i>Installation Commitments Met (Percent)</i>
OP-4D ¹	<i>Installation Interval (Average Days)</i>
OP-6A-4 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-4 ¹	<i>Delayed Days (Average Days)</i>
OP-4E ¹	<i>Installation Interval (Average Days)</i>
OP-6A-5 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-5 ¹	<i>Delayed Days (Average Days)</i>
OP-5	<i>New Service Installation without Trouble Reports (Percent)</i>

For UDIT – Above DS1 Level:

OP-3D	<i>Installation Commitments Met (Percent)</i>
OP-3E	<i>Installation Commitments Met (Percent)</i>
OP-4D ¹	<i>Installation Interval (Average Days)</i>
OP-6A-4 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-4 ¹	<i>Delayed Days (Average Days)</i>
OP-4E ¹	<i>Installation Interval (Average Days)</i>
OP-6A-5 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-5 ¹	<i>Delayed Days (Average Days)</i>
OP-5	<i>New Service Installation without Trouble Reports (Percent)</i>

For E911/911 Trunks:

OP-3D	<i>Installation Commitments Met (Percent)</i>
OP-3E	<i>Installation Commitments Met (Percent)</i>
OP-4D ¹	<i>Installation Interval (Average Days)</i>
OP-6A-4 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-4 ¹	<i>Delayed Days (Average Days)</i>
OP-4E ¹	<i>Installation Interval (Average Days)</i>
OP-6A-5 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-5 ¹	<i>Delayed Days (Average Days)</i>
OP-5	<i>New Service Installation without Trouble Reports (Percent)</i>

Maintenance and Repair

For Residential Single Line Service:

MR-3A	All Troubles Cleared within 24 Hours (Percent)
MR-3B	All Troubles Cleared within 24 Hours (Percent)
MR-3C	All Troubles Cleared within 24 Hours (Percent)
MR-6A	Mean Time to Restore (Hours:Minutes)
MR-6B	Mean Time to Restore (Hours:Minutes)
MR-6C	Mean Time to Restore (Hours:Minutes)
MR-7A	Repair Repeat Report Rate (Percent)
MR-7B	Repair Repeat Report Rate (Percent)
MR-7C	Repair Repeat Report Rate (Percent)
MR-8	Trouble Rate (Percent)

For Business Single Line Service:

MR-3A	All Troubles Cleared within 24 Hours (Percent)
MR-3B	All Troubles Cleared within 24 Hours (Percent)
MR-3C	All Troubles Cleared within 24 Hours (Percent)
MR-6A	Mean Time to Restore (Hours:Minutes)
MR-6B	Mean Time to Restore (Hours:Minutes)
MR-6C	Mean Time to Restore (Hours:Minutes)
MR-7A	Repair Repeat Report Rate (Percent)
MR-7B	Repair Repeat Report Rate (Percent)
MR-7C	Repair Repeat Report Rate (Percent)
MR-8	Trouble Rate (Percent)

For Centrex:

MR-3A	All Troubles Cleared within 24 Hours (Percent)
MR-3B	All Troubles Cleared within 24 Hours (Percent)
MR-3C	All Troubles Cleared within 24 Hours (Percent)
MR-6A	Mean Time to Restore (Hours:Minutes)
MR-6B	Mean Time to Restore (Hours:Minutes)
MR-6C	Mean Time to Restore (Hours:Minutes)
MR-7A	Repair Repeat Report Rate (Percent)
MR-7B	Repair Repeat Report Rate (Percent)
MR-7C	Repair Repeat Report Rate (Percent)
MR-8	Trouble Rate (Percent)

For Centrex 21:

MR-3A	All Troubles Cleared within 24 Hours (Percent)
MR-3B	All Troubles Cleared within 24 Hours (Percent)
MR-3C	All Troubles Cleared within 24 Hours (Percent)
MR-6A	Mean Time to Restore (Hours:Minutes)
MR-6B	Mean Time to Restore (Hours:Minutes)
MR-6C	Mean Time to Restore (Hours:Minutes)
MR-7A	Repair Repeat Report Rate (Percent)
MR-7B	Repair Repeat Report Rate (Percent)
MR-7C	Repair Repeat Report Rate (Percent)
MR-8	Trouble Rate (Percent)

For PBX Trunks:

MR-3A	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-3B	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-3C	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-6A	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6B	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6C	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7A	<i>Repair Repeat Report Rate (Percent)</i>
MR-7B	<i>Repair Repeat Report Rate (Percent)</i>
MR-7C	<i>Repair Repeat Report Rate (Percent)</i>
MR-8	<i>Trouble Rate (Percent)</i>

For Basic ISDN:

MR-3A	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-3B	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-3C	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-6A	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6B	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6C	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7A	<i>Repair Repeat Report Rate (Percent)</i>
MR-7B	<i>Repair Repeat Report Rate (Percent)</i>
MR-7C	<i>Repair Repeat Report Rate (Percent)</i>
MR-8	<i>Trouble Rate (Percent)</i>

For UNE-P (POTS):

MR-3A	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-3B	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-3C	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-6A	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6B	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6C	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7A	<i>Repair Repeat Report Rate (Percent)</i>
MR-7B	<i>Repair Repeat Report Rate (Percent)</i>
MR-7C	<i>Repair Repeat Report Rate (Percent)</i>
MR-8	<i>Trouble Rate (Percent)</i>

For Qwest DSL:

MR-3D	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-3E	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-6D	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6E	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7D	<i>Repair Repeat Report Rate (Percent)</i>
MR-7E	<i>Repair Repeat Report Rate (Percent)</i>
MR-8	<i>Trouble Rate (Percent)</i>

For Primary ISDN:

MR-3D	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-3E	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-6D	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6E	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7D	<i>Repair Repeat Report Rate (Percent)</i>
MR-7E	<i>Repair Repeat Report Rate (Percent)</i>

MR-8	Trouble Rate (Percent)
For DS0:	
MR-3D	All Troubles Cleared within 24 Hours (Percent)
MR-3E	All Troubles Cleared within 24 Hours (Percent)
MR-6D	Mean Time to Restore (Hours:Minutes)
MR-6E	Mean Time to Restore (Hours:Minutes)
MR-7D	Repair Repeat Report Rate (Percent)
MR-7E	Repair Repeat Report Rate (Percent)
MR-8	Trouble Rate (Percent)
For DS1:	
MR-3D	All Troubles Cleared within 24 Hours (Percent)
MR-3E	All Troubles Cleared within 24 Hours (Percent)
MR-6D	Mean Time to Restore (Hours:Minutes)
MR-6E	Mean Time to Restore (Hours:Minutes)
MR-7D	Repair Repeat Report Rate (Percent)
MR-7E	Repair Repeat Report Rate (Percent)
MR-8	Trouble Rate (Percent)
For DS3 and Higher:	
MR-3D	All Troubles Cleared within 24 Hours (Percent)
MR-3E	All Troubles Cleared within 24 Hours (Percent)
MR-6D	Mean Time to Restore (Hours:Minutes)
MR-6E	Mean Time to Restore (Hours:Minutes)
MR-7D	Repair Repeat Report Rate (Percent)
MR-7E	Repair Repeat Report Rate (Percent)
MR-8	Trouble Rate (Percent)
For Frame Relay:	
MR-3D	All Troubles Cleared within 24 Hours (Percent)
MR-3E	All Troubles Cleared within 24 Hours (Percent)
MR-6D	Mean Time to Restore (Hours:Minutes)
MR-6E	Mean Time to Restore (Hours:Minutes)
MR-7D	Repair Repeat Report Rate (Percent)
MR-7E	Repair Repeat Report Rate (Percent)
MR-8	Trouble Rate (Percent)
For UDIT – DS1 Level:	
MR-3D	All Troubles Cleared within 24 Hours (Percent)
MR-3E	All Troubles Cleared within 24 Hours (Percent)
MR-6D	Mean Time to Restore (Hours:Minutes)
MR-6E	Mean Time to Restore (Hours:Minutes)
MR-7D	Repair Repeat Report Rate (Percent)
MR-7E	Repair Repeat Report Rate (Percent)
MR-8	Trouble Rate (Percent)
For UDIT – Above DS1 Level:	
MR-3D	All Troubles Cleared within 24 Hours (Percent)
MR-3E	All Troubles Cleared within 24 Hours (Percent)
MR-6D	Mean Time to Restore (Hours:Minutes)

MR-6E	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7D	<i>Repair Repeat Report Rate (Percent)</i>
MR-7E	<i>Repair Repeat Report Rate (Percent)</i>
MR-8	<i>Trouble Rate (Percent)</i>

For E911/911 Trunks:

MR-3D	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-3E	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-6D	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6E	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7D	<i>Repair Repeat Report Rate (Percent)</i>
MR-7E	<i>Repair Repeat Report Rate (Percent)</i>
MR-8	<i>Trouble Rate (Percent)</i>

TIER 1C

Billing

BI-1A	<i>Time to Provide Recorded Usage Records (Average Days)</i>
BI-1B	<i>Time to Provide Recorded Usage Records (Percent)</i>
BI-3A	<i>Billing Accuracy – Adjustments for Errors (Percent)</i>
BI-3B	<i>Billing Accuracy – Adjustments for Errors (Percent)</i>
BI-4A	<i>Billing Completeness (Percent)</i>
BI-4B	<i>Billing Completeness (Percent)</i>

Each billing measure (BI-1A/BI-1B; BI-3A/BI-3B; and BI-4A/BI-4B) will be subject to a per measure cap of a base payment of \$5,000 per month, subject to a maximum escalation of \$30,000 per measure.

TIER 2

Continuing Non-Conforming Performance

See Section 10.3.

Work Completion Timeliness

PO-6	<i>Work Completion Notification Timeliness (Hours:Minutes)</i>
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This measure shall be on a Tier 2 basis (measuring aggregate performance to all CLECs) and shall be calculated as follows:

<u>Performance</u>	<u>Monthly Payment</u>
1-1.49 hrs	\$10,000
1.5-1.99 hrs	\$15,000
2-2.49 hrs	\$20,000
2.5-2.99 hrs	\$25,000
3-3.49 hrs	\$30,000
3.5-3.99 hrs	\$35,000
4-4.49 hrs	\$40,000
4.5-4.99	\$45,000
5+	\$50,000

Regionwide Wholesale Support Systems

The following submeasures, which relate to the quality of Qwest's computer systems and call centers, are recorded only on a regionwide (14 state) basis:

GA-1A Appointment Scheduler	Gateway Availability – IMA-GUI (Percent)
GA-1B Fetch-N-Stuff	Gateway Availability – IMA-GUI (Percent)
GA-1C Data Arbiter	Gateway Availability – IMA-GUI (Percent)
GA-2	Gateway Availability – IMA-EDI (Percent)
GA-3	Gateway Availability – EB-TA (Percent)
GA-4	Gateway Availability – EXACT (Percent)
GA-6	Gateway Availability – GUI – Repair (Percent)
PO-1A-1	Pre-Order/Order Response Times(Seconds)
PO-1B-1	Pre-Order/Order Response Times(Seconds)
PO-1A-2	Pre-Order/Order Response Times(Seconds)
PO-1B-2	Pre-Order/Order Response Times(Seconds)
PO-1A-3	Pre-Order/Order Response Times(Seconds)
PO-1B-3	Pre-Order/Order Response Times(Seconds)
PO-1A-4	Pre-Order/Order Response Times(Seconds)
PO-1B-4	Pre-Order/Order Response Times(Seconds)
PO-1A-5	Pre-Order/Order Response Times(Seconds)
PO-1B-5	Pre-Order/Order Response Times(Seconds)
PO-1A-6	Pre-Order/Order Response Times(Seconds)
PO-1B-6	Pre-Order/Order Response Times(Seconds)
PO-1A-7	Pre-Order/Order Response Times(Seconds)
PO-1B-7	Pre-Order/Order Response Times(Seconds)
PO-1A-8	Pre-Order/Order Response Times(Seconds)
PO-1B-8	Pre-Order/Order Response Times(Seconds)
OP-2	Calls Answered within Twenty Seconds – Interconnect Provisioning Center (Percent)
MR-2	Calls Answered within Twenty Seconds – Interconnect Repair Center (Percent)

PO-1A and PO-1B shall have their transaction types aggregated together.

For Colorado, Qwest shall make a Tier-2 payments based upon monthly performance results according to the following schedule. (On this measure, the total payment, for all 14 Qwest states, shall actually be a multiple of the one noted below.)

<u>Measure</u>	<u>Performance</u>	<u>Payment</u>
GA-1,GA-2,	1% or lower	\$1,000
GA-3,GA-4	>1% to 3%	\$10,000
GA-6	>3% to 5%	\$20,000
	> 5%	\$30,000
PO-1	2 sec or less	\$1,000
	>2 sec to 5 sec	\$5,000
	>5 sec to 10 sec	\$10,000
	> 10 sec	\$15,000
OP-2/MR-2	1% or less	\$1,000

>1% to 3%	\$5,000
>3% to 5%	\$10,000
>5%	\$15,000

Handling of Local Service Requests

PO-10 *LSR Accountability (Percent)*

<u>Performance</u>	<u>Payment</u>
99-99.5	\$10,000
98.5-98.99	\$20,000
98-98.49	\$30,000
97.5-97.99	\$40,000
97-97.49	\$50,000
96.5-96.99	\$60,000
96-96.49	\$70,000
95.5-95.99	\$80,000
95-95.49	\$90,000
below 95%	\$100,000

If the PO-10 measure at the end of any month dips below 95%, the Commission may commence a proceeding to determine whether the problem is being remedied and to determine whether any other action is appropriate.

Electronic Flow Through Rates

For Resale:

PO-2A-1 IMA Flow-through LSRs	<i>Electronic Flow-through (Percent)</i>
PO-2A-2 GUI Flow-through LSRs	<i>Electronic Flow-through (Percent)</i>
PO-2B-1 IMA Flow-through Eligible LSRs	<i>Electronic Flow-through (Percent)</i>
PO-2B-2 GUI Flow-through Eligible LSRs	<i>Electronic Flow-through (Percent)</i>

For Unbundled Loops:

PO-2A-1 IMA Flow-through LSRs	<i>Electronic Flow-through (Percent)</i>
PO-2A-2 GUI Flow-through LSRs	<i>Electronic Flow-through (Percent)</i>
PO-2B-1 IMA Flow-through Eligible LSRs	<i>Electronic Flow-through (Percent)</i>
PO-2B-2 GUI Flow-through Eligible LSRs	<i>Electronic Flow-through (Percent)</i>

For LNP:

PO-2A-1 IMA Flow-through LSRs	<i>Electronic Flow-through (Percent)</i>
PO-2A-2 GUI Flow-through LSRs	<i>Electronic Flow-through (Percent)</i>
PO-2B-1 IMA Flow-through Eligible LSRs	<i>Electronic Flow-through (Percent)</i>
PO-2B-2 GUI Flow-through Eligible LSRs	<i>Electronic Flow-through (Percent)</i>

For UNE-P (POTS):

PO-2A-1 IMA Flow-through LSRs	<i>Electronic Flow-through (Percent)</i>
PO-2A-2 GUI Flow-through LSRs	<i>Electronic Flow-through (Percent)</i>
PO-2B-1 IMA Flow-through Eligible LSRs	<i>Electronic Flow-through (Percent)</i>
PO-2B-2 GUI Flow-through Eligible LSRs	<i>Electronic Flow-through (Percent)</i>

Qwest shall be required to meet a standard for either eligible flow-through (PO-2B-1 & PO-2B-2 aggregated) or actual flow-through (PO-2A-1 & PO-2A-2 aggregated). If Qwest misses the standard for both PO-2B and PO-2A, it shall pay payments on the measure in which it performed closer to the relevant standard.

The following table sets out the relevant standard for measuring acceptable levels of actual flow-through (PO-2A) and flow-through eligible orders (PO-2B).

Flow-through Orders (PO-2A)	January <u>2002</u>	July <u>2002</u>	January <u>2003</u>	July <u>2003</u>
Resale	70%	80%	85%	85%
Unbundled Loops	50%	60%	70%	75%
LNP	70%	80%	85%	85%
UNE-P (POTS)	50%	65%	80%	85%

Flow-through Eligible Orders (PO-2B)	January <u>2002</u>	July <u>2002</u>	January <u>2003</u>	July <u>2003</u>
Resale	80%	90%	95%	95%
Unbundled Loops	60%	70%	80%	85%
LNP	80%	90%	95%	95%
UNE-P (POTS)	60%	75%	90%	95%

The relevant payment shall be computed on a quarterly basis and shall take the performance on the better of the eligible flow through orders (PO-2B) or actual orders to flow through (PO-2A) and apply a \$75,000 payment for each 2.5% that the relevant measurement differs from the standard. This payment shall not exceed \$600,000 per submeasure (resale, unbundled loop, LNP, UNEP). By way of illustration, the payment table for eligible flow through orders for resale for beginning January, 2002 is:

Resale:	77.5%-79.99%	\$ 75,000
	75.0%-77.49%	\$150,000
	72.5%-74.99%	\$225,000
	70.0%-72.49%	\$300,000
	67.5%-69.99%	\$375,000
	65.0%-57.49%	\$450,000
	62.5%-64.99%	\$525,000
	below 62.49%	\$600,000

Change Management Requirements

PO-16 *Release Notification on Time (Calendar Days)*

For failing to notify competitors of the first announcement on time, Qwest shall pay a payment of \$200/per day. For failing to notify competitors of subsequent release dates (i.e., the final requirements and final release notes), Qwest shall pay a payment of \$50/day.

GA-7 *Timely Outage Resolution following Software Releases (Percent)*

Failure to resolve software outages within 48 hours shall result in a \$100,000 payment by Qwest for each additional 48 hours out of service.

PO-18(CPAP)

Interface Versions Availability (Percent)

A failure to reinstate a pulled version that had not been available for 6 months within 24 hours shall result in a \$50,000 payment, with half of the payment going to the CLEC who brings the complaint and the other half going into the Special Fund.

APPENDIX B

**(PERFORMANCE INDICATOR DEFINITIONS – TO BE SUPPLIED BY
QWEST)**

CONTINUATION

[7.]

COLORADO PERFORMANCE ASSURANCE PLAN RECOMMENDED SGAT LANGUAGE

(Redline Changes to Attachment A of Decision No. R01-1142-I)

1.0 Introduction

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

2.0 Plan Structure

2.1 The CPAP is a tiered remedy plan. Qwest shall be subject to self-executing payments to CLEC for Tier 1 submeasures, identified in Appendix A, which generate both Tier 1X and 50% of Tier 1Y payments (described in Sections 7.0 and 8.0). Qwest shall be subject to self-executing payments to the Tier 2 Special Fund for the following: (1) Tier 2 submeasures (identified in Appendix A), (2) 50% of Tier 1Y payments not owed to the CLEC (described in Section 8.3), and (3) payments for missing Tier 1A or Tier 1B submeasures by more than 50% (described in Section 10.3).

3.0 Performance Measurements

3.1 The performance standards for each measure and submeasure are identified in Appendix A. This Appendix A places the Performance Indicator Definitions ("PIDs") in Tier 1A, Tier 1B, Tier 1C or Tier 2.

4.0 Statistical Methodology

4.1 Qwest will be in conformance with Tier 1A, Tier 1B, Tier 1C and Tier 2 benchmark submeasures 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.

4.2 For Tier 1B and Tier 1C parity submeasures, 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 CLEC. For the purpose of this Section, the Qwest results will be the Qwest monthly retail results as specified in the PIDs filed with the CPAP as approved by the Colorado Public Utilities Commission ("Commission"). The modified z-test shall be applicable if the CLEC sample size is greater than or equal to 30 for a given

If the fraction is greater than α (alpha), the significance level of the test, the hypothesis of no difference is not rejected, and the test is passed. Alpha = 0.05. For individual month testing for performance measurements involving LIS trunks and DS-1 and DS-3 that are Unbundled Dedicated Interoffice Transport, Resale, or Unbundled Loops (performance measurements: OP-3D/E, OP-4D/E, OP-5, OP-6-4/5, MR-5A/B, MR-7D/E, and MR-8) with sample sizes of 1-10, alpha = 0.15. When performance submeasures disaggregate to zone 1 and zone 2, the CLEC volumes in both zones shall be combined for purposes of statistical testing.

5.0 Critical Z-Value

5.1 The following table shall be used to determine the Critical z-value for Tier 1B and Tier 1C parity submeasures when the CLEC sample size is greater than or equal to 30. It is based on the monthly business volume of the CLEC for the particular performance submeasures for which statistical testing is being performed.

TABLE 1: CRITICAL Z-VALUE

CLEC volume (Sample size)	Critical Z-Value
30-150	1.645
151-300	2.0
301-600	2.7
601-3000	3.7
3001 and above	4.3

~~Where performance submeasures disaggregate to zone 1 and zone 2, the CLEC volumes in both zones shall be combined for purposes of statistical testing.~~

5.2 When the CLEC sample size is greater than or equal to 30, Qwest's performance to a CLEC for a Tier 1B or Tier 1C parity submeasure will be considered conforming in a month when the z-score calculated pursuant to Section 4.2 is equal to or less than the appropriate critical z-value identified in Section 5.1, Table 1.

6.0 Tier 1A Parity Calculations

6.1 For Tier 1A, which includes the measures that are most critical and most likely to be relied on most heavily by smaller competitors, the average performance Qwest gives a-CLEC in the current month shall be compared to the average of prior six months retail performance, subject to a variance factor (standard performance). The average retail performance over the prior six months shall be calculated by summing the six individual monthly numerator values and dividing that amount by the sum of the six individual monthly denominator values. The variance factor shall modify that standard average according to the variance table listed below in Table 2. This table

captures the variability of the data and seeks to minimize the impact of smaller sample sizes on the ultimate calculation.

TABLE 2: VARIANCE FACTORS

CLEC volumes	OP-3 LIS	OP-3 UBL ¹	OP-4 LIS	OP-4 UBL ¹	OP-6 LIS	OP-6UBL	OP-5	NP
1-5	24 25	18 25	15 18	10 14	20 24	20 28	<u>20</u>	
6-15	17 18	15 18	11 12	8 10	16	16 18	<u>12</u>	
16-22	16	14	9	8	15	15	<u>10</u>	
23-30	15	13	8	7	14	14	<u>9</u>	
31-40	13	11	7	7	12	12	<u>8</u>	
41-60	11	9	6	6	10	10	<u>7</u>	
61-90	9	7	5	6	8	8	<u>6</u>	
91-150	5	5	4	5	6	6	<u>5</u>	
151-300	5	4	3	4	4	4	<u>4</u>	
301-500	4	3	2	3	3	3	<u>3</u>	
501-1000	3	2	2	2	2	2	<u>2</u>	
1001-1500	2	1	1	1	1	1	<u>1</u>	
1501-2000	1	0.5	0.5	0.5	0.5	0.5	<u>.5</u>	
2000+	0	0	0	0	0	0	<u>0</u>	

Measure Type	%	%	Days	Days	Days	Days	%
Modification	Subtract	Subtract	Add	Add	Add	Add	Subtract

CLEC volumes	MR5-LIS	MR5-UBL ²	MR6-LIS	MR-6-UBL	MR7 ³	MR-8 ³	PO-9b
1-5	18 22	20 28	180 220	300 500	20 28	20 28	14 20
6-15	16	16 18	180	240 300	16 18	16 18	12
16-22	15	15	150	220	15	15	10
23-30	14	14	130	200	14	14	9
31-40	13	12	110	160	12	12	8
41-60	11	10	90	150	10	10	7
61-90	9	8	70	140	8	8	6
91-150	7	6	60	130	6	6	5
151-300	5	4	50	120	4	4	4
301-500	4	3	40	110	3	3	3
501-1000	3	2	30	100	2	2	2
1001-1500	2	1	20	50	1	1	1
1501-2000	1	0.5	10	25	0.5	0.5	0.5
2000+	0	0	0	0	0	0	0

Measure Type	%	%	Mins	Mins	%	%	%
Modification	Subtract	Subtract	Add	Add	Add	Add	Subtract

CLEC volumes	OP-5 L/S	OP-6 L/S	MR-3 L/S	MR-6 L/S	MR-7 L/S	MR-11	MR-12
<u>1-5</u>	<u>22</u>	<u>12</u>	<u>22</u>	<u>500</u>	<u>25</u>	<u>16</u>	<u>600</u>

<u>6-15</u>	<u>17</u>	<u>6</u>	<u>12</u>	<u>400</u>	<u>18</u>	<u>9</u>	<u>300</u>
<u>16-22</u>	<u>13</u>	<u>5</u>	<u>9</u>	<u>300</u>	<u>14</u>	<u>7</u>	<u>250</u>
<u>23-30</u>	<u>11</u>	<u>4</u>	<u>8</u>	<u>250</u>	<u>12</u>	<u>6</u>	<u>200</u>
<u>31-40</u>	<u>10</u>	<u>3</u>	<u>6</u>	<u>200</u>	<u>10</u>	<u>5</u>	<u>175</u>
<u>41-60</u>	<u>8</u>	<u>3</u>	<u>5</u>	<u>175</u>	<u>8</u>	<u>4</u>	<u>150</u>
<u>61-90</u>	<u>7</u>	<u>2</u>	<u>4</u>	<u>150</u>	<u>7</u>	<u>3</u>	<u>125</u>
<u>91-150</u>	<u>5</u>	<u>2</u>	<u>4</u>	<u>125</u>	<u>5</u>	<u>2</u>	<u>100</u>
<u>151-300</u>	<u>4</u>	<u>1</u>	<u>3</u>	<u>120</u>	<u>4</u>	<u>2</u>	<u>75</u>
<u>301-500</u>	<u>3</u>	<u>1</u>	<u>2</u>	<u>90</u>	<u>3</u>	<u>1.5</u>	<u>50</u>
<u>501-1000</u>	<u>2</u>	<u>.7</u>	<u>1.5</u>	<u>60</u>	<u>2</u>	<u>1</u>	<u>40</u>
<u>1001-1500</u>	<u>1.5</u>	<u>.6</u>	<u>1</u>	<u>30</u>	<u>1.5</u>	<u>.75</u>	<u>25</u>
<u>1501-2000</u>	<u>1.25</u>	<u>.5</u>	<u>.75</u>	<u>25</u>	<u>1.25</u>	<u>.5</u>	<u>15</u>
<u>2000+</u>	<u>1</u>	<u>.25</u>	<u>.5</u>	<u>20</u>	<u>1</u>	<u>0</u>	<u>0</u>

<u>Measure Type</u>	<u>%</u>	<u>Days</u>	<u>%</u>	<u>Mins</u>	<u>%</u>	<u>%</u>	<u>Mins</u>
<u>Modification</u>	<u>Add</u>	<u>Add</u>	<u>Subtract</u>	<u>Add</u>	<u>Add</u>	<u>Subtract</u>	<u>Add</u>

¹ Except Analog, 2-wire non-loaded, and ADSL qualified loops.

² MR-5 UBL's variance table also applies for MR3-UBL calculations.

³ MR-7 & 8's column applies both for LIS trunks and Unbundled Loops (UBL)

⁴ On NI-1, the variance table only applies in instances where the parity comparison applies – i.e., Qwest's blocking rates exceed 1%, as the appropriate comparison for that measurements is the retail analog or a 1% standard, whichever is higher.

⁵ The first failure will not result in any penalty. Each subsequent failure will constitute a "miss" for purposes of triggering a payment.

6.2 For any Tier 1A benchmark performance submeasure where the CLEC volume is ten 10 or below, Qwest shall be allowed to miss one occurrence before being subject to any payments for non-conforming performance. That is, if CLEC volume is ≤ 10 and the number of occurrences is ≤ 1 there is no payment made. For all Tier 1A parity performance submeasures with sample sizes of 1-30, Qwest shall calculate and report payments based upon both the Table 2 variance factors and the permutation test as set out in Section 4.3. CLEC shall receive the higher of the payment based upon variance factors or the payment based upon permutation testing.

6.3 Qwest's performance to CLEC for a Tier 1A submeasure will be considered conforming in a month when the CLEC performance result is better than or equal to the Qwest standard performance result as defined in Section 6.1.

6.4 For any Tier 1A measure where variance factors have not been developed or where there are insufficient data to develop such factors, the relevant measures shall rely on the same statistical methodology used for Tier 1B and Tier 1C, as set forth in Sections 4.0 and 5.0 of this Plan, to determine performance results.

7.0 Tier 1X: Calculation of Payments to CLEC for Tier 1A, 1B and 1C Submeasures

7.1 Unless otherwise specified in this Section 7.0 or in Appendix A, payments to CLEC under the CPAP are to be made on a per occurrence basis. The formulas set forth below shall be used to determine the total number of occurrences upon which Qwest is required to make payments to CLEC.

For percentage submeasures, the CPAP uses the following formula:

$$\text{CLEC Occurrences} = \text{Absolute value of (CLEC result -- standard)} \\ \text{multiplied by CLEC volume.}$$

For interval submeasures, the CPAP uses the following formula:

$$\text{CLEC Occurrences} = \text{Absolute value of ((CLEC result --} \\ \text{standard)/standard)} \text{ multiplied by CLEC volume.}$$

For the above formulas, for Tier 1A parity submeasures, the standard is the average of the prior six months retail performance adjusted by the relevant variance factor in Section 6.1, Table 2. For Tier 1B and Tier 1C parity submeasures, the standard is the current month retail performance, as adjusted for sample size and variance in accordance with Sections 4 and 5. For Tier 1A, Tier 1B and Tier 1C submeasures with a benchmark, the standard is the benchmark.

7.2 For interval submeasures, the number of occurrences shall not exceed the CLEC volume for the particular submeasure.

7.3 If Qwest fails to meet the applicable standard for Tier 1 submeasures, Qwest shall make a per occurrence payment to CLEC as specified in Table 3 below, unless different payment provisions for the applicable Tier 1 submeasure are set forth in Appendix A.

TABLE 3: PER OCCURRENCE PAYMENT AMOUNTS

Tier 1A	\$ 225.00
Tier 1B	\$ 75.00
Tier 1C	\$ 25.00

7.4 To account for the severity of a missed standard, the base payment shall be multiplied by the factor in Table 4 according to the following formula:

$$\text{Base Payment} = (\text{per occurrence payment}) \times (\text{occurrences}) \\ \text{Total Payment} = (\text{base payment}) \times (\text{severity multiplier})$$

The severity multiplier for each measure is obtained by calculating the difference between the CLEC result and the standard performance for that measure, and then

looking up the multiplier on Table 4. For Tier 1A, the standard performance is the average of prior six month retail performance with the variance calculation. For Tier 1B and 1C, the standard performance is the current month retail performance. For PIDs that do not have retail equivalents, the benchmark targets shall be used.

The severity penalty shall be derived from the base payment even where the monthly payment has been increased under the minimum payment rule or the additional penalty for ongoing poor performance.

TABLE 4

For Percentage measures		For Interval Measures	
Between	Multiplier	CLEC Performance*	Multiplier
0-4.99%	1	$1 < x < 2$	1.1
5%-9.99%	1.1	$2 \leq x < 3$	1.2
10-14.99%	1.2	$3 \leq x < 4$	1.3
15-19.99%	1.3	$4 \leq x < 5$	1.4
20-24.99%	1.4	$5 \leq x < 6$	1.5
25-29.99%	1.5	$6 \leq x < 7$	1.6
30-34.99%	1.6	$7 \leq x < 8$	1.7
35-39.99%	1.7	$8 \leq x < 9$	1.8
40-44.99%	1.8	$9 \leq x < 10$	1.9
45-49.99%	1.9	$10 \leq x < 11$	2.0
50-54.99%	2.0	$11 \leq x < 12$	2.1
55-59.99%	2.1	$12 \leq x < 13$	2.2
60-64.99%	2.2	$13 \leq x < 14$	2.3
65-69.99%	2.3	$14 \leq x < 15$	2.4
70-74.99%	2.4	$15 \leq x < 16$	2.5
75-79.99%	2.5	.	.
80-84.99%	2.6	.	.
85-89.99%	2.7	.	.
90-94.99%	2.8	$39 \leq x < 40$	4.9
95%-100%	2.9	40 or over	5

*calculated in days or hours, depending on measure

7.5 Geographically, all measures should only include Colorado statistics. For purposes of reporting, the data will be displayed in the most granular disaggregation possible and will be rolled up to overviews as appropriate. For purposes of minimum payments, a "measure" shall be the highest level of aggregation, i.e. PO-5, OP-4, MR-4, etc and so forth. For purposes of severity and duration penalties (Tier 1Y), a "measure" shall be at the most granular level of product reporting disaggregation, except where otherwise specified. For purposes of statistical comparison and occurrence calculation, a "measure" shall be at the most granular level of product reporting disaggregation, except where otherwise specified. If it turns out that CLECs seem to have data that are spread out over the disaggregated "sub-measures" in such a way that this approach leads to consistently small sample sizes (less than 10

in particular, but less than 30 will be considered), yet there is a way in which the samples could be effectively aggregated to create more meaningful sample sizes, then the Commission will consider aggregation during the six-month review.

8.0 Tier 1Y: Calculation of Payments

8.1 Qwest's non-conforming performance for Tier 1 submeasures shall be subject to escalating per occurrence payments. For Billing measures in Tier 1C, duration escalation is subject to a \$5,000 per measure cap in month one, increasing by a maximum of \$5,000 per month to a maximum per measure cap of \$30,000. The duration function does not include the severity factor calculated in Tier 1X when doubling (or tripling, etc.) the base payment.

8.2 The second continuous month of non-conforming performance for a particular submeasure will require the total per occurrence payment before severity to be multiplied by two. On the third continuous month, the total per occurrence payment before severity will be multiplied by three. The escalation will proceed along these lines until Qwest's wholesale performance meets the relevant standard. At that point (i.e., on the first acceptable month of acceptable performance following non-conforming performance), Qwest's per occurrence payment shall "step down" to the next level. If Qwest's next month's performance does not meet the applicable standard for the same submeasure, the payment will remain at the stepped down level and will then step up again if the non-conforming performance continues the following month. Alternatively, if Qwest's performance for the submeasure continues to conform to the standard, the per occurrence payment will step down each month until it reaches the original per occurrence payment.

8.3 For the first 12 months of escalated payments on a particular submeasure discussed in Section 8.2 above, Tier 1Y payments shall be divided between the CLEC and the Tier 2 Special Fund. Fifty percent (50%) of Tier 1Y payments shall be paid to the CLEC, and 50% of Tier 1Y payments shall be paid to the Special Fund as set forth in Section 10.4. If the escalation payments for a particular submeasure continue for more than 12 months, the escalation payments owed to the CLEC will be fixed at 50% of the 12 month level. This fixed amount will continue until Qwest's satisfactory performance for that submeasure results in Qwest paying at the 11 month level. At that point, the process in Section 8.2 will apply. All amounts in excess of the CLEC payments for month 12 will be paid to the Special Fund.

9.0 Minimum Payments to CLEC

9.1 For smaller CLECs, there is a minimum per measure payment for Tier 1A of \$600 and for Tier 1B of \$300. If the otherwise applicable payment is below this amount, the minimum payment shall apply. If the measure is one which falls into Tier 1A for some products, and Tier 1B for other products, and if any of the violations incurred that month for that measure were in Tier 1A, then the Tier 1A minimum

payment shall apply rather than the 1B payment. In the case of any month in which no payment is owed, the minimum payment ~~will~~ not apply.

9.2 For purposes of minimum payments, ~~the definition of a smaller CLEC shall be~~ is a CLEC one with less than or equal to 100,000 lines in service in Colorado (of whatever type – facilities-based, resale, UNE loops (including shared lines), etc. ~~and so forth~~). Upon adopting the CPAP and at six month intervals after that, a CLEC ~~must~~ certify to the Commission, with notification to Qwest, that it should be designated as a smaller CLEC in order to benefit from the minimum payment. Any CLEC that does not certify that it is below the minimum lines in service requirement shall not be eligible for the minimum payment.

10.0 Tier 2 Payments to the Special Fund

10.1 Tier 2 performance submeasures and corresponding base payments are set forth in Appendix A.

10.2 ~~Fifty percent of the Tier 1Y payments~~ not owed to the CLEC (as described in Section 8.3) shall be considered Tier 2 payments, and ~~made~~ shall be paid to the Tier 2 Special Fund.

10.3 When an individual submeasure in either Tier 1A or Tier 1B, using CLEC aggregate results, is missed by at least 50% of the applicable standard for two or more consecutive months, Qwest shall pay to the Tier 2 Special Fund \$25,000 for each Tier 1A submeasure missed and \$8,000 for each Tier 1B submeasure missed. A Tier 1A miss shall be determined with CLEC aggregate results by comparing the method identified in Section 6.1 using the variance factors in Table 2 and the variance factors in Table 5 below.

TABLE 5: VARIANCE FACTORS (WITH ONE FREE MISS RULE)

<u>CLEC volumes</u>	<u>OP-3 LIS</u>	<u>OP-3 UBL¹</u>	<u>OP-4 LIS</u>	<u>OP-4 UBL¹</u>	<u>OP-6 LIS</u>	<u>OP-6UBL</u>
<u>1-5</u>	<u>21</u>	<u>18</u>	<u>15</u>	<u>10</u>	<u>20</u>	<u>20</u>
<u>6-15</u>	<u>17</u>	<u>15.5</u>	<u>11</u>	<u>8.5</u>	<u>16</u>	<u>16</u>
<u>16-22</u>	<u>16</u>	<u>14</u>	<u>9</u>	<u>8</u>	<u>15</u>	<u>15</u>
<u>23-30</u>	<u>15</u>	<u>13</u>	<u>8</u>	<u>7</u>	<u>14</u>	<u>14</u>
<u>31-40</u>	<u>13</u>	<u>11</u>	<u>7</u>	<u>7</u>	<u>12</u>	<u>12</u>
<u>41-60</u>	<u>11</u>	<u>9</u>	<u>6</u>	<u>6</u>	<u>10</u>	<u>10</u>
<u>61-90</u>	<u>9</u>	<u>7</u>	<u>5</u>	<u>6</u>	<u>8</u>	<u>8</u>
<u>91-150</u>	<u>5</u>	<u>5</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>6</u>
<u>151-300</u>	<u>5</u>	<u>4</u>	<u>3</u>	<u>4</u>	<u>4</u>	<u>4</u>
<u>301-500</u>	<u>4</u>	<u>3</u>	<u>2</u>	<u>3</u>	<u>3</u>	<u>3</u>
<u>501-1000</u>	<u>3</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>
<u>1001-1500</u>	<u>2</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>
<u>1501-2000</u>	<u>1</u>	<u>0.5</u>	<u>0.5</u>	<u>0.5</u>	<u>0.5</u>	<u>0.5</u>
<u>2000+</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

<u>Measure Type</u>	<u>%</u>	<u>%</u>	<u>Days</u>	<u>Days</u>	<u>Days</u>	<u>Days</u>		
<u>Modification</u>	<u>Subtract</u>	<u>Subtract</u>	<u>Add</u>	<u>Add</u>	<u>Add</u>	<u>Add</u>		
<u>CLEC volumes</u>	<u>MR5-LIS</u>	<u>MR5-UBL²</u>	<u>MR6-LIS</u>	<u>MR6-UBL</u>	<u>MR7³</u>	<u>MR-8³</u>	<u>PO-9b</u>	<u>NI-1⁴</u>
<u>1-5</u>	<u>18</u>	<u>20</u>	<u>180</u>	<u>300</u>	<u>20</u>	<u>20</u>	<u>14</u>	<u>0.64</u>
<u>6-15</u>	<u>16</u>	<u>16</u>	<u>180</u>	<u>240</u>	<u>16</u>	<u>16</u>	<u>12</u>	<u>0.64</u>
<u>16-22</u>	<u>15</u>	<u>15</u>	<u>150</u>	<u>220</u>	<u>15</u>	<u>15</u>	<u>10</u>	<u>0.64</u>
<u>23-30</u>	<u>14</u>	<u>14</u>	<u>130</u>	<u>200</u>	<u>14</u>	<u>14</u>	<u>9</u>	<u>0.64</u>
<u>31-40</u>	<u>13</u>	<u>12</u>	<u>110</u>	<u>160</u>	<u>12</u>	<u>12</u>	<u>8</u>	<u>0.64</u>
<u>41-60</u>	<u>11</u>	<u>10</u>	<u>90</u>	<u>150</u>	<u>10</u>	<u>10</u>	<u>7</u>	<u>0.64</u>
<u>61-90</u>	<u>9</u>	<u>8</u>	<u>70</u>	<u>140</u>	<u>8</u>	<u>8</u>	<u>6</u>	<u>0.53</u>
<u>91-150</u>	<u>7</u>	<u>6</u>	<u>60</u>	<u>130</u>	<u>6</u>	<u>6</u>	<u>5</u>	<u>0.42</u>
<u>151-300</u>	<u>5</u>	<u>4</u>	<u>50</u>	<u>120</u>	<u>4</u>	<u>4</u>	<u>4</u>	<u>0.31</u>
<u>301-500</u>	<u>4</u>	<u>3</u>	<u>40</u>	<u>110</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>0.23</u>
<u>501-1000</u>	<u>3</u>	<u>2</u>	<u>30</u>	<u>100</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>0.17</u>
<u>1001-1500</u>	<u>2</u>	<u>1</u>	<u>20</u>	<u>50</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>0.11</u>
<u>1501-2000</u>	<u>1</u>	<u>0.5</u>	<u>10</u>	<u>25</u>	<u>0.5</u>	<u>0.5</u>	<u>0.5</u>	<u>0.05</u>
<u>2000+</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<u>Measure Type</u>	<u>%</u>	<u>%</u>	<u>Mins</u>	<u>Mins</u>	<u>%</u>	<u>%</u>	<u>%</u>	<u>%</u>
<u>Modification</u>	<u>Subtract</u>	<u>Subtract</u>	<u>Add</u>	<u>Add</u>	<u>Add</u>	<u>Add</u>	<u>Subtract</u>	<u>Add</u>

¹ Except Analog, 2-wire non-loaded, and ADSL qualified loops.

² MR-5 UBL's variance table also applies for MR3-UBL calculations.

³ MR-7 & 8's column applies both for LIS trunks and Unbundled Loops (UBL)

⁴ On NI-1, the variance table only applies in instances where the parity comparison applies – i.e., Qwest's blocking rates exceed 1%, as the appropriate comparison for that measurement is the retail analog or a 1% standard, whichever is higher.

When the variance factors in Table 5 are used, for any performance submeasure where the CLEC volume is ten or below, a performance submeasure will not be considered missed for the purposes of Section 10.3 until the number of payment occurrences is >1 (the one free miss rule). If the method of determining conformance in Section 6.1 using the variance factors in Table 2 or the variance factors in Table 5 with the one free miss rule results in a conclusion of conformance, then for the purposes of Section 10.3, the performance measurement is considered met. If both methods described in this Section result in a performance measurement miss, Qwest's payment obligation, if any, in this Section shall be the lesser of the payment amounts determined using the two methods.

10.4 All Tier 2 payments (including the 50% of the Tier 1Y payments not owed to the CLEC, as set forth in Section 8.3), any special payments assessed by the Monitor, and the 50% share of payments for inaccurate reporting not self-corrected by Qwest) shall be paid into a sSpecial fFund that Qwest shall keep in an interest-accruing bank account ("Tier 2 Special Fund" or "Special Fund").

10.5 This Special Ffund shall pay for the Independent Monitor at least until the first three-year review. When there are insufficient funds in the Special Fund for this purpose, Qwest shall advance the necessary funds.

10.6 Other potential uses for this fund include: paying a technical advisor for the Commission's CPAP Revision process; paying a consultant for the three-year review; and, if the Commission so decides, paying for additional audits of Qwest's performance measurement and reporting, and paying other administrative expenses.

10.7 Upon implementation of the CPAP, the Commission shall decide how to use the remainder of this fund. The uses shall be competitively neutral efforts in the telecommunications field that do not benefit Qwest directly.

11.0 Cap on Tier 1 and Tier 2 Payments

11.1 There shall be an annual cap of \$100 million on payments for performance under the CPAP. The cap shall apply to Tier 1X, Tier 1Y, and Tier 2 payments as explained in Section 11.3.

11.2 The following shall not count toward the annual cap: any penalties imposed by the Independent Monitor to maintain the integrity of the CPAP; any penalties imposed by the Commission; any penalties imposed directly by the CPAP for failure to report, failure to report timely, or failure to report accurately; any liquidated damages under another Interconnection Agreement; any interest payments; and any damages in an associated action.

11.3 Tier 1Y and Tier 2 penalties shall be subject to a monthly cap of 1/12 of the annual cap of \$100 million. Following is a description of how the monthly cap shall work:

If the total payments (Tier 1X, 1Y, 2) do not exceed the monthly cap, Qwest shall make all payments.

If the total payments (Tier 1X, 1Y, 2) do exceed the monthly cap, Qwest shall pay all Tier 1X payments (even if they alone exceed the monthly cap). Other than Tier 1X and payments specified in Section 11.2, Qwest shall not make payments in excess of the monthly cap. The balance in excess of the monthly cap shall roll forward and be paid when Qwest's total monthly penalties are below the monthly cap, whenever that ~~time should occurs~~ (even if that should take longer than a year).

In a month ~~when~~ in which Qwest's total payment is below the monthly cap, any deferred payments plus interest will be due, but only to the extent that the deferred payments do not cause the total monthly payment to exceed the monthly cap. In the event all Tier 1Y and Tier 2 payments cannot be made in

any month due to the monthly cap, Qwest will pay Tier 1Y payments first (up to the monthly cap) and then, from the remaining money, pay Tier 2 payments (up to the monthly cap).

The deferred payments shall be paid with interest on the relevant amount. The interest rate shall be equal to twice the Commission prescribed customer deposit rate.

If Qwest wishes to pay make any Tier 1Y and Tier 2 payments over and above the monthly cap in order to avoid paying interest on the deferred amount, it may do so.

11.4 If Qwest payments equal or exceed the annual cap for two years in a row or equal or exceed 1/3 of the annual cap in a combination of two consecutive months, the Commission shall have the authority to open a proceeding to request Qwest to explain the non-conforming performance and show that it did not result from Qwest's failure to avoid reasonably foreseeable risks. If the Commission concludes that Qwest failed to act in a prudent manner to avoid reasonably foreseeable consequences, the Commission may raise the cap to the amount which Qwest would have paid in the higher of the prior two years, may ask the Federal Communications Commission ("FCC") to halt Qwest's long distance marketing authority for a particular interval, may levy a fine, and/or may take other appropriate action.

12.0 Timing and Form of Payment

12.1 All Tier 1 payments to CLEC and all Tier 2 payments to the Tier-2 Special Fund shall be made on the last business day of the month following the due date of the performance measurement report for the month for which payment is being made.

12.2 All payments shall be in cash. Qwest shall be allowed, after obtaining the individual agreement of CLEC, to make such cash payments through the use of electronic fund transfers to CLEC and the Special Fund. However, once Qwest and CLEC agree on a method of payment (i.e., wire transfer or check), Qwest shall not change the method of payment without the permission of CLEC. Qwest shall be able to offset cash payment to CLEC with a bill credit applied against any non-disputed charges that are more than 90 days past due.

12.3 Qwest shall provide monthly payment information at the same time that the performance reports are due. Monthly payment information shall include the payment calculations.

12.4 In the case of late payments, Qwest shall pay interest to CLEC and/or to the Special Fund, as applicable, calculated at twice the Commission prescribed customer deposit rate, on the amount in question. Should Qwest demonstrate to the relevant CLEC or to the Independent Monitor that it overpaid, it shall be able to deduct from

future payments any past overpayment, along with interest calculated at the Commission prescribed customer deposit rate for the amount in question.

13.0 Reporting

13.1 ~~Beginning 60 days after the Commission's adoption of this CPAP,~~ Qwest will provide the Commission and CLECs opting into the CPAP with a monthly report of Qwest's performance for the PIDs. These reports shall contain any carry-over payment amounts and calculations as well as the current month's information. Qwest will collect, analyze, and report performance data for these PID measurements. Qwest will store such data in easy-to-access electronic form for three years after they have been produced and for an additional three years in an archived format. Any failure to follow these requirements shall be treated as a violation of the CPAP integrity requirements discussed in Sections 17.5 and 17.8.

13.2 ~~Qwest shall deliver the individual monthly report to CLEC and the aggregate State report to the Commission and the Office of Consumer Counsel via email on or before the last business day of each month following the relevant performance period.~~ On or before the last business day of each month following the relevant performance period, Qwest shall post the individual CLEC monthly reports to a secure part of the CPAP website and the aggregate state report to the public part of the CPAP website. In addition, Qwest must officially file with the Commission, one hard copy and one electronic copy in an Excel format, of all CLEC individual monthly reports under seal and one hard copy and one electronic copy in an Excel format of the state aggregate report in the public file. If CLEC requests a hard copy of its individual report, Qwest should make that hard copy available at no cost to CLEC.

13.3 In the case of late reporting, Qwest shall make a payment to the Special Fund of \$500 per calendar day for each day the report is late to the Special Fund. This amount represents the total payment for missing a reporting deadline, rather than a payment per report and does not count against the cap described in Section 11.1. This payment shall begin on the report due date and continue until the report is actually distributed.

13.4 If any inaccurate reporting is revealed by any annual audit, Commission audit or mini-audit, Qwest shall ~~be required to make any payments due to the CLEC as a result of the inaccurate reporting plus an additional payment of 50% of the amount due as a result of the underpayment.~~ Half of the 50% payment shall be paid into the Tier 2 Special Fund, and half shall be paid to the CLEC.

13.5 In addition to the ~~payment in Section 13.4 payment,~~ if as a result of an inaccurate report, any bill over \$25,000 is adjusted upwards by 25% or more, Qwest shall also incur a late reporting payment as set forth in Section 13.3. This payment shall begin on the report due date and shall continue until the day the discrepancy is resolved.

13.6 If a discrepancy is revealed solely by Qwest, and Qwest self-corrects the discrepancy prior to the monthly payment being due, no additional liability shall be assessed. If Qwest self-corrects the erroneous reports before an audit on the relevant measurements in question begins but after the relevant payment is made, it shall be responsible for paying the additional amount owed due to the non-conforming performance as well as interest on this amount at the rate of two times the Commission prescribed customer deposit rate.

13.7 If a discrepancy is revealed by a Qwest-CLEC data reconciliation process or any other inquiry, Qwest shall pay the additional amount owed as well as interest on any late additional amount at the rate of three times the Commission prescribed customer deposit rate.

13.8 If a given Qwest-CLEC data reconciliation process forces Qwest to adjust its payment upwards three months in a row, Qwest must pay the additional amount and an additional penalty to Tier 1Y as if the discrepancy was had been revealed by an audit (see Section 14.12) for that third month and for each consecutive month that the CLEC reveals additional payments via data reconciliation.

13.9 If a given Qwest-CLEC data reconciliation process forces Qwest to adjust its payment upward five times in a calendar year, Qwest must pay the additional amount and an additional penalty to Tier 1Y as if the discrepancy was had been revealed by an audit for that fifth month and for all other months in that calendar year that the CLEC reveals additional payments via data reconciliation.

14.0 Audits of Performance Results

14.1 Qwest shall carefully document any and all changes that Qwest makes to the Performance Measurement and Reporting System. This change log shall be displayed on a public website dedicated to the CPAP web-site. The Performance Measurement and Reporting System is defined to include at least: elements of Qwest's Regulatory Reporting System that constitute the data collection programs (i.e., the software code used by Qwest to determine which data fields are used and how they are used), the underlying data extracted by the data collection programs and data reference tables structures (e.g., USOC tables, wire center tables, etc., used in the calculation of measurements) (including codes tables), the data staging extraction programs (programming code used to organize and consolidate the data), the calculation programming (the code used to implement the formula defined for a measurement), and the report generation programs (including the report format and report file creation), the underlying calculations, the report formatting, and the report distribution software. This change log shall contain, at a minimum, a detailed description of the change (in plain English); the effects of the change, the reason for the change, the dates of notification and of implementation, and whether the change received Commission approval. Qwest shall also record if the change is fundamental or non-fundamental (see Sections 14.2 and 14.3).

14.2 Qwest shall be allowed to change the software and data structure that underly the Performance Measurement And Reporting System as defined in Section 14.1 in ways that are transparent to the CLECs non-fundamental (i.e., system changes for which the relevant performance data can be replicated under the old approach) without preapproval, but shall promptly record these changes on the change log so that they may factor into the process by which the scope of the audit is determined. Omitted or inaccurate changes shall result in Qwest being required to pay a \$2500 fine, plus interest at the Commission prescribed customer deposit rate accrued from the time the change took effect. The payment shall go to the Tier 2 Special Fund and does not count against the annual cap described in Section 11.1.

14.3 Before making any changes to the Performance Measurement and Reporting System in a manner whereby the relevant data cannot be reconstructed under the prior approach (i.e., a fundamental change to its measurement system), Qwest shall record the proposed change to the change log and notify the Auditor retained for the purpose of auditing performance measurements under this CPAP to request an evaluation of the proposed change. The Auditor will evaluate the impact of the proposed change and report, in writing, the results of that evaluation to the Commission and Qwest. Qwest shall immediately post the Auditor's report on the public CPAP website. Upon receiving the report of the impact evaluation from the Auditor, the Commission shall have 15 days to take action to prevent Qwest from making such change and to decide on a process for resolving the issue. During the first seven day period following the filing and recording of the Auditor's report, interested parties may file comments on the proposed change and Auditor's report. If the Commission takes no action on the issue during the 15 day period, Qwest shall be free to make the proposed change.

If Qwest makes a fundamental change pursuant to this Section without obtaining approval, it shall be liable for \$100,000 payable to the Special Fund. If Qwest cannot reproduce reliable performance data, the Independent Monitor shall determine what payments are due based upon the data collected by the affected CLECs along with any appropriate interest and late payment penalties.

Qwest shall obtain approval from the Commission, the Change Management Process forum, or other industry forum prior to implementing any CLEC-affecting changes to the Performance Measurement and Reporting System. Any CLEC-affecting change to the CPAP, including the PIDs, the underlying data collection, reporting and payment calculations must go through one of two processes. Either:

Qwest can bring these changes to an industry forum, such as the Change Management Process (CMP), for discussion. If agreement is reached, then Qwest will file the change with the Commission, in a compliance-type filing. The Commission will not issue a decision on these items, but they will simply be incorporated into the CPAP; or

~~Qwest will make an application-like filing with the Independent Monitor for changes that have not been agreed to at an industry forum either because agreement couldn't be reached, or Qwest did not present the change to the forum. Parties will be allowed to comment and a record will be established. The Independent Monitor will then issue a formal decision on whether the change will be allowed as part of the CPAP.~~

~~If Qwest fails to obtain approval for any CLEC-affecting change, it shall pay a \$1000 fine for each affected CLEC. This fine shall be paid directly to the affected CLECs which payment does not count against the cap described in Section 11.1.~~

14.4 Qwest shall keep a record of all exclusions (i.e., those allowed by the PIDs, authorized by the Commission or otherwise excluded for any reason) and of each basis for each exclusion. Such records shall be kept in easy-to-access electronic format for three years and an additional three years in an archived format.

14.5 As part of the data reconciliation process, CLECs shall have the right to request access to the raw, excluded data and business rules or other basis used relied upon by Qwest to exclude the data from the most recent month's report as part of the data reconciliation process. The records and data must be turned over, in a mutually-agreeable format within two weeks of the request ~~in a mutually agreeable format~~.

14.6 An independent audit of the results of the performance submeasures identified in Appendix A and the financial payments calculated based upon Qwest's performance results shall be performed annually. The first audit shall begin one year after the effective date the CPAP, and the second and third annual audits shall begin one year after the completion of the prior year's audit. Qwest shall pay for the first three audits; thereafter, the Commission shall determine whether the audits shall be paid by the Special Fund or by Qwest. The annual audit shall encompass both the performance reports and payment amounts. The audit shall include at least the following: (1) problem areas requiring further oversight as identified in the previous audit(s); (2) any submeasures changed or being changed from a manual to electronic system; (3) the accuracy of the measurements and reports designated in Tier 1A; (4) submeasures responsible for 80% of the payments paid by Qwest over the prior year (to the extent that they are not covered by the Tier 1A audit); and (5) whether Qwest is exercising a proper duty of care in evaluating which, if any, performance results can be properly excluded from its wholesale performance requirements.

14.7 A thorough scrutiny of Qwest's measurement and reporting system shall not be required for the annual audit. If, after examining the structure of the performance and measurement system, receiving input from CLECs, examining exclusions made by Qwest, and evaluating the nature of any changes, as well as some representative examples, the Auditor can confidently conclude that the measurement and reporting system is reliable, the Auditor shall need not perform a more extensive audit.

14.8 The Auditor shall be chosen by the Commission, with input from Qwest, CLECs, and other interested persons. The Auditor shall perform all of the auditing functions described above for the first three years. Any interested person may petition the Independent Monitor to disqualify the Auditor based upon gross neglect of duties, incompetence, or a significant conflict of interest. The Auditor shall respond to the petition within a reasonable time. The Independent Monitor shall then be authorized, in its discretion, to open a proceeding to consider the petition for disqualification.

14.9 CLEC may request a mini-audit of the performance measurement results covering Qwest's performance to CLEC for any submeasures. However, CLEC will not be allowed to commence such an audit unless and until (1) CLEC has requested access to the raw data and business rules and attempted to meet with Qwest to attempt data reconciliation for any discrepancies by presenting its own version of the data calculation and comparing it to Qwest's to demonstrate the areas where in which Qwest allegedly erred, and (2) the parties Qwest and CLEC are unable to reach agreement about any alleged discrepancy through the Qwest-CLEC data reconciliation process. Qwest must provide the necessary expertise and work in good faith to attempt to answer the CLEC concerns. Qwest's experts must be available for requested meetings to take place within 10 business days of the CLEC request, but Qwest may attempt to resolve the issue over the phone or via email before holding a face-to-face meeting.

14.10 Upon CLEC request, data files of the CLEC raw data, or any subset thereof, and business rules or other basis used to generate the reports as part of the data reconciliation process will be transmitted, without charge, to CLEC, within two weeks of the request, in a mutually acceptable format, protocol, and transmission medium.

14.11 The scope of the CLEC mini-audit allowed under this CPAP is limited to the relevant measures and submeasures that were the subject of and determined to be suspect through, the Qwest-CLEC data reconciliation process.

14.12 The mini-audit shall be conducted by the Auditor designated for annual audits, unless the CLEC demonstrates to the Independent Monitor good cause that another entity should perform the mini-audit. CLEC shall pay the Auditor's fees and expenses, and CLEC and Qwest shall bear their own costs. If an mini-audit identifies a non-conformance that materially affects the results (material being defined as a deficiency that requires an additional payment of at least 10% more than the total amount paid on the submeasures examined by the mini-audit) by Qwest, Qwest shall pay the Auditor's fees and expenses. In addition, Qwest shall resolve the identified problems and shall pay any applicable payments under the late payment rulesprovisions. Qwest shall also pay other CLECs any appropriate payments and penalties based on problems uncovered in the mini-audit. If the Auditor does not identify any non-conformance, CLEC shall not be allowed to request another mini-audit during the six months after the initial mini-audit request; however, CLEC is nevertheless permitted to request Qwest-CLEC data reconciliation during that time.

14.13 If CLEC proves to the Independent Monitor via the dispute resolution process that Qwest did not work in good faith to resolve the issues prior to the initiation of a mini-audit, the Independent Monitor can shift the Auditor's fees and expenses to Qwest, and the six-month moratorium on mini-audits shall then be waived.

14.14 The Commission reserves the right to choose to conduct an audit itself, with the assistance of an outside Auditor if it chooses. Such an audit shall be paid for through the Special Fund. If the audit reveals any material non-conformance (as defined above) in Qwest's performance reporting, Qwest shall reimburse the costs of the audit and, where appropriate, shall make applicable payments to CLECs or Special Fund as described above.

15.0 Waiver of Payments

15.1 Qwest may seek a waiver of the obligation to make payments pursuant to this CPAP by seeking an exception from the Independent Monitor on any of the following grounds:

- (1) *Force majeure*, as defined in SGAT Section 5.7 (as to benchmark standards, but not as to parity submeasures);
- (2) A work stoppage (as to benchmark standards, but not as to parity submeasures);
- (3) An act or omission by CLEC that is in bad faith and designed to "game" the payment process; or
- (4) A material ~~CLEC~~ failure by CLEC to follow the applicable business rules.

15.2 Any waiver request must contain an explanation of the circumstances that justify the waiver and any and all relevant documentation relied upon to support the request. To establish that the circumstances warrant granting of a requested waiver, Qwest must show the existence of those circumstances by a preponderance of the evidence. For any such action, Qwest shall be required to pay the disputed credits or place the disputed amount of money into an interest-bearing escrow account until the matter is resolved. CLEC must respond to any such waiver requests within 10 business days and the Independent Monitor shall have 10 business days after the response is filed to rule on the requested waiver, subject to review by the Commission as specified by the Dispute Resolution Process in Section 17.0.

16.0 Limitations

16.1 The payments imposed by the CPAP shall not become available in Colorado until the first day of the second month after Qwest receives Section 271 authority for

the State of Colorado. Each CLEC shall have the option of electing the CPAP *in toto* as set forth in this CPAP SGAT or of negotiating an alternative regime with Qwest. The CLECs need not adopt the *Interconnection, Unbundled Network Elements, Ancillary Services, and Resale SGAT* in its entirety in order to adopt the CPAP SGAT. Qwest will not be liable for Tier 1 payments to CLEC until the Commission has approved an interconnection agreement between the CLEC and Qwest which adopts the provisions of this CPAP.

16.2 Qwest's agreement to implement these enforcement terms, and specifically its agreement to make any payments 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. CLEC may not use (1) the existence of this enforcement plan or (2) Qwest's Tier 1 or Tier 2 payments as evidence that Qwest has discriminated in the provision of any facilities or services under Sections 251 or 252 of the Act or has violated any state or federal law or regulation. Qwest's conduct underlying its performance measures, however, is not made inadmissible by this SGAT term. 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 payments under these provisions for the purpose of precluding additional payments or offsetting any payments 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.

16.3 This CPAP contains a comprehensive set of performance submeasures, statistical methodologies, and payment mechanisms that are designed to function together, and only together, as an integrated whole. To elect the CPAP, CLEC must adopt the CPAP in its entirety, into its interconnection agreement with Qwest in lieu of other alternative standards or relief, except as stated in Sections 16.4, 16.6, and 16.7.

16.4 In electing the CPAP, CLEC shall surrender any rights to remedies under state wholesale service quality rules (in that regard, this CPAP shall constitute an "agreement of the parties" to opt out of those rules, as specified in 4 CCR 723-43-10 of those rules) or under any interconnection agreement designed to provide such monetary relief for the same performance issues addressed by the CPAP. The CPAP shall not limit either non-contractual legal or non-contractual regulatory remedies that may be available to CLEC.

16.5 Whether or not a CLEC opts into the CPAP, Qwest shall be responsible for making payments to the Tier 2 Special Fund, including the 50% of the Tier 1Y payments not owed to the CLEC as set forth in Section 8.3, for the wholesale performance provided to that CLEC.

16.6 Tier 1X and Tier 1Y payments to CLECs are in the nature of liquidated damages. Before CLEC shall be able to file an action seeking contract damages that flow from an alleged failure to perform in an area specifically measured and regulated by the CPAP, CLEC must first seek permission through the Dispute Resolution Process set forth in Section 17.0 to proceed with the action. This permission shall be granted only if CLEC can present a reasonable theory of damages for the non-conforming performance at issue and evidence of real world economic harm that, as applied over the preceding six months, establishes that the actual payments collected for non-conforming performance in the relevant area do not redress the extent of the competitive harm. If CLEC can make this showing, it shall be permitted to proceed with this action. Any damages awarded through this action shall be offset with payments made under this CPAP. If the CLEC cannot make this showing, the action shall be barred. To the extent that CLEC's contract action relates to an area of performance not addressed by the CPAP, no such procedural requirement shall apply.

16.7 If for any reason CLEC agreeing to this CPAP is awarded compensation for the same harm for which it received payments under the CPAP, the court or other adjudicatory body hearing such claim may offset the damages resulting from such claim against payments made for the same harm. Only that relevant finder of fact, and not Qwest in its discretion, can judge what amount, if any, of CPAP payments should be offset from any judgment for a CLEC in a related action.

16.8 If Qwest believes that some Tier 2 payments duplicate payments that are made to the state under other service quality rules, Qwest may make the payments to a special interest bearing escrow account and then dispute the payments via the Independent Monitor. If Qwest can show that the payments are indeed duplicative, it may retain the money (and its interest) that indeed are found to duplicated other state payments. Otherwise the money will go to the Tier 2 Special Fund.

16.9 The Commission shall have the right to modify this plan at any time as appropriate.

17.0 Dispute Resolution Process

17.1 The dispute resolution process specified in this CPAP does not replace or in any way limit, among other things, the processes for resolving interconnection disputes not within the ambit of the CPAP.

17.2 The Commission shall appoint an Independent Monitor to resolve disputes identified in Section 17.5. The salary and expenses of the Independent Monitor shall be paid by the Special Fund. If at any time, the Special Fund does not contain sufficient funds to pay for the Independent Monitor, Qwest shall advance the funds until the Special Fund contains the necessary funds to cover these expenses.

17.3 In the event that any person determines that the Independent Monitor has acted with gross neglect of duties, committed any ethical impropriety, has a significant conflict of interest, or is incompetent to perform the assigned task, the person may contact the Chief Administrative Law Judge (ALJ) of the Commission. The Chief ALJ shall be authorized at in its sole discretion to file a petition, to remove the Independent Monitor. The Commission shall rule on the petition within two months, including any hearing that it may hold to resolve disputed facts.

17.4 If the Independent Monitor position is vacant at any time, the parties shall file actions requests for dispute resolution with the Chief ALJ, who shall then be responsible for fulfilling the duties of the Independent Monitor or designating another ALJ to do so. If the Commission decides during the CPAP Revision Process that it wishes to assign some or all of the Independent Monitor's duties to either to the Commission ALJs or to Commission staff persons, it shall be free to do so; and the contract with the Independent Monitor shall so provide.

17.5 The Independent Monitor shall be responsible, at least initially, for the following functions, which may be modified by the Commission as it deems appropriate, with input from the parties, and for other responsibilities as set out in the CPAP (see, for example, Section 17.12). The Independent Monitor shall resolve all challenges to the accuracy of any performance measurements or reports, as evaluated through the auditing process in Section 14.0, as well as any disputes over the CPAP integrity requirements (that is, the rules that enable the CPAP to function, such as data collection and retention requirements, maintaining the PIDs as approved, and so forth). If Qwest is repeatedly penalized for failing to meet the performance requirements under any given PID, the Independent Monitor shall have the authority to require Qwest to perform a root-cause analysis. The Independent Monitor shall evaluate, including necessary investigation of, all allegations that Qwest has misinterpreted, wrongly applied, or violated the relevant business rules that govern the applicable payments to be made pursuant to the CPAP. For example, for disputes about whether particular CLEC actions qualify as exclusions from a measure, where such disputes were not settled by the Qwest-CLEC data reconciliation process or an audit, the Independent Monitor shall be authorized to decide what payments should have been made. The Independent Monitor shall also entertain challenges to disqualify the Auditor based upon gross neglect of duties, incompetence, or a significant conflict of interest. The Independent Monitor shall approve or deny permission for a CLEC to bring an overlapping lawsuit for contractual remedies. Finally, the Independent Monitor shall assess any additional penalties under this plan, such as penalties for bringing frivolous disputes.

17.6 The dispute resolution process envisioned by the CPAP provides a means of resolving issues raised by the CPAP reports, payment calculations and processes. This process is akin to the dispute resolution processes that might be set established in other Interconnection Agreements, except it applies exclusively to the CPAP.

17.7 The Independent Monitor shall employ a slightly modified version of the Commission's expedited dispute resolution procedure set forth in 4 CCR 723-1-61(k), but if the designated Independent Monitor so chooses, it shall be able to submit any desired material procedural changes to the Commission, which shall solicit comments from all interested persons before making a decision whether to adopt the procedural change. The procedural changes may be limited to a particular dispute or may apply to all future disputes as deemed appropriate by the Commission.

17.8 ~~In terms of how the expedited resolution procedure would be modified (at least as an initial matter),~~ ~~the CPAP's dispute resolution process shall not be resorted to unless and until the problem is raised at the Vice President-Vice President level at least two weeks before a dispute is submitted to the Independent Monitor.~~ As part of its request for dispute resolution, the party making the request ("complainant") must give provide the Independent Monitor a statement including specific facts that the complainant engaged (or attempted to engage) in good faith negotiations to resolve the disagreement that, and that, despite these negotiations good faith efforts, the parties failed to resolve the issue.

17.9 Insofar as there is a dispute about any business rule or requirement of the CPAP, any ruling issued by the Independent Monitor shall bind all parties unless and until it is overturned reversed or modified by the Commission. If the Independent Monitor's decision is reversed or modified upon review, any payments affected by the Commission's decision must be refunded.

17.10 The Commission's review, while plenary, shall not include consideration of any evidence not presented to the Independent Monitor. Appeals must be filed within five business days of the Independent Monitor's decision, and the opposing party shall have five business days to respond. The Commission shall then have 15 business days to rule on the appeal. A party shall have five business days to seek reconsideration or rehearing and the Commission shall have ~~ten~~ 10 business days to rule on any such motions. As a term of participation in the CPAP, all decisions after a motion for reconsideration and rehearing are final and shall be appealable to federal court under the standard in the Federal Arbitration Act.

17.11 In all actions before the Independent Monitor, the losing party shall pay all relevant attorney's fees and costs – including monies spent to prove that the problem exists – as determined by the Independent Monitor.

17.12 With regard to requiring payments that were erroneously withheld, the Independent Monitor shall enforce penalties for late payments and inaccurate reporting, as may be applicable. With regard to CPAP integrity requirements, the Independent Monitor shall be able to order the appropriate payments for misreporting along with the 50% premium, and shall be able to levy an additional payment of up to \$100,000 if the Independent Monitor finds that such action materially affected the payments, was willful, and was taken without any legitimate business justification. Any action by CLEC that materially affects the relevant payments, lacks any

legitimate business justification, and can be explained solely as an effort willfully to "game" the CPAP shall be grounds for the Independent Monitor's invalidating all payments received as a result of such actions. In addition, if the Independent Monitor finds it appropriate, CLEC shall be required to pay to Qwest a payment equaling 50% of the amount at issue and shall also be subject to an additional payment amount up to \$100,000. In all actions before the Independent Monitor, the losing party shall pay all relevant attorney fees and costs, including monies spent to prove that the problem exists, as determined by the Independent Monitor.

18.0 Effective Date, Reviews and Termination

18.1 The effective date of the CPAP ~~will be~~ is the date on which Qwest obtains § 271 approval from the FCC for Colorado. Dates for reviews of the CPAP are calculated from this effective date.

18.2 Reviews of the CPAP occur every six months, commencing with the effective date of the CPAP. Under the six-month CPAP review process, a Commission staff person shall submit a report to the Commission at the five month mark to recommend a series of changes, if any, to the CPAP, noting which of those were agreed to by all parties and which were contested.

18.3 In order to prepare their six-month review report, the relevant Commission staff person (along with any technical advisor the Commission may choose to retain and pay from the Tier 2 Special Fund) shall request feedback on possible changes and shall meet with parties (individually or together) and the Independent Monitor beginning no later than 90 days into the relevant cycle.

18.4 After the Commission staff person submits a six-month review report to the Commission on any suggested changes, parties shall have two weeks to file exceptions to, or comment on, that report. The Commission will rule within four weeks of receiving the parties' exceptions and/or comments on what changes, if any, should be instituted.

18.5 The Commission shall conduct a proceeding to resolve any disputed issues. ~~If the Commission deems it necessary (taking into account the recommendation of the relevant Commission staff person), it can order a hearing to resolve any particularly difficult issues, in which case it shall have an additional four weeks in which to rule on any appropriate revisions to the CPAP.~~

18.6 The six-month CPAP review process shall focus on refining, shifting the relative weighing of, deleting, and adding new PIDs; however, such the six-month review is not limited to these areas. With the exception of the areas specifically identified in Section 18.7 as eligible for review only at the three-year and six-year reviews, any other part of the CPAP is eligible for review during a six-month CPAP review. After the Commission considers such changes through the six-month

process, it shall determine what set of changes should be embodied in an amended SGAT that Qwest will file in order to effectuate these changes.

18.6.1 If, pursuant to Section 8.2, a PID continues to trigger a payment escalation for six months or more, that PID shall automatically be reviewed during a six-month review pursuant to this Section, in order to determine if there are issues with that PID, such as poor definition, that need to be addressed. In order to minimize this likelihood, the sound practice for introducing PIDs is to work through a collaborative forum before bringing a proposed PID addition or change to the Commission. The preferred approach is to introduce new PIDs as diagnostic measures, allowing for some reporting of actual data before determining the relevant standard and appropriate penalties.

18.7 Parties may suggest more fundamental changes to the plan; but, unless the suggestion is highly exigent, the suggestion shall either be declined or deferred until the three-year review. The following areas of the CPAP will be eligible for change only at the three-year and six-year reviews:

- (1) The statistical methodology (Sections 4.0, 5.0 and 6.0) except for additions to the variance tables for new Tier 1A measures;
- (2) The payment caps (Sections 11.0 and 18.8);
- (3) The duration of the CPAP (Section 18.11);
- (4) The payment regime structure (Sections 2.0, 7.0, 8.0, 9.0, 10.1, 10.2, 10.3, and 10.4) except for the addition of payment amounts for new Tier 2 measures and of payment amounts for violations of change management requirements;
- (5) The legal operation of the CPAP (Sections 15.0 and 16.0);
- (6) The Independent Monitor (Section 17.0) with the exception of assignment of the Independent Monitor function to an Administrative Law Judge;
- (7) Any proposal that does not relate directly to measuring and/or providing payments for non-discriminatory wholesale performance.

18.7.1 If, at the conclusion of a six-month CPAP review, the Commission orders a change in any areas identified in Section 18.7 without Qwest's consent, the Commission decision shall be stayed automatically during the course of any judicial challenge up to issuance of a final non-appealable order on the merits. This provision shall not apply if there is no judicial challenge.

18.8 Qwest shall calculate separately, payments owed under the CPAP that do not include changes made at the six-month review ("baseline CPAP") and payments owed under a CPAP revised to reflect changes made at the six-month review ("revised CPAP"). If payments calculated under the revised CPAP are more than 110% of payments calculated under the baseline CPAP, Qwest shall limit payments to the affected CLECs and to the Special Fund to a 10% increase ("10% collar") above the total baseline CPAP payment liability. Any CLEC affected by this limitation of payments shall be eligible for payments above the 10% collar from the Special

Fund. If the Special Fund does not contain sufficient funds to provide such payments to CLECs, Qwest shall make up the difference. Any funds that Qwest provides to make up the difference will be offset against Qwest's future Special Fund liabilities. At any six-month review, if the total payment liability for the revised CPAP is below 110% of the total payment liability for the baseline CPAP for the preceding six month period, the revised CPAP shall become the baseline CPAP for the next six month period, otherwise, the same baseline CPAP shall remain in effect for the next six month period. If CLEC or Qwest repeatedly or blatantly suggests modifications to the plan solely for its own benefit, and not for the effectiveness of the plan itself, that Party may be subject to sanctions at the discretion of the Commission.

18.9 If Qwest or CLEC wishes to modify a PID outside of the six-month review process and before the Three-Year Review set forth in this plan the CPAP, the change must be approved by the Independent Monitor and then also approved by the Commission. ~~The Independent Monitor and the Commission shall be more likely to allow the change if it has been approved by another forum such as the ROC or CMP (See Section 14.3). PID changes that have not been approved by one of these two forums or their future equivalent shall be unlikely to be approved outside of the six-month review process or the three-year review.~~

18.10 Thirty (30) months after the effective date of the CPAP § 271 approval, the Commission shall initiate a comprehensive review of the CPAP (the "Three-Year Review") with the assistance of an outside, independent expert. Such expert shall be paid from the Special Fund. When there are insufficient funds in the Special Fund for this purpose, Qwest shall advance the funds. The Three-Year Review shall:

- (1) Seek to refine the payment amounts by developing an evidentiary basis for the harm associated with particular non-conforming wholesale performance and to adjust the CPAP's payment amounts accordingly. Such evidence shall be the only basis for making upward or downward adjustments to the CPAP's payment amounts during the three-year review.
- (2) Evaluate whether there are available economical alternatives to Qwest's wholesale service offerings and whether such alternatives provide competitors with a meaningful opportunity to compete. This process shall thus consider the rationale for removing measures (or submeasures) both based on Qwest's demonstration of its ability to deliver reliable wholesale performance in certain areas and/or the fact that its Qwest's critical role in the market as a provider of key wholesale inputs is dissipating to the extent that the Commission can lift performance assurance requirements (either on a measure or submeasure basis).

- (3) Focus on whether some areas -- disaggregated by either product type or geographic area -- no longer need to be measured and/or subject to payments for non-conforming wholesale performance.
- (4) Evaluate whether the revision process should take place at a semi-annual, annual, or other interval.

At the Three-Year Review, the Commission cannot require Qwest, under the authority granted to it under the CPAP, to undertake any new obligations. At the Three-Year Review, if it chooses to do so, the Commission may order changes in the CPAP. The Commission decision shall be effective according to its terms unless stayed by action of the Commission or by action of a court of competent jurisdiction.

18.11 This Except as provided in this Section, this CPAP will expire six years from its effective date after Qwest receives § 271 approval. Only Tier 1A submeasures and payments will continue beyond six years, and these Tier 1A submeasures and payments shall continue until the Commission orders otherwise. Five and one-half years after § 271 approval the CPAP's effective date, a review shall be conducted with the objective of phasing-out the CPAP entirely. This review shall focus on ensuring that phase-out of the CPAP is indeed appropriate at that time, and on identifying any other submeasures in addition to the Tier 1A submeasures that should continue as part of the CPAP, that might need temporarily to remain. At the conclusion of the review, the Commission may revive this CPAP wholesale, sunset the entire plan, including Tier 1A payments, or allow more traditional contract and arbitration remedies to take the CPAP's place.

19.0 Voluntary Performance Assurance Plan

19.1 This CPAP represents Qwest's voluntary offer to provide performance assurance.

APPENDIX A

This appendix lists the submeasures to be included within the Performance Assurance Plan, classified either under Tier 1A, Tier 1B, Tier 1C or Tier 2. All submeasures not otherwise so designated rely on, and incorporate by reference, the Performance Indicator Definitions (PIDs) developed and approved by the Regional Oversight Committee's (ROC) Technical Advisory Group (TAG). For Tier 1A submeasures, the average performance Qwest gives a CLEC in the current month shall be compared to the average of prior six months retail performance subject to a "variance factor" (see Section 6.1, Table 2). In areas where this document suggests a standard that is in dispute (both procedurally and substantively) as part of the Commission's Section 271 review (namely, the standards for collocation, TBD1 (premature disconnects), subloops, conditioned loops and line sharing and line splitting), the standard listed herein is meant as a default standard that would give way in the event that the Commission adopts a different one.

TIER 1A

INTERCONNECTION

Trunk Blocking

NI-1A

LIS Trunks to Qwest Tandem Offices (Percent)

NI-1B

LIS Trunks to Qwest End Offices (Percent)

Provisioning

For LIS Trunks:

OP-3D

Installation Commitments Met (Percent)

OP-3E

Installation Commitments Met (Percent)

OP-4D¹

Installation Interval (Average Days)

OP-6A-4¹

Delayed Days (Average Days)

OP-6B-4¹

Delayed Days (Average Days)

OP-4E¹

Installation Interval (Average Days)

OP-6A-5¹

Delayed Days (Average Days)

OP-6B-5¹

Delayed Days (Average Days)

OP-5

New Service Installation without Trouble Reports (Percent)

Maintenance and Repair

For LIS Trunks:

MR-5A

All Troubles Cleared within 4 Hours (Percent)

MR-5B

All Troubles Cleared within 4 Hours (Percent)

¹ Submeasures for OP-4 are included with OP-6 as "families" OP-4A with (OP-6A-1 & OP-6B-1 combined); OP-4B with (OP-6A-2 & OP-6B-2 combined); OP-4C with (OP-6A-3 & OP-6B-3 combined); OP-4D with (OP-6A-4 & OP-6B-4 combined); and OP-4E with (OP-6A-5 & OP-6B-5 combined). Submeasures within each family share a single payment opportunity with only the submeasure (OP-4 or OP-6A & OP-6B combined) with the highest payment being paid.

MR-6D	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6E	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7D	<i>Repair Repeat Report Rate (Percent)</i>
MR-7E	<i>Repair Repeat Report Rate (Percent)</i>
MR-8	<i>Trouble Rate (Percent)</i>

SWITCHING CUSTOMERS

For Unbundled Loops:

OP-13A	Analog	<i>Coordinated Cuts on Time (Percent)</i>
OP-13A	All Other	<i>Coordinated Cuts on Time (Percent)</i>
OP-7		<i>Coordinated Hot Cut Interval (Percent)</i>
OP-8B		<i>Number Portability Timeliness (Hours:Minutes)</i>
OP-8C		<i>Number Portability Timeliness (Hours:Minutes)</i>
NP-1A		<i>NXX Code Activation (Percent)</i>
OP-17		<i>Timeliness of Disconnects associated with LNP Orders (Percent)</i>
MR-11		<i>LNP Trouble Reports Cleared within 24 Hours (Percent)</i>
MR-12		<i>LNP Trouble Reports-Mean Time to Restore (Hours:Minutes)</i>

OP-13A would not be subject to a severity measurement as part of the Tier 1X calculation. Instead, OP-7 (Coordinated Hot Cut – Unbundled Loop), which will be reconfigured to measure the out-of-service time for a coordinated hot cut, which provide the following particularized severity function:

<u>Hrs Out of Service</u>	<u>Payment</u>
1-1.99	\$225
2-2.99	\$450
3-3.99	\$675
4-4.99	\$800
5+	\$1025

COLLOCATION

Collocation is measured on (1) whether the feasibility studies are completed on time (e.g., within 10 days); (2) whether the installation commitment is met; (3) how many days late is particular feasibility study; and (4) how many days is a particular installation of the requested space. The applicable standard for making collocation space available shall be the CLEC's interconnection agreement, the Commission standard, or the FCC regulation, whichever is applicable. For addressing these issues, the relevant calculations and the associated payments shall be:

<u>Days Late for Feasibility Study</u>	<u>Payment</u>	<u>Days Late For Installation</u>	<u>Payment</u>
1-10	\$45	1-10	\$150
11-20	\$90	11-20	\$300
21-30	\$135	21-30	\$450
31-40	\$180	31-40	\$600
40+	\$300	40+	\$1000

ACCESS TO LOCAL LOOPS

Pre-Order

For Unbundled Loops:

PO-5A-1(b)	IMA Electronic LSRs	FOCs On Time (Percent)
PO-5A-2(b)	EDI Electronic LSRs	FOCs On Time (Percent)
PO-5B-1(b)	IMA Electronic/Manual LSRs	FOCs On Time (Percent)
PO-5B-2(b)	EDI Electronic/Manual LSRs	FOCs On Time (Percent)
PO-5C-(b)	Fax Manual LSRs	FOCs On Time (Percent)
PO-9B		Timely Jeopardy Notices (Percent)

Provisioning

For Unbundled Analog Loops:

OP-3A	non-designed	Installation Commitments Met (Percent)
OP-3B	non-designed	Installation Commitments Met (Percent)
OP-3C	non-designed	Installation Commitments Met (Percent)
OP-3D	designed	Installation Commitments Met (Percent)
OP-3E	designed	Installation Commitments Met (Percent)
OP-4A ¹	non-designed	Installation Interval (Average Days)
OP-6A-1 ¹	non-designed	Delayed Days (Average Days)
OP-6B-1 ¹	non-designed	Delayed Days (Average Days)
OP-4B ¹	non-designed	Installation Interval (Average Days)
OP-6A-2 ¹	non-designed	Delayed Days (Average Days)
OP-6B-2 ¹	non-designed	Delayed Days (Average Days)
OP-4C ¹	non-designed	Installation Interval (Average Days)
OP-6A-3 ¹	non-designed	Delayed Days (Average Days)
OP-6B-3 ¹	non-designed	Delayed Days (Average Days)
OP-4D ¹	designed	Installation Interval (Average Days)
OP-6A-4 ¹	designed	Delayed Days (Average Days)
OP-6B-4 ¹	designed	Delayed Days (Average Days)
OP-4E ¹	designed	Installation Interval (Average Days)
OP-6A-5 ¹	designed	Delayed Days (Average Days)
OP-6B-5 ¹	designed	Delayed Days (Average Days)
OP-5		New Service Installation without Trouble Reports (Percent)

For Unbundled Non-Loaded Loops (2-wire):

OP-3D	Installation Commitments Met (Percent)
OP-3E	Installation Commitments Met (Percent)
OP-4D ¹	Installation Interval (Average Days)
OP-6A-4 ¹	Delayed Days (Average Days)
OP-6B-4 ¹	Delayed Days (Average Days)
OP-4E ¹	Installation Interval (Average Days)
OP-6A-5 ¹	Delayed Days (Average Days)
OP-6B-5 ¹	Delayed Days (Average Days)
OP-5	New Service Installation without Trouble Reports (Percent)

For Unbundled Non-Loaded Loops (4-wire):

OP-3D	Installation Commitments Met (Percent)
OP-3E	Installation Commitments Met (Percent)
OP-4D ¹	Installation Interval (Average Days)
OP-6A-4 ¹	Delayed Days (Average Days)
OP-6B-4 ¹	Delayed Days (Average Days)
OP-4E ¹	Installation Interval (Average Days)
OP-6A-5 ¹	Delayed Days (Average Days)
OP-6B-5 ¹	Delayed Days (Average Days)
OP-5	New Service Installation without Trouble Reports (Percent)

For Unbundled DS1-Capable Loops:

OP-3D	Installation Commitments Met (Percent)
OP-3E	Installation Commitments Met (Percent)
OP-4D ¹	Installation Interval (Average Days)
OP-6A-4 ¹	Delayed Days (Average Days)
OP-6B-4 ¹	Delayed Days (Average Days)
OP-4E ¹	Installation Interval (Average Days)
OP-6A-5 ¹	Delayed Days (Average Days)
OP-6B-5 ¹	Delayed Days (Average Days)
OP-5	New Service Installation without Trouble Reports (Percent)

For Unbundled ISDN-Capable Loops:

OP-3D	Installation Commitments Met (Percent)
OP-3E	Installation Commitments Met (Percent)
OP-4D ¹	Installation Interval (Average Days)
OP-6A-4 ¹	Delayed Days (Average Days)
OP-6B-4 ¹	Delayed Days (Average Days)
OP-4E ¹	Installation Interval (Average Days)
OP-6A-5 ¹	Delayed Days (Average Days)
OP-6B-5 ¹	Delayed Days (Average Days)
OP-5	New Service Installation without Trouble Reports (Percent)

For Unbundled ADSL-Qualified Loops:

OP-3D	Installation Commitments Met (Percent)
OP-3E	Installation Commitments Met (Percent)
OP-4D ¹	Installation Interval (Average Days)
OP-6A-4 ¹	Delayed Days (Average Days)
OP-6B-4 ¹	Delayed Days (Average Days)
OP-4E ¹	Installation Interval (Average Days)
OP-6A-5 ¹	Delayed Days (Average Days)
OP-6B-5 ¹	Delayed Days (Average Days)
OP-5	New Service Installation without Trouble Reports (Percent)

For Unbundled Loops of DS3 and Higher:

OP-3D	Installation Commitments Met (Percent)
OP-3E	Installation Commitments Met (Percent)
OP-4D ¹	Installation Interval (Average Days)
OP-6A-4 ¹	Delayed Days (Average Days)
OP-6B-4 ¹	Delayed Days (Average Days)
OP-4E ¹	Installation Interval (Average Days)

OP-6A-5 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-5 ¹	<i>Delayed Days (Average Days)</i>
OP-5	<i>New Service Installation without Trouble Reports (Percent)</i>

For Sub-Loop Unbundling:

OP-3A	<i>Installation Commitments Met (Percent)</i>
OP-3B	<i>Installation Commitments Met (Percent)</i>
OP-4A ¹	<i>Installation Interval (Average Days)</i>
OP-6A-1 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-1 ¹	<i>Delayed Days (Average Days)</i>
OP-4B ¹	<i>Installation Interval (Average Days)</i>
OP-6A-2 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-2 ¹	<i>Delayed Days (Average Days)</i>

Sub-loops – because sub-loops track loops in all other respects (e.g., have three different intervals in Qwest's Standard Interval Guides depending on the number of sub-loops in an order), OP-3 and OP-4 for this submeasure shall track the approach taken for loops. In particular, the relevant interval (5 days for 1-8 subloops in an order; 6 days for 9-16 in an order; and 7 days for 17+) shall be the standard for OP-3 (i.e., the relevant interval must be met 90% of the time) and the intermediate standard – i.e., 6 days – shall be the relevant interval for OP-4.

For Unbundled Loop Conditioning:

OP-3D	<i>Installation Commitments Met (Percent)</i>
OP-3E	<i>Installation Commitments Met (Percent)</i>
OP-4D	<i>Installation Interval (Average Days)</i>
OP-4E	<i>Installation Interval (Average Days)</i>

Conditioned loops (i.e., accounting for the additional time necessary to "condition" a previously unconditioned loop to make it DSL ready) – the interval, as envisioned by Qwest, is 15 days, which represents the target date for installing the product. Thus, OP-3 shall require that 90% of conditioned loops be installed within the interval, unless a dispatch to the location is necessary. As for OP-4, the relevant installation interval shall be set at 16.5 days, which reflects the recognition that 10% of the conditioned loops will not be installed within 15 days, so that the relevant interval should be marginally greater than the interval.

For Line Sharing/Line Splitting:

OP-3A	<i>Installation Commitments Met (Percent)</i>
OP-3B	<i>Installation Commitments Met (Percent)</i>
OP-3C	<i>Installation Commitments Met (Percent)</i>
OP-4A ¹	<i>Installation Interval (Average Days)</i>
OP-6A-1 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-1 ¹	<i>Delayed Days (Average Days)</i>
OP-4B ¹	<i>Installation Interval (Average Days)</i>
OP-6A-2 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-2 ¹	<i>Delayed Days (Average Days)</i>
OP-4C ¹	<i>Installation Interval (Average Days)</i>
OP-6A-3 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-3 ¹	<i>Delayed Days (Average Days)</i>

Line sharing/Line splitting together –the interval for line sharing and line splitting, which shall be measured on an aggregate basis, is 3 days. Thus, OP-3 shall be that 90% of such loops shall be installed with 3 days. As for OP-4, the relevant installation interval shall be set at 3.3 days, which reflects the recognition 10% of such loops will not be installed within 3 days, so that the relevant interval should be marginally greater than the interval.

Maintenance and Repair

For Unbundled Analog Loops:

MR-3D	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-3E	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-6D	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6E	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7D	<i>Repair Repeat Report Rate (Percent)</i>
MR-7E	<i>Repair Repeat Report Rate (Percent)</i>
MR-8	<i>Trouble Rate (Percent)</i>

For Unbundled Non-loaded Loops (2-wire):

MR-3D	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-3E	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-6D	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6E	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7D	<i>Repair Repeat Report Rate (Percent)</i>
MR-7E	<i>Repair Repeat Report Rate (Percent)</i>
MR-8	<i>Trouble Rate (Percent)</i>

For Unbundled Non-loaded Loops (4-wire):

MR-5A	<i>All Troubles Cleared within 4 Hours (Percent)</i>
MR-5B	<i>All Troubles Cleared within 4 Hours (Percent)</i>
MR-6D	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6E	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7D	<i>Repair Repeat Report Rate (Percent)</i>
MR-7E	<i>Repair Repeat Report Rate (Percent)</i>
MR-8	<i>Trouble Rate (Percent)</i>

For Unbundled DS1-Capable Loops:

MR-5A	<i>All Troubles Cleared within 4 Hours (Percent)</i>
MR-5B	<i>All Troubles Cleared within 4 Hours (Percent)</i>
MR-6D	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6E	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7D	<i>Repair Repeat Report Rate (Percent)</i>
MR-7E	<i>Repair Repeat Report Rate (Percent)</i>
MR-8	<i>Trouble Rate (Percent)</i>

For Unbundled ISDN-Capable Loops:

MR-3D	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-3E	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-6D	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6E	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7D	<i>Repair Repeat Report Rate (Percent)</i>

MR-7E
MR-8

Repair Repeat Report Rate (Percent)
Trouble Rate (Percent)

For Unbundled ADSL-Qualified Loops:

MR-3D	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-3E	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-6D	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6E	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7D	<i>Repair Repeat Report Rate (Percent)</i>
MR-7E	<i>Repair Repeat Report Rate (Percent)</i>
MR-8	<i>Trouble Rate (Percent)</i>

For Unbundled Loops of DS3 and Higher:

MR-5A	<i>All Troubles Cleared within 4 Hours (Percent)</i>
MR-5B	<i>All Troubles Cleared within 4 Hours (Percent)</i>
MR-6D	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6E	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7D	<i>Repair Repeat Report Rate (Percent)</i>
MR-7E	<i>Repair Repeat Report Rate (Percent)</i>
MR-8	<i>Trouble Rate (Percent)</i>

For Sub-Loop Unbundling:

MR-3A	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-3B	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-3C	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-6A	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6B	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6C	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7A	<i>Repair Repeat Report Rate (Percent)</i>
MR-7B	<i>Repair Repeat Report Rate (Percent)</i>
MR-7C	<i>Repair Repeat Report Rate (Percent)</i>
MR-8	<i>Trouble Rate (Percent)</i>

For the MR-3, MR-6, MR-7, and MR-8 measures, the relevant analog product shall be ISDN-BRI.

For Line Sharing/Line Splitting:

MR-3A	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-3B	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-3C	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-6A	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6B	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6C	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7A	<i>Repair Repeat Report Rate (Percent)</i>
MR-7B	<i>Repair Repeat Report Rate (Percent)</i>
MR-7C	<i>Repair Repeat Report Rate (Percent)</i>
MR-8	<i>Trouble Rate (Percent)</i>

For the MR-3, MR-6, MR-7, and MR-8 measures, the relevant analog product shall be Qwest's DSL service, which is also provisioned and treated on a line shared basis.

TIER 1B

Pre-Order

For LSR:

PO-3A-1	IMA & rejected manually	<i>LSR Rejection Notice Interval (Hours:Minutes)</i>
PO-3A-2	IMA & auto-rejected	<i>LSR Rejection Notice Interval (Hours:Minutes)</i>
PO-3B-1	EDI & rejected manually	<i>LSR Rejection Notice Interval (Hours:Minutes)</i>
PO-3B-2	EDI & auto-rejected	<i>LSR Rejection Notice Interval (Hours:Minutes)</i>
PO-3C	Facsimile	<i>LSR Rejection Notice Interval (Hours:Minutes)</i>

For Resale and UNE-P:

PO-5A-1(a)	IMA Electronic LSRs	<i>FOCs On Time (Percent)</i>
PO-5A-2(a)	EDI Electronic LSRs	<i>FOCs On Time (Percent)</i>
PO-5B-1(a)	IMA Electronic/Manual LSRs	<i>FOCs On Time (Percent)</i>
PO-5B-2(a)	EDI Electronic/Manual LSRs	<i>FOCs On Time (Percent)</i>
PO-5C-(a)	Facsimile Manual LSRs	<i>FOCs On Time (Percent)</i>
PO-8D	(POTS)	<i>Jeopardy Notice Interval (Average Days)</i>
PO-9D	(POTS)	<i>Timely Jeopardy Notices (Percent)</i>

For LNP:

PO-5A-1(c)	IMA Electronic LSRs	<i>FOCs On Time (Percent)</i>
PO-5A-2(c)	EDI Electronic LSRs	<i>FOCs On Time (Percent)</i>
PO-5B-1(c)	IMA Electronic/Manual LSRs	<i>FOCs On Time (Percent)</i>
PO-5B-2(c)	EDI Electronic/Manual LSRs	<i>FOCs On Time (Percent)</i>
PO-5C-(c)	Facsimile Manual LSRs	<i>FOCs On Time (Percent)</i>

For LIS Trunks:

PO-5D	<i>FOCs On Time (Percent)</i>
PO-8C	<i>Jeopardy Notice Interval (Average Days)</i>
PO-9C	<i>Timely Jeopardy Notices (Percent)</i>

For Billing:

PO-7A	IMA-GUI	<i>Billing Completion Notification Timeliness (Percent)</i>
PO-7B	IMA-EDI	<i>Billing Completion Notification Timeliness (Percent)</i>

For Non-Designed Services:

PO-8A	<i>Jeopardy Notice Interval (Average Days)</i>
PO-9A	<i>Timely Jeopardy Notices (Percent)</i>

For Unbundled Loops:

PO-8B	<i>Jeopardy Notice Interval (Average Days)</i>
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Provisioning

For Residential Single Line Service:

OP-3A	Installation Commitments Met (Percent)
OP-3B	Installation Commitments Met (Percent)
OP-3C	Installation Commitments Met (Percent)
OP-4A ¹	Installation Interval (Average Days)
OP-6A-1 ¹	Delayed Days (Average Days)
OP-6B-1 ¹	Delayed Days (Average Days)
OP-4B ¹	Installation Interval (Average Days)
OP-6A-2 ¹	Delayed Days (Average Days)
OP-6B-2 ¹	Delayed Days (Average Days)
OP-4C ¹	Installation Interval (Average Days)
OP-6A-3 ¹	Delayed Days (Average Days)
OP-6B-3 ¹	Delayed Days (Average Days)
OP-5	New Service Installation without Trouble Reports (Percent)

For Business Single Line Service:

OP-3A	Installation Commitments Met (Percent)
OP-3B	Installation Commitments Met (Percent)
OP-3C	Installation Commitments Met (Percent)
OP-4A ¹	Installation Interval (Average Days)
OP-6A-1 ¹	Delayed Days (Average Days)
OP-6B-1 ¹	Delayed Days (Average Days)
OP-4B ¹	Installation Interval (Average Days)
OP-6A-2 ¹	Delayed Days (Average Days)
OP-6B-2 ¹	Delayed Days (Average Days)
OP-4C ¹	Installation Interval (Average Days)
OP-6A-3 ¹	Delayed Days (Average Days)
OP-6B-3 ¹	Delayed Days (Average Days)
OP-5	New Service Installation without Trouble Reports (Percent)

For Centrex:

OP-3A	Installation Commitments Met (Percent)
OP-3B	Installation Commitments Met (Percent)
OP-3C	Installation Commitments Met (Percent)
OP-4A ¹	Installation Interval (Average Days)
OP-6A-1 ¹	Delayed Days (Average Days)
OP-6B-1 ¹	Delayed Days (Average Days)
OP-4B ¹	Installation Interval (Average Days)
OP-6A-2 ¹	Delayed Days (Average Days)
OP-6B-2 ¹	Delayed Days (Average Days)
OP-4C ¹	Installation Interval (Average Days)
OP-6A-3 ¹	Delayed Days (Average Days)
OP-6B-3 ¹	Delayed Days (Average Days)
OP-5	New Service Installation without Trouble Reports (Percent)

For Centrex 21:

OP-3A	Installation Commitments Met (Percent)
OP-3B	Installation Commitments Met (Percent)
OP-3C	Installation Commitments Met (Percent)

OP-4A ¹	Installation Interval (Average Days)
OP-6A-1 ¹	Delayed Days (Average Days)
OP-6B-1 ¹	Delayed Days (Average Days)
OP-4B ¹	Installation Interval (Average Days)
OP-6A-2 ¹	Delayed Days (Average Days)
OP-6B-2 ¹	Delayed Days (Average Days)
OP-4C ¹	Installation Interval (Average Days)
OP-6A-3 ¹	Delayed Days (Average Days)
OP-6B-3 ¹	Delayed Days (Average Days)
OP-5	New Service Installation without Trouble Reports (Percent)

For PBX Trunks:

OP-3A	Installation Commitments Met (Percent)
OP-3B	Installation Commitments Met (Percent)
OP-3C	Installation Commitments Met (Percent)
OP-3D	Installation Commitments Met (Percent)
OP-3E	Installation Commitments Met (Percent)
OP-4A ¹	Installation Interval (Average Days)
OP-6A-1 ¹	Delayed Days (Average Days)
OP-6B-1 ¹	Delayed Days (Average Days)
OP-4B ¹	Installation Interval (Average Days)
OP-6A-2 ¹	Delayed Days (Average Days)
OP-6B-2 ¹	Delayed Days (Average Days)
OP-4C ¹	Installation Interval (Average Days)
OP-6A-3 ¹	Delayed Days (Average Days)
OP-6B-3 ¹	Delayed Days (Average Days)
OP-4D ¹	Installation Interval (Average Days)
OP-6A-4 ¹	Delayed Days (Average Days)
OP-6B-4 ¹	Delayed Days (Average Days)
OP-4E ¹	Installation Interval (Average Days)
OP-6A-5 ¹	Delayed Days (Average Days)
OP-6B-5 ¹	Delayed Days (Average Days)
OP-5	New Service Installation without Trouble Reports (Percent)

For Basic ISDN:

OP-3A	Installation Commitments Met (Percent)
OP-3B	Installation Commitments Met (Percent)
OP-3C	Installation Commitments Met (Percent)
OP-3D	Installation Commitments Met (Percent)
OP-3E	Installation Commitments Met (Percent)
OP-4A ¹	Installation Interval (Average Days)
OP-6A-1 ¹	Delayed Days (Average Days)
OP-6B-1 ¹	Delayed Days (Average Days)
OP-4B ¹	Installation Interval (Average Days)
OP-6A-2 ¹	Delayed Days (Average Days)
OP-6B-2 ¹	Delayed Days (Average Days)
OP-4C ¹	Installation Interval (Average Days)
OP-6A-3 ¹	Delayed Days (Average Days)
OP-6B-3 ¹	Delayed Days (Average Days)
OP-4D ¹	Installation Interval (Average Days)
OP-6A-4 ¹	Delayed Days (Average Days)

CP-4B-1
CP-4E
CP-4A-2
CP-4B-2
CP-5

Delayed Days (Average Days)
Installation Interval (Average Days)
Delayed Days (Average Days)
Delayed Days (Average Days)
New Service Installation without Trouble Reports (Percent)

For Unit P (POTR)

CP-3A
CP-3B
CP-3C
CP-4A
CP-4A-1
CP-4B-1
CP-4B
CP-4A-2
CP-4B-2
CP-4C
CP-4A-3
CP-4B-3
CP-5

Installation Commitments Met (Percent)
Installation Commitments Met (Percent)
Installation Commitments Met (Percent)
Installation Interval (Average Days)
Delayed Days (Average Days)
Delayed Days (Average Days)
Installation Interval (Average Days)
Delayed Days (Average Days)
Delayed Days (Average Days)
Installation Interval (Average Days)
Delayed Days (Average Days)
Delayed Days (Average Days)
New Service Installation without Trouble Reports (Percent)

For Unit DGL

CP-3A
CP-3B
CP-3C
CP-3D
CP-3E
CP-4A
CP-4A-1
CP-4B-1
CP-4B
CP-4A-2
CP-4B-2
CP-4C
CP-4A-3
CP-4B-3
CP-4D
CP-4A-4
CP-4B-4
CP-4E
CP-4A-5
CP-4B-5
CP-5

Installation Commitments Met (Percent)
Installation Commitments Met (Percent)
Installation Commitments Met (Percent)
Installation Commitments Met (Percent)
Installation Commitments Met (Percent)
Installation Interval (Average Days)
Delayed Days (Average Days)
Delayed Days (Average Days)
Installation Interval (Average Days)
Delayed Days (Average Days)
Delayed Days (Average Days)
Installation Interval (Average Days)
Delayed Days (Average Days)
Delayed Days (Average Days)
Installation Interval (Average Days)
Delayed Days (Average Days)
Delayed Days (Average Days)
Installation Interval (Average Days)
Delayed Days (Average Days)
Delayed Days (Average Days)
New Service Installation without Trouble Reports (Percent)

For Pottery (SDN)

CP-3A
CP-3B
CP-3C
CP-3D
CP-3E
CP-4A

Installation Commitments Met (Percent)
Installation Commitments Met (Percent)
Installation Commitments Met (Percent)
Installation Commitments Met (Percent)
Installation Commitments Met (Percent)
Installation Interval (Average Days)

OP-6A-1 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-1 ¹	<i>Delayed Days (Average Days)</i>
OP-4B ¹	<i>Installation Interval (Average Days)</i>
OP-6A-2 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-2 ¹	<i>Delayed Days (Average Days)</i>
OP-4C ¹	<i>Installation Interval (Average Days)</i>
OP-6A-3 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-3 ¹	<i>Delayed Days (Average Days)</i>
OP-4D ¹	<i>Installation Interval (Average Days)</i>
OP-6A-4 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-4 ¹	<i>Delayed Days (Average Days)</i>
OP-4E ¹	<i>Installation Interval (Average Days)</i>
OP-6A-5 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-5 ¹	<i>Delayed Days (Average Days)</i>
OP-5	<i>New Service Installation without Trouble Reports (Percent)</i>

For DS0:

OP-3A	non-designed	<i>Installation Commitments Met (Percent)</i>
OP-3B	non-designed	<i>Installation Commitments Met (Percent)</i>
OP-3C	non-designed	<i>Installation Commitments Met (Percent)</i>
OP-3D	designed	<i>Installation Commitments Met (Percent)</i>
OP-3E	designed	<i>Installation Commitments Met (Percent)</i>
OP-4A ¹	non-designed	<i>Installation Interval (Average Days)</i>
OP-6A-1 ¹	non-designed	<i>Delayed Days (Average Days)</i>
OP-6B-1 ¹	non-designed	<i>Delayed Days (Average Days)</i>
OP-4B ¹	non-designed	<i>Installation Interval (Average Days)</i>
OP-6A-2 ¹	non-designed	<i>Delayed Days (Average Days)</i>
OP-6B-2 ¹	non-designed	<i>Delayed Days (Average Days)</i>
OP-4C ¹	non-designed	<i>Installation Interval (Average Days)</i>
OP-6A-3 ¹	non-designed	<i>Delayed Days (Average Days)</i>
OP-6B-3 ¹	non-designed	<i>Delayed Days (Average Days)</i>
OP-4D ¹	designed	<i>Installation Interval (Average Days)</i>
OP-6A-4 ¹	designed	<i>Delayed Days (Average Days)</i>
OP-6B-4 ¹	designed	<i>Delayed Days (Average Days)</i>
OP-4E ¹	designed	<i>Installation Interval (Average Days)</i>
OP-6A-5 ¹	designed	<i>Delayed Days (Average Days)</i>
OP-6B-5 ¹	designed	<i>Delayed Days (Average Days)</i>
OP-5		<i>New Service Installation without Trouble Reports (Percent)</i>

For DS1:

OP-3D	<i>Installation Commitments Met (Percent)</i>
OP-3E	<i>Installation Commitments Met (Percent)</i>
OP-4D ¹	<i>Installation Interval (Average Days)</i>
OP-6A-4 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-4 ¹	<i>Delayed Days (Average Days)</i>
OP-4E ¹	<i>Installation Interval (Average Days)</i>
OP-6A-5 ¹	<i>Delayed Days (Average Days)</i>
OP-6B-5 ¹	<i>Delayed Days (Average Days)</i>
OP-5	<i>New Service Installation without Trouble Reports (Percent)</i>

For DS3 and Higher:

OP-3D	Installation Commitments Met (Percent)
OP-3E	Installation Commitments Met (Percent)
OP-4D ¹	Installation Interval (Average Days)
OP-6A-4 ¹	Delayed Days (Average Days)
OP-6B-4 ¹	Delayed Days (Average Days)
OP-4E ¹	Installation Interval (Average Days)
OP-6A-5 ¹	Delayed Days (Average Days)
OP-6B-5 ¹	Delayed Days (Average Days)
OP-5	New Service Installation without Trouble Reports (Percent)

For Frame Relay:

OP-3D	Installation Commitments Met (Percent)
OP-3E	Installation Commitments Met (Percent)
OP-4D ¹	Installation Interval (Average Days)
OP-6A-4 ¹	Delayed Days (Average Days)
OP-6B-4 ¹	Delayed Days (Average Days)
OP-4E ¹	Installation Interval (Average Days)
OP-6A-5 ¹	Delayed Days (Average Days)
OP-6B-5 ¹	Delayed Days (Average Days)
OP-5	New Service Installation without Trouble Reports (Percent)

For UDIT – DS1 Level:

OP-3D	Installation Commitments Met (Percent)
OP-3E	Installation Commitments Met (Percent)
OP-4D ¹	Installation Interval (Average Days)
OP-6A-4 ¹	Delayed Days (Average Days)
OP-6B-4 ¹	Delayed Days (Average Days)
OP-4E ¹	Installation Interval (Average Days)
OP-6A-5 ¹	Delayed Days (Average Days)
OP-6B-5 ¹	Delayed Days (Average Days)
OP-5	New Service Installation without Trouble Reports (Percent)

For UDIT – Above DS1 Level:

OP-3D	Installation Commitments Met (Percent)
OP-3E	Installation Commitments Met (Percent)
OP-4D ¹	Installation Interval (Average Days)
OP-6A-4 ¹	Delayed Days (Average Days)
OP-6B-4 ¹	Delayed Days (Average Days)
OP-4E ¹	Installation Interval (Average Days)
OP-6A-5 ¹	Delayed Days (Average Days)
OP-6B-5 ¹	Delayed Days (Average Days)
OP-5	New Service Installation without Trouble Reports (Percent)

For E911/911 Trunks:

OP-3D	Installation Commitments Met (Percent)
OP-3E	Installation Commitments Met (Percent)
OP-4D ¹	Installation Interval (Average Days)
OP-6A-4 ¹	Delayed Days (Average Days)
OP-6B-4 ¹	Delayed Days (Average Days)
OP-4E ¹	Installation Interval (Average Days)

CP-01-0
CP-02-0
CP-03-0

Delayed Days (Average Days)
Delayed Days (Average Days)
New Service Installation without Trouble Reports (Percent)

Performance and Status

For Residential Single Line Service

WPS-01	All Troubles Cleared within 24 Hours (Percent)
WPS-02	All Troubles Cleared within 24 Hours (Percent)
WPS-03	All Troubles Cleared within 24 Hours (Percent)
WPS-04	Avg. Time to Restore (Hours/Minutes)
WPS-05	Avg. Time to Restore (Hours/Minutes)
WPS-06	Avg. Time to Restore (Hours/Minutes)
WPS-07	Repair Report Report Rate (Percent)
WPS-08	Repair Report Report Rate (Percent)
WPS-09	Repair Report Report Rate (Percent)
WPS-10	Trouble Rate (Percent)

For Business Single Line Service

WBS-01	All Troubles Cleared within 24 Hours (Percent)
WBS-02	All Troubles Cleared within 24 Hours (Percent)
WBS-03	All Troubles Cleared within 24 Hours (Percent)
WBS-04	Avg. Time to Restore (Hours/Minutes)
WBS-05	Avg. Time to Restore (Hours/Minutes)
WBS-06	Avg. Time to Restore (Hours/Minutes)
WBS-07	Repair Report Report Rate (Percent)
WBS-08	Repair Report Report Rate (Percent)
WBS-09	Repair Report Report Rate (Percent)
WBS-10	Trouble Rate (Percent)

For Center

WCS-01	All Troubles Cleared within 24 Hours (Percent)
WCS-02	All Troubles Cleared within 24 Hours (Percent)
WCS-03	All Troubles Cleared within 24 Hours (Percent)
WCS-04	Avg. Time to Restore (Hours/Minutes)
WCS-05	Avg. Time to Restore (Hours/Minutes)
WCS-06	Avg. Time to Restore (Hours/Minutes)
WCS-07	Repair Report Report Rate (Percent)
WCS-08	Repair Report Report Rate (Percent)
WCS-09	Repair Report Report Rate (Percent)
WCS-10	Trouble Rate (Percent)

For Center 22

WCS2-01	All Troubles Cleared within 24 Hours (Percent)
WCS2-02	All Troubles Cleared within 24 Hours (Percent)
WCS2-03	All Troubles Cleared within 24 Hours (Percent)
WCS2-04	Avg. Time to Restore (Hours/Minutes)
WCS2-05	Avg. Time to Restore (Hours/Minutes)
WCS2-06	Avg. Time to Restore (Hours/Minutes)
WCS2-07	Repair Report Report Rate (Percent)
WCS2-08	Repair Report Report Rate (Percent)

MR-7C
MR-8

Repair Repeat Report Rate (Percent)
Trouble Rate (Percent)

For PBX Trunks:

MR-3A
MR-3B
MR-3C
MR-6A
MR-6B
MR-6C
MR-7A
MR-7B
MR-7C
MR-8

All Troubles Cleared within 24 Hours (Percent)
All Troubles Cleared within 24 Hours (Percent)
All Troubles Cleared within 24 Hours (Percent)
Mean Time to Restore (Hours/Minutes)
Mean Time to Restore (Hours/Minutes)
Mean Time to Restore (Hours/Minutes)
Repair Repeat Report Rate (Percent)
Repair Repeat Report Rate (Percent)
Repair Repeat Report Rate (Percent)
Trouble Rate (Percent)

For Basic ISDN:

MR-3A
MR-3B
MR-3C
MR-6A
MR-6B
MR-6C
MR-7A
MR-7B
MR-7C
MR-8

All Troubles Cleared within 24 Hours (Percent)
All Troubles Cleared within 24 Hours (Percent)
All Troubles Cleared within 24 Hours (Percent)
Mean Time to Restore (Hours/Minutes)
Mean Time to Restore (Hours/Minutes)
Mean Time to Restore (Hours/Minutes)
Repair Repeat Report Rate (Percent)
Repair Repeat Report Rate (Percent)
Repair Repeat Report Rate (Percent)
Trouble Rate (Percent)

For UNE-P (POTS):

MR-3A
MR-3B
MR-3C
MR-6A
MR-6B
MR-6C
MR-7A
MR-7B
MR-7C
MR-8

All Troubles Cleared within 24 Hours (Percent)
All Troubles Cleared within 24 Hours (Percent)
All Troubles Cleared within 24 Hours (Percent)
Mean Time to Restore (Hours/Minutes)
Mean Time to Restore (Hours/Minutes)
Mean Time to Restore (Hours/Minutes)
Repair Repeat Report Rate (Percent)
Repair Repeat Report Rate (Percent)
Repair Repeat Report Rate (Percent)
Trouble Rate (Percent)

For Qwest DSL:

MR-3D
MR-3E
MR-6D
MR-6E
MR-7D
MR-7E
MR-8

All Troubles Cleared within 24 Hours (Percent)
All Troubles Cleared within 24 Hours (Percent)
Mean Time to Restore (Hours/Minutes)
Mean Time to Restore (Hours/Minutes)
Repair Repeat Report Rate (Percent)
Repair Repeat Report Rate (Percent)
Trouble Rate (Percent)

For Primary ISDN:

MR-3D
MR-3E

All Troubles Cleared within 24 Hours (Percent)
All Troubles Cleared within 24 Hours (Percent)

MR-6D	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6E	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7D	<i>Repair Repeat Report Rate (Percent)</i>
MR-7E	<i>Repair Repeat Report Rate (Percent)</i>
MR-8	<i>Trouble Rate (Percent)</i>

For DS0:

MR-3D	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-3E	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-6D	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6E	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7D	<i>Repair Repeat Report Rate (Percent)</i>
MR-7E	<i>Repair Repeat Report Rate (Percent)</i>
MR-8	<i>Trouble Rate (Percent)</i>

For DS1:

MR-3D	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-3E	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-6D	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6E	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7D	<i>Repair Repeat Report Rate (Percent)</i>
MR-7E	<i>Repair Repeat Report Rate (Percent)</i>
MR-8	<i>Trouble Rate (Percent)</i>

For DS3 and Higher:

MR-3D	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-3E	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-6D	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6E	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7D	<i>Repair Repeat Report Rate (Percent)</i>
MR-7E	<i>Repair Repeat Report Rate (Percent)</i>
MR-8	<i>Trouble Rate (Percent)</i>

For Frame Relay:

MR-3D	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-3E	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-6D	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6E	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7D	<i>Repair Repeat Report Rate (Percent)</i>
MR-7E	<i>Repair Repeat Report Rate (Percent)</i>
MR-8	<i>Trouble Rate (Percent)</i>

For UDIT – DS1 Level:

MR-3D	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-3E	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-6D	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6E	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7D	<i>Repair Repeat Report Rate (Percent)</i>
MR-7E	<i>Repair Repeat Report Rate (Percent)</i>
MR-8	<i>Trouble Rate (Percent)</i>

For UDIT – Above DS1 Level:

MR-3D	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-3E	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-6D	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6E	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7D	<i>Repair Repeat Report Rate (Percent)</i>
MR-7E	<i>Repair Repeat Report Rate (Percent)</i>
MR-8	<i>Trouble Rate (Percent)</i>

For E911/911 Trunks:

MR-3D	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-3E	<i>All Troubles Cleared within 24 Hours (Percent)</i>
MR-6D	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-6E	<i>Mean Time to Restore (Hours:Minutes)</i>
MR-7D	<i>Repair Repeat Report Rate (Percent)</i>
MR-7E	<i>Repair Repeat Report Rate (Percent)</i>
MR-8	<i>Trouble Rate (Percent)</i>

TIER 1C

Billing

BI-1A	<i>Time to Provide Recorded Usage Records (Average Days)</i>
BI-1B	<i>Time to Provide Recorded Usage Records (Percent)</i>
BI-3A	<i>Billing Accuracy – Adjustments for Errors (Percent)</i>
BI-3B	<i>Billing Accuracy – Adjustments for Errors (Percent)</i>
BI-4A	<i>Billing Completeness (Percent)</i>
BI-4B	<i>Billing Completeness (Percent)</i>

Each billing measure (BI-1A/BI-1B; BI-3A/BI-3B; and BI-4A/BI-4B) will be subject to a per measure cap of a base payment of \$5,000 per month, subject to a maximum escalation of \$30,000 per measure.

TIER 2

Continuing Non-Conforming Performance

See Section 10.3.

Work Completion Timeliness

PO-6	<i>Work Completion Notification Timeliness (Hours:Minutes)</i>
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This measure shall be on a Tier 2 basis (measuring aggregate performance to all CLECs) and shall be calculated as follows:

<u>Performance</u>	<u>Monthly Payment</u>
1-1.49 hrs	\$10,000
1.5-1.99 hrs	\$15,000
2-2.49 hrs	\$20,000
2.5-2.99 hrs	\$25,000
3-3.49 hrs	\$30,000

3.5-3.99 hrs	\$35,000
4-4.49 hrs	\$40,000
4.5-4.99	\$45,000
5+	\$50,000

Regionwide Wholesale Support Systems

The following submeasures, which relate to the quality of Qwest's computer systems and call centers, are recorded only on a regionwide (14 state) basis:

GA-1A Appointment Scheduler	Gateway Availability – IMA-GUI (Percent)
GA-1B Fetch-N-Stuff	Gateway Availability – IMA-GUI (Percent)
GA-1C Data Arbiter	Gateway Availability – IMA-GUI (Percent)
GA-2	Gateway Availability – IMA-EDI (Percent)
GA-3	Gateway Availability – EB-TA (Percent)
GA-4	Gateway Availability – EXACT (Percent)
GA-6	Gateway Availability – GUI – Repair (Percent)
PO-1A-1	Pre-Order/Order Response Times(Seconds)
PO-1B-1	Pre-Order/Order Response Times(Seconds)
PO-1A-2	Pre-Order/Order Response Times(Seconds)
PO-1B-2	Pre-Order/Order Response Times(Seconds)
PO-1A-3	Pre-Order/Order Response Times(Seconds)
PO-1B-3	Pre-Order/Order Response Times(Seconds)
PO-1A-4	Pre-Order/Order Response Times(Seconds)
PO-1B-4	Pre-Order/Order Response Times(Seconds)
PO-1A-5	Pre-Order/Order Response Times(Seconds)
PO-1B-5	Pre-Order/Order Response Times(Seconds)
PO-1A-6	Pre-Order/Order Response Times(Seconds)
PO-1B-6	Pre-Order/Order Response Times(Seconds)
PO-1A-7	Pre-Order/Order Response Times(Seconds)
PO-1B-7	Pre-Order/Order Response Times(Seconds)
PO-1A-8	Pre-Order/Order Response Times(Seconds)
PO-1B-8	Pre-Order/Order Response Times(Seconds)
OP-2	Calls Answered within Twenty Seconds – Interconnect Provisioning Center (Percent)
MR-2	Calls Answered within Twenty Seconds – Interconnect Repair Center (Percent)

PO-1A and PO-1B shall have their transaction types aggregated together.

For Colorado, Qwest shall make a Tier-2 payments based upon monthly performance results according to the following schedule. (On this measure, the total payment, for all 14 Qwest states, shall actually be a multiple of the one noted below.)

<u>Measure</u>	<u>Performance</u>	<u>Payment</u>
GA-1,GA-2,	1% or lower	\$1,000
GA-3,GA-4	>1% to 3%	\$10,000
GA-6	>3% to 5%	\$20,000
	> 5%	\$30,000
PO-1	2 sec or less	\$1,000
	>2 sec to 5 sec	\$5,000

	>5 sec to 10 sec	\$10,000
	> 10 sec	\$15,000
OP-2/MR-2	1% or less	\$1,000
	>1% to 3%	\$5,000
	>3% to 5%	\$10,000
	>5%	\$15,000

Handling of Local Service Requests

PO-10 *LSR Accountability (Percent)*

<u>Performance</u>	<u>Payment</u>
99-99.5	\$10,000
98.5-98.99	\$20,000
98-98.49	\$30,000
97.5-97.99	\$40,000
97-97.49	\$50,000
96.5-96.99	\$60,000
96-96.49	\$70,000
95.5-95.99	\$80,000
95-95.49	\$90,000
below 95%	\$100,000

If the PO-10 measure at the end of any month dips below 95%, the Commission may commence a proceeding to determine whether the problem is being remedied and to determine whether any other action is appropriate.

Electronic Flow Through Rates

For Resale:

PO-2A-1	IMA Flow-through LSRs	<i>Electronic Flow-through (Percent)</i>
PO-2A-2	GUI Flow-through LSRs	<i>Electronic Flow-through (Percent)</i>
PO-2B-1	IMA Flow-through Eligible LSRs	<i>Electronic Flow-through (Percent)</i>
PO-2B-2	GUI Flow-through Eligible LSRs	<i>Electronic Flow-through (Percent)</i>

For Unbundled Loops:

PO-2A-1	IMA Flow-through LSRs	<i>Electronic Flow-through (Percent)</i>
PO-2A-2	GUI Flow-through LSRs	<i>Electronic Flow-through (Percent)</i>
PO-2B-1	IMA Flow-through Eligible LSRs	<i>Electronic Flow-through (Percent)</i>
PO-2B-2	GUI Flow-through Eligible LSRs	<i>Electronic Flow-through (Percent)</i>

For LNP:

PO-2A-1	IMA Flow-through LSRs	<i>Electronic Flow-through (Percent)</i>
PO-2A-2	GUI Flow-through LSRs	<i>Electronic Flow-through (Percent)</i>
PO-2B-1	IMA Flow-through Eligible LSRs	<i>Electronic Flow-through (Percent)</i>
PO-2B-2	GUI Flow-through Eligible LSRs	<i>Electronic Flow-through (Percent)</i>

For UNE-P (POTS):

PO-2A-1	IMA Flow-through LSRs	<i>Electronic Flow-through (Percent)</i>
PO-2A-2	GUI Flow-through LSRs	<i>Electronic Flow-through (Percent)</i>

PO-2B-1 IMA Flow-through Eligible LSRs *Electronic Flow-through (Percent)*
 PO-2B-2 GUI Flow-through Eligible LSRs *Electronic Flow-through (Percent)*

Qwest shall be required to meet a standard for either eligible flow-through (PO-2B-1 & PO-2B-2 aggregated) or actual flow-through (PO-2A-1 & PO-2A-2 aggregated). If Qwest misses the standard for both PO-2B and PO-2A, it shall pay payments on the measure in which it performed closer to the relevant standard.

The following table sets out the relevant standard for measuring acceptable levels of actual flow-through (PO-2A) and flow-through eligible orders (PO-2B).

Flow-through Orders (PO-2A)	January <u>2002</u>	July <u>2002</u>	January <u>2003</u>	July <u>2003</u>
Resale	70%	80%	85%	85%
Unbundled Loops	50%	60%	70%	75%
LNP	70%	80%	85%	85%
UNE-P (POTS)	50%	65%	80%	85%

Flow-through Eligible Orders (PO-2B)	January <u>2002</u>	July <u>2002</u>	January <u>2003</u>	July <u>2003</u>
Resale	80%	90%	95%	95%
Unbundled Loops	60%	70%	80%	85%
LNP	80%	90%	95%	95%
UNE-P (POTS)	60%	75%	90%	95%

The relevant payment shall be computed on a quarterly basis and shall take the performance on the better of the eligible flow through orders (PO-2B) or actual orders to flow through (PO-2A) and apply a \$75,000 payment for each 2.5% that the relevant measurement differs from the standard. This payment shall not exceed \$600,000 per submeasure (resale, unbundled loop, LNP, UNEP). By way of illustration, the payment table for eligible flow through orders for resale for beginning January, 2002 is:

Resale:	77.5%-79.99%	\$ 75,000
	75.0%-77.49%	\$150,000
	72.5%-74.99%	\$225,000
	70.0%-72.49%	\$300,000
	67.5%-69.99%	\$375,000
	65.0%-57.49%	\$450,000
	62.5%-64.99%	\$525,000
	below 62.49%	\$600,000

Change Management Requirements

PO-16 *Release Notification on Time (Calendar Days)*

For failing to notify competitors of the first announcement on time, Qwest shall pay a payment of \$200/per day. For failing to notify competitors of subsequent release dates (i.e., the final requirements and final release notes), Qwest shall pay a payment of \$50/day.

GA-7

Timely Outage Resolution following Software Releases (Percent)

Failure to resolve software outages within 48 hours shall result in a \$100,000 payment by Qwest for each additional 48 hours out of service.

PO-18(CPAP)

Interface Versions Availability (Percent)

A failure to reinstate a pulled version that had not been available for 6 months within 24 hours shall result in a \$50,000 payment, with half of the payment going to the CLEC who brings the complaint and the other half going into the Special Fund.

APPENDIX B

**(PERFORMANCE INDICATOR DEFINITIONS -- TO BE SUPPLIED BY
QWEST)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF COLORADO

Docket No. 011-041T

IN THE MATTER OF THE INVESTIGATION INTO ALTERNATIVE APPROACHES
FOR A QWEST CORPORATION PERFORMANCE ASSURANCE PLAN IN
COLORADO

Docket No. 971-198T

IN THE MATTER OF THE INVESTIGATION INTO U S WEST COMMUNICATIONS,
INC.'S COMPLIANCE WITH § 271(C) OF THE TELECOMMUNICATIONS ACT OF
1996.

VERIFICATION OF R. STEVEN DAVIS

By Decision No. C02-399 adopted March 27, 2002 the Commission ordered Qwest to file a verified statement indicating acceptance or non-acceptance of the Colorado Assurance Plan contained in the decision and attachments thereto and approved by the Commission.

R. Steven Davis, of lawful age and being first duly sworn, deposes and states:

1. My name is Robert Steven Davis. I am Senior Vice President, Policy and Law for Qwest Corporation in Denver, Colorado.
2. Qwest Corporation agrees to offer the Colorado Performance Assurance Plan attached to Decision No. C02-399, as a part of its Colorado Statement of Generally Available Terms and Conditions ("SGAT") in support of its section 271 filing with the Federal Communications Commission, subject to clarification by the Commission in accordance with Qwest's Motion for Clarification filed contemporaneously with this Verification.

R. Steven Davis

SUBSCRIBED AND SWORN to before me this _____ day of April, 2002.

Notary Public

My Commission Expires:

Debra Elofson
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

Mary S. Hobson
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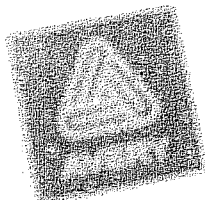
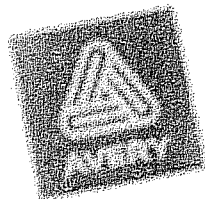
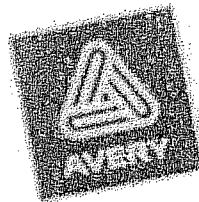
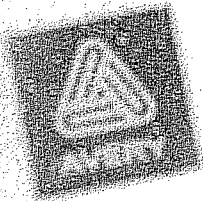
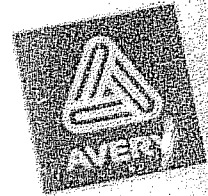
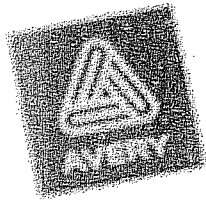
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Mark Stacy
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Cheyenne, WY 82009



CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of April 2002, the original and 10 copies of Additional Statement of Supplemental Authority Regarding Qwest's Performance Assurance Plan, were sent by Overnight Mail to:

Debra Elofson
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

and a true and correct copy was sent by U.S. Mail and e-mail on April 23, 2002 addressed to:

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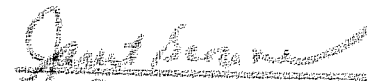
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Janet Browne



Gary B. Witt
Senior Attorney

Open 10:00
10:00-10:30 AM
Driver 10:30 AM
10:30-11:00 AM
Fax 10:00-11:00 AM

April 24, 2002

RECEIVED

APR 25 2002

Via Overnight Mail

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Debra Elofson
Executive Director
SD Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

Re: In the Matter of the Analysis into Qwest Corporation's Compliance with
Section 271(c) of the Telecommunications Act of 1996, TC01-165

Dear Ms. Elofson:

Enclosed for filing are the original and ten copies of AT&T's Request for
Confidential Treatment of Information pursuant to ARSD 20:10:01:41.

Please call me if there are any questions.

Sincerely,

Gary B. Witt/jb

Gary B. Witt

GBW/jb

Enclosure

cc: Service List

APR 23 1992

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTASOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE ANALYSIS INTO QWEST)
CORPORATION'S COMPLIANCE WITH SECTION)
271(C) OF THE TELECOMMUNICATIONS ACT OF)
1996

Docket No. TC01-165

AT&T'S REQUEST FOR CONFIDENTIAL TREATMENT OF INFORMATION

AT&T Communications of the Midwest, Inc. ("AT&T"), pursuant to ARSD
20:10:01:41, submits the following information with the South Dakota Public Utilities
Commission ("Commission") requesting confidential treatment:

1. AT&T's Responses to Qwest's Requests for Information dated April 22, 2002, list the number of end user lines in various categories in South Dakota. AT&T's Responses contain information that is highly confidential.
2. The length of time for which confidentiality is being requested is until this docket and all appeals have concluded. After that time has ended, the documents shall be shredded or returned to the undersigned.
3. The name, address, and phone number of a person to be contacted regarding the confidentiality request is: Gary B. Witt, AT&T Law & Government Affairs, 1875 Lawrence Street, Denver, Colorado, 80202, (303) 298-6163, attorney for AT&T.
4. The grounds upon which confidentiality is requested are that the material constitutes highly confidential information that is the property of AT&T Communications of the Midwest, Inc. Any disclosure of this information would be a competitive disadvantage to AT&T with its competitors in South Dakota.

5. The factual basis that qualifies the information for confidentiality is that the information was requested by Qwest as a part of discovery in this docket. The information provided should only be used as it relates to Qwest's §271 application and should not be disclosed to anyone outside of this docket.

6. With respect to the information at issue, AT&T and Qwest executed a Special Protective Agreement Concluded Between Qwest Communications and AT&T Communications of the Midwest (attached as Exhibit A) on April 22, 2002, which sets forth the terms for handling any highly confidential information between AT&T and Qwest in this matter.

WHEREFORE AT&T requests that the Commission grant AT&T's request that the information provided in AT&T's Responses to Qwest's Requests for Information be treated as highly confidential information.

**AT&T COMMUNICATIONS OF THE
MIDWEST, INC.**

By: Gary B. Witt
Mary B. Tibby
Gary B. Witt
Steven H. Weigler
1875 Lawrence Street, Suite 1300
Denver, Colorado 80202
Telephone: (303) 298-6163

SPECIAL PROTECTIVE AGREEMENT CONCLUDED BETWEEN QWEST COMMUNICATIONS AND AT&T COMMUNICATIONS OF THE MIDWEST

Qwest Corporation ("Qwest") and AT&T Communications of the Midwest, Inc.

("AT&T") hereby conclude the following Special Protective Agreement ("Agreement") with respect to data sought from AT&T specifying the number of access lines owned or built by AT&T in South Dakota, or specifying the number of customers AT&T may have in the state, irrespective of how presented, whether aggregated or disaggregated, whether prepared geographically or otherwise (the "Information"), shall receive additional protection as follows:

1. The Information shall be made available only to (a) individual members of the South Dakota Public Utilities Commission; (b) individual members of the Commission Staff; (c) Jonathan J. Frankel, outside attorney on behalf of Qwest, and (d) David L. Testrel, witness on behalf of Qwest, and no others.
2. Persons allowed to receive such Information shall not divulge or reveal the Information to anyone not specified in this Agreement.
3. All persons allowed to receive such Information shall sign the attached Signature Page prior to receipt of the Information.
4. Persons authorized to review the Information shall maintain the documents containing the Information, and any notes reflecting the Information, in a secure location in which only parties authorized under this Agreement have access. Any testimony or exhibits prepared that reflect the Information must be maintained in a secure location until removed by the

hearing room for production under seal and under circumstances that will ensure continued protection from disclosure to persons not entitled to review the Information.

5. The first page and individual pages of a document containing the Information must be marked by a stamp that reads: "HIGHLY CONFIDENTIAL—USE RESTRICTED PER SPECIAL PROTECTIVE AGREEMENT." Placing a "Highly Confidential" stamp on the first page of a document shall indicate only that one or more pages contain the Information and shall not serve to protect the entire contents of a multi-page document. Each page that contains the Information must be marked separately to indicate the presence of the Information, even where the Information has been redacted. The unredacted versions of each page containing the Information, and provided under seal, should be submitted on paper distinct in color from non-confidential information and other "Confidential Information" covered by the general Confidentiality Agreement signed by Qwest and AT&T.

Made, entered, and effective as of April _____, 2002.

Gary B. Witt
Steven H. Weigler
AT&T Communications of the Midwest, Inc.
1875 Lawrence Street, Suite 1500
Denver, Colorado 80202
Telephone: (303) 291-6160

*Attorneys for AT&T Communications of the
Midwest, Inc.*

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Jonathan J. Frankel
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2445 M St., N.W.
Washington, DC 20037
Telephone: (202) 663-6113

Attorneys for Qwest Corporation

SIGNATORY PAGE

Consent to Be Bound

This Agreement, together with the general Confidentiality Agreement signed by the parties, governs the use of the specific confidential information (the "Information") described above.

I have read this Agreement and agree to be bound by the terms contained in each of the provisions listed above.

Signature & Printed Name

Date

Party

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of April 2002, the original and 10 copies of AT&T's Request for Confidential Treatment of Information were sent by overnight mail to:

Debra Elofson
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

and a true and correct copy (without highly confidential enclosure) was sent by U.S. Mail on April 24, 2002 addressed to:

Colleen Sevoid
Manager – Regulatory Affairs
QWEST Corporation
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Sioux Falls, SD 57194

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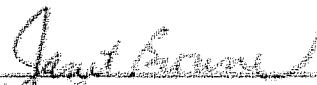
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Mark Stacy
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5300 Meadowbrook Drive
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Janet Browne

Confidential

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