

DIVIDER

STATE OF NORTH DAKOTA
INFORMATION TECHNOLOGY DEPARTMENT
SFN 2053 (4-2002)

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DESCRIPTION

PU-04-303

**Qwest Corporation
Performance Assurance Plan**

Revision

Filed 6/24/2004

Closed 10/8/2004

04

NORTH DAKOTA PUBLIC SERVICE COMMISSION
INFORMAL HEARING
January 25, 2006

**Qwest Corporation
Performance Assurance Plan
Revision**

Case No. PU-05-584 et.al.

STAFF MEMORANDUM

Executive Summary

- (1) Staff believes that the Commission can approve PID changes because the PID document is part of the SGAT, but the PID changes will only affect future interconnection agreements when the PID changes were not part of a ROC PID administration collaborative.
- (2) Staff believes the Commission has no authority to approve PAP changes unless they have resulted from a ROC administration collaborative or a Commission six-month review. Although the PAP is an exhibit to the SGAT, Qwest maintains the PAP is not a part of the SGAT. PAP changes only take effect when included as part of a future interconnection agreement.

SUMMARY OF PROPOSAL:

On September 22, 2005 Qwest filed an application for approval of revisions to its PIDs, Case No PU-05-583, and also revisions to its PAP, Case No. PU-05-584. The proposed revisions result from a stipulation between Qwest, MCImetro, Covad, and AT&T (New Stipulation). Qwest states that the New Stipulation is a comprehensive modification of and replaces the previously filed Washington Stipulation (Case Nos PU-04-500 and PU-04-501) and Arizona Stipulation (Case Nos. PU-04-632 and PU-04-631) Qwest states that, when the New Stipulation is approved by the Commission, the changes will amend the agreements of all CLECs that have adopted or elected Exhibits B and K of the SGAT.

PID Revisions

SGAT Section 20.0 provides that changes to PIDs (added, deleted, or modified) that are made by the Regional Oversight Committee shall be incorporated into Exhibit B by reference. Modifications of PIDs that apply to the Qwest Performance Assurance Plan (QPAP) shall be made in accordance with Section 16.0 of Exhibit K. The PID revisions proposed in Case Nos. PU-04-220 and PU-04-302 were part of a ROC PID administration collaborative and thus made by the Regional Oversight Committee. Those revisions are incorporated into Exhibit B by reference and so the Commission did not issue orders. The revisions went into effect after 60 days as provided under Section 252(f)(3) of the Telecommunications Act of 1996 (Act).

The PID revisions proposed in Case Nos. PU-04-500 and PU-04-632 were not made by the Regional Oversight Committee but instead were a resolution of disputed issues that were the subject of a six month review of the PAP in the states of Washington and Arizona. Qwest considers the PID document to be part of the SGAT and the Commission has authority under North Dakota Century Code Section 49-21-01.7(10) to approve an SGAT under Section 252 of the Act. Therefore, the Commission issued orders approving those PID revisions.

In Qwest's latest PID revision filing, Case No. PU-04-583, the proposed PID revisions again result from a stipulation reached outside the Regional Oversight Committee. These revisions would not be incorporated into Exhibit B by reference under SGAT Section 20.0. The revisions could be approved by the Commission under the SGAT, however, the revisions would then affect only the amended agreements of MCImetro, Covad, and AT&T and any future interconnection agreements adopting an SGAT that includes those amendments and that interconnection agreement approved by the Commission. Under Section 252(f)(3) of the Act, the PID changes proposed in Case No. PU-04-583 went into effect after 60 days from September 22, 2005. The PID changes will not amend the existing interconnection agreements of all other CLECs that have adopted or elected Exhibits B and K of the SGAT.

PAP Revisions

The North Dakota Century Code only provides Commission with authority to approve the SGAT and interconnection agreements. The PAP is an exhibit to the SGAT, but Qwest maintains that the PAP is not a part of the SGAT.¹ Therefore, the Commission has no authority under the North Dakota Century Code to approve PAP revisions. However, the Commission has authority under North Dakota Century Code Section 49-21-01.7(9) to approve interconnection agreements. An interconnection agreement may incorporate the PAP and therefore, the Commission approves the PAP when it approves an interconnection agreement incorporating the PAP.

While the North Dakota Century Code provides no Commission authority to approve the PAP, PAP Section 16.3 provides for Commission approval of PAP changes resulting from a ROC administration forum. PAP Section 16.1 provides for Commission approval of PAP changes resulting from a PAP six-month review process

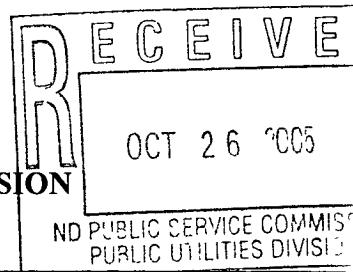
In Case Nos. PU-2342-03-632 and PU-04-303, the PAP revisions resulted from ROC administration forums and the Commission adopted orders to approve the revisions under authority provided by PAP Section 16.3

Case Nos. PU-04-501 (Washington Stipulation) and PU-04-631 (Arizona Stipulation) did not involve PAP revisions resulting from a ROC administration forum or a six-month review process in North Dakota. Therefore the Commission did not issue

¹ Qwest Corporation, November 5, 2002 letter, Case No. PU-314-97-193, document #1365

an order for approval. Similarly, the New Stipulation was not part of a ROC administration forum or a six-month review process in North Dakota. The Commission has no authority to adopt an order approving the PAP revisions except through the approval of an interconnection agreement containing those revisions.

STATE OF NORTH DAKOTA
BEFORE THE PUBLIC SERVICE COMMISSION



In the Matter of the Qwest Performance
Assurance Plan

PU 04-220; PU 04-302;
PU 04-303; PU 04-500;
PU 04-501; PU 04-631
PU 04-632 *PU-05-583*
PU-05-584

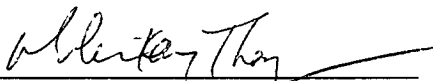
**ERRATA TO THE
SETTLEMENT OF
DISPUTED ISSUES**

Qwest Corporation, through undersigned counsel, respectfully submits these errata to the Settlement of Disputed Issues, which Qwest filed on behalf of all the parties on September 22, 2005. An underlined version and a clean version of the first page of the Settlement are attached. The clean version should be substituted for the first page of the Settlement currently on file with the Commission

The edits to the first page of the Settlement correct the case number references in the caption of the filing and delete the references to case numbers in the text.

RESPECTFULLY submitted this 25th day of October, 2005.

QWEST CORPORATION

By: 

Melissa K. Thompson
Qwest Services Corporation
1801 California, 10th Floor
Denver, CO 80202
(303) 383-6728
(303) 296-3132 (fax)
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Attorney for Qwest Corporation

**STATE OF NORTH DAKOTA
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of the Qwest Performance
Assurance Plan

PU 04-220; PU 04-302;
PU 04-303; PU 04-500;
PU 04-501; PU 04-631
PU 04-632

**SETTLEMENT OF
DISPUTED
ISSUES**

COME NOW Qwest Corporation (“Qwest”), MCImetro Access Transmission Service, LLC (“MCI”), Dieca Communications d/b/a Covad Communications Company (“Covad”), AT&T Communications of the Midwest, Inc. (collectively, the “Stipulating Parties”) and submit the following revised Stipulation.

The Stipulating Parties have agreed and respectfully recommend that the North Dakota Public Service Commission (“Commission”) issue its Order approving the following dispositions of the issues that modify and supersede two Stipulations previously filed with this Commission.

The first Stipulation (the “Washington Stipulation”), was filed on September 15, 2004. The second Stipulation (the “Arizona Stipulation”), was filed on November 30, 2004. This revised Stipulation is intended to be a comprehensive modification of the issues contained in both the Washington and Arizona Stipulations and replaces those filings. Each Stipulating Party agreed initially and with this Stipulation to compromise its positions, including legal positions, with the goal of achieving an overall resolution that is fair and in the public interest. The Stipulating Parties, at arms’ length and with full knowledge of the facts, recommend that this revised Stipulation be approved by the

SETTLEMENT OF
DISPUTED ISSUES

**STATE OF NORTH DAKOTA
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of the Qwest Performance
Assurance Plan

PU 04-220; PU 04-302;
PU 04-303; ~~PU 04-403;~~
PU 04-500; PU 04-501
PU 04-631; PU 04-632

**SETTLEMENT OF
DISPUTED
ISSUES**

COME NOW Qwest Corporation (“Qwest”), MCImetro Access Transmission Service, LLC (“MCI”), Dieca Communications d/b/a Covad Communications Company (“Covad”), AT&T Communications of the Midwest, Inc. (collectively, the “Stipulating Parties”) and submit the following revised Stipulation.

The Stipulating Parties have agreed and respectfully recommend that the North Dakota Public Service Commission (“Commission”) issue its Order approving the following dispositions of the issues that modify and supersede two Stipulations previously filed with this Commission ~~in Case Numbers PU 04-302 and PU 04-303~~. The first Stipulation (the “Washington Stipulation”), was filed on September 15, 2004. The second Stipulation (the “Arizona Stipulation”), was filed on November 30, 2004. This revised Stipulation is intended to be a comprehensive modification of the issues contained in both the Washington and Arizona Stipulations and replaces those filings. Each Stipulating Party agreed initially and with this Stipulation to compromise its positions, including legal positions, with the goal of achieving an overall resolution that is fair and in the public interest. The Stipulating Parties, at arms’ length and with full knowledge of the facts, recommend that this revised Stipulation be approved by the

SETTLEMENT OF
DISPUTED ISSUES

)

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **Errata to the Settlement of Disputed Issues** to be served via electronic and U S. Mail, postage prepaid, to the following on this 25th day of October, 2005:

Iiona Jeffcoat-Sacco
Executive Secretary
North Dakota Public Service Commission
600 East Boulevard Avenue – 12th Floor
Bismarck ND 58505-0480
ijeffcoatsacco@state.nd.us

Greg Diamond, Attorney
Covad
7901 Lowry Blvd.
Denver, CO 80230
gdiamond@covad.com

Michele Singer-Nelson, Attorney
MCI
707 17th Street, Suite 4200
Denver, CO 80202
michel.singer_nelson@mci.com

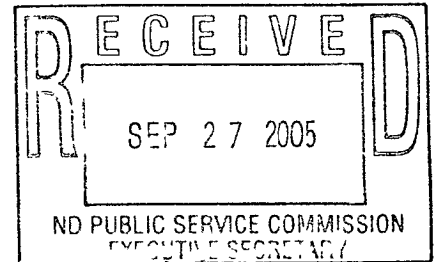
Letty S. D. Friesen, Senior Attorney
AT&T
919 Congress Ave Suite 900
Austin TX 78701
lsfriesen@att.com

Deborah Dunning



September 23, 2005

Ms. Ilona Jeffcoat-Sacco
Executive Secretary
North Dakota Public Service Commission
600 East Boulevard Avenue -- 12th Floor
Bismarck, North Dakota 58505-0480



Re: Case No PU-04-302 and PU-04-³⁴³~~403~~

PU-04-302
PU-04-303
PU-04-304
PU-04-631
PU-04-632
PU-04-633
PU-04-634

Dear Ms. Jeffcoat-Sacco:

On September 22, 2005, Qwest Corporation filed a Settlement of Disputed Issues in above referenced dockets. Unfortunately, the Certificate of Service for the filing is incorrect. Please accept the enclosed corrected Certificate of Service and seven copies for filing as a replacement for the original Certificate of Service. I apologize for any inconvenience that we may have caused.

Thank you. If you have any questions or concerns, please contact me at 303.383.6639 or debbie.dunning@qwest.com.

Sincerely,

Debbie Dunning

Encl.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **Settlement of Disputed Issues** to be served via electronic and U.S. Mail, postage prepaid, to the following on this 22nd day of September, 2005:

Ilona Jeffcoat-Sacco
Executive Secretary
North Dakota Public Service Commission
600 East Boulevard Avenue – 12th Floor
Bismarck ND 58505-0480
ijeffcoatsacco@state.nd.us

Greg Diamond, Attorney
Covad
7901 Lowry Blvd.
Denver, CO 80230
gdiamond@covad.com

Michele Singer-Nelson, Attorney
MCI
707 17th Street, Suite 4200
Denver, CO 80202
michel.singer_nelson@mci.com

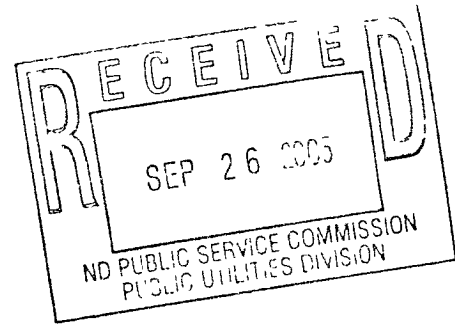
Letty S D. Friesen, Senior Attorney
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919 Congress Ave Suite 900
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lsfriesen@att.com

Deborah Dunning

Qwest
1801 California St. Suite 900
Denver, CO 80202
Phone 303-383-6728
Facsimile 303-296-3132
E-Mail melissa.thompson@qwest.com

Melissa K. Thompson
Senior Attorney

September 22, 2005



Ms. Ilona Jeffcoat-Sacco
Executive Secretary
North Dakota Public Service Commission
600 East Boulevard Avenue -- 12th Floor
Bismarck, North Dakota 58505-0480

Re: Case No. PU-04-302 and PU-04-403

Dear Ms. Jeffcoat-Sacco:

Please find enclosed an original and seven copies of a filing for Cases No. PU-04-302 and PU-04-403. We are submitting an electronic copy of the filing as well. If you have any questions or concerns, please feel free to contact me.

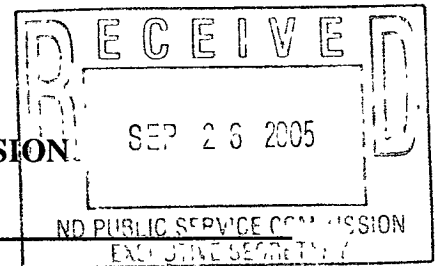
Thank you.

Sincerely,


Melissa K. Thompson

cc: Scott Macintosh
Mel Kambeitz
Laurel Burke

STATE OF NORTH DAKOTA
BEFORE THE PUBLIC SERVICE COMMISSION



In the Matter of the Qwest Performance Assurance Plan

PU 04-302 - PU-04-220
PU-04-500
303 PU-04-301
PU-04-631
PU-04-631
SETTLEMENT OF
DISPUTED
ISSUES

COME NOW Qwest Corporation (“Qwest”), MCI metro Access Transmission Service, LLC (“MCI”), Dieca Communications d/b/a Covad Communications Company (“Covad”), AT&T Communications of the Midwest, Inc. (collectively, the “Stipulating Parties”) and submit the following revised Stipulation.

The Stipulating Parties have agreed and respectfully recommend, that the North Dakota Public Service Commission (“PUC” or “Commission”) issue its Order approving the following dispositions of the issues which modify and supersede two Stipulations previously filed with this Commission in Case Numbers PU-04-302 and PU-04-303. The first Stipulation (the “Washington Stipulation”), was filed on September 15, 2004. The second Stipulation (the “Arizona Stipulation”), was filed on November 30, 2004. This revised Stipulation is intended to be a comprehensive modification of the issues contained in both the Washington and Arizona Stipulations and replaces those filings. Each Stipulating Party agreed initially and with this Stipulation to compromise its positions, including legal positions, with the goal of achieving an overall resolution that is fair and in the public interest. The Stipulating Parties, at arms’ length and with full knowledge of the facts, recommend that this revised Stipulation be approved by the

Commission as it is consistent with the Federal Telecommunications Act of 1996 (“the Act”) and this Commission’s prior orders regarding Qwest’s Performance Assurance Plan (“QPAP”). Section 14.0 of the QPAP will not apply to any re-run that is necessary to effectuate this revised Stipulation.

If the Commission does not adopt the proposal in this revised Stipulation in whole or in part, the Stipulating Parties reserve their rights to take positions on issues in future proceedings that may be contrary to this revised Stipulation. Except as necessary to have effectuated their agreement to promptly submit and recommend this revised Stipulation to the remaining state regulatory commissions, nothing in this revised Stipulation may be used as precedent or an admission against interest by any Stipulating Party against any other Stipulating Party in any future proceeding.

For North Dakota, the Parties stipulate as follows:

1. Line Splitting Apply the Qwest DSL standard to OP-5A as a separate disaggregation in the QPAP. Parties agree that QPAP provisions will apply beginning with performance data that is two months of re-run data and the current month’s performance data; the exact months are determined by whether the Commission’s approval is given on or before, or after the 10th calendar day of a month.¹
2. Loop Splitting. No QPAP changes are required. However, CLECs and Qwest agree that performance reporting will begin, on a diagnostic basis, at the time CLECs order loop splitting, in any quantity, for three consecutive months as reflected in

¹ For example, if the adoption date of the Commission’s order were after December 10, 2005 but on or before January 10, 2006, the beginning month of the QPAP applicability will be October 2005, or if the adoption date were after January 10, 2006 but on or before February 10, 2006, the beginning month of the QPAP applicability would be November, 2005, and so forth

Exhibit B.

3. x-DSL: Include x-DSL loops in the OP and MR measurements of the QPAP as follows: 90% for OP-3; 6 business days for OP-4; parity with Qwest DSL for OP-5A; parity with Qwest DSL with dispatch for OP-6; parity with Qwest IDSL for the MR-3, MR-6, MR-7, and MR-8. Parties agree that QPAP provisions will apply beginning with performance data that is two months of re-run data and the current month's performance data; the exact months are determined by whether the Commission's approval is given on or before, or after the 10th calendar day of a month.²

4. PO-20

A. Incorporation of the new PO-20 into Exhibit B:

The expanded PO-20 was filed with this Commission on September 13, 2004 to be incorporated into the North Dakota Exhibit B. Parties agree that QPAP provisions will apply beginning with performance data that is two months of re-run data and the current month's performance data; the exact months are determined by whether the Commission's approval is given on or before, or after the 10th calendar day of a month.³

B. Tier Designation: Tier 1B ; no Tier 2. Parties agree that QPAP provisions will apply beginning with performance data that is two months of re-run data and the current month's performance data; the exact months are determined by

² See footnote 1 above

³ See footnote 1 above

whether the Commission's approval is given on or before, or after the 10th calendar day of a month.⁴

C. Low Volume Exception: A standard of "no more than one order with PO-20 errors" should be assigned, applicable when CLEC volumes are lower than or equal to seventeen in a month during the time the 97% benchmark applies, lower than or equal to thirteen in a month during the time the 96% benchmark applies, and lower than or equal to ten in a month during the time the 95% benchmark applies. Parties agree that QPAP provisions will apply beginning with performance data that is two months of re-run data and the current month's performance data; the exact months are determined by whether the Commission's approval is given on or before, or after the 10th calendar day of a month.⁵

D. A Stabilization or "Burn In" Period: Qwest should be allowed a stabilization or "burn in period" of up to three months on each Phase, during which payments are not required for "misses" in the Phase being "burned in," but payments are required for "misses" that exceed the applicable benchmark in the previous Phase and that are reported based on the PID requirements for the previous Phase. Parties agree that QPAP provisions will apply beginning with performance data that is two months of re-run data and the current month's performance data; the exact months are determined by whether the Commission's approval is given on or before, or after the 10th calendar day of a month.⁶

⁴ See footnote 1 above

⁵ See footnote 1 above

⁶ See footnote 1 above

5. Publishing Aggregate Payments: Beginning with September 2004 performance, Qwest began publishing and will continue to publish on its website the state payment report by major PID category that Qwest files with the North Dakota Commission; and Qwest has made available and will continue to make available a report similar to that which it provides individual CLECs in Tab 2 of the CLEC payment report showing QPAP payments at the PID/Product submeasure level, and will total the payments for each submeasure and/or product. For example, Qwest will report aggregate QPAP payments by measure (e.g., MR-8) and will also publish aggregate QPAP payments at the submeasure level (e.g., MR-8 for DS-1 capable loops).

6. Low Volume Exception for Line Splitting: No Low Volume Exception will be allowed for OP-3 for Line Splitting.

7. OP-5, New Service Quality: The performance indicator definition OP-5B will be updated to reflect a benchmark of 96.5% for all products except Dark Fiber, Sub Loop Unbundling and Frame Relay which will remain diagnostic. The QPAP and in Minnesota, the Wholesale Service Quality Plan (“MWSQP”) will also be revised to include OP-5A and OP-5B. Parties agree that QPAP provisions will apply beginning with performance data that is two months of re-run data and the current month’s performance data; the exact months are determined by whether the Commission’s approval is given on or before, or after the 10th calendar day of a month.⁷

Further, in the QPAP, OP-5B for all states, and in the MWSQP in Minnesota, apply a standard of no more than one order with new service trouble (of the total orders in

⁷ See footnote 1 above
SETTLEMENT OF
DISPUTED ISSUES
Page 5

OP-5T) when order volumes are ≤ 29 . That is, low volume treatment for OP-5B will only be triggered if both (1) the CLEC volume of orders is less than or equal to 29 (the denominator of OP-5T) and (2) the number of orders with trouble in OP-5A is no more than one. Parties agree that QPAP provisions will apply beginning with performance data that is two months of re-run data and the current month's performance data; the exact months are determined by whether the Commission's approval is given on or before, or after the 10th calendar day of a month on or before, or after the 10th calendar day of a month.⁸

The Parties do not agree as to whether low volume treatment is appropriate. CLECs will not object to low volume treatment in this one instance to resolve this disputed issue. In agreeing to this compromise, the Parties are making no representations that low volume treatment or the linking of measures to determine low volume treatment is appropriate for any other measurement or purpose. All Parties reserve their rights to their positions as to the low volume treatment in other contexts, and Qwest will not state in any other context that CLECs agreed that low volume relief is appropriate based on this compromise.

In addition, the Parties do not agree as to whether a 96.5% benchmark is appropriate. Qwest will not object to a 96.5% benchmark in the instance of this one sub-measurement, for all states, to resolve this disputed issue. In agreeing to this compromise, the Parties are making no representations that such a standard or benchmark level is appropriate for any other measurement. All Parties reserve their rights to their positions

⁸ See footnote 1 above
SETTLEMENT OF
DISPUTED ISSUES
Page 6

as to the types and levels of standards for other measurements in other contexts, and CLECs will not state in any other context that Qwest agreed that a 96.5% benchmark is appropriate for the OP measures or for any other measurement.

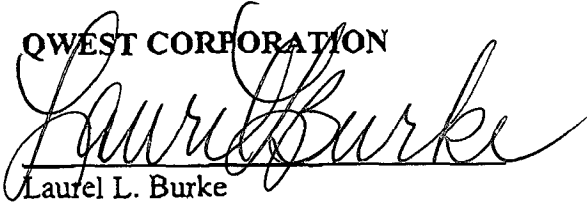
8. PO-2, Electronic Flow-Through and BI-5, Billing Claims Adjustments; The Stipulating Parties intend by this agreement to maintain the status quo as to PO-2 and BI-5 in all states at least until the next 6 month review cycle following what may currently be started or underway.⁹

9. Implementation: This revised Stipulation may be executed in counterparts. If and when this revised Stipulation is approved and adopted by the North Dakota Commission through approvals of the amended Exhibit B, these changes will amend the agreements of all CLECs that have adopted or elected Exhibits B and K.

So have we all stipulated.

⁹ CLECs agree not to seek the addition of BI-5 until at least the next 6 month review cycle following what may currently be started or underway. Qwest agrees not to seek the removal of PO-2 from the QPAP until at least the next 6 month review cycle following what may currently be started or underway.

QWEST CORPORATION



Laurel L. Burke
Sr. Attorney
Counsel for Qwest Corporation

**MCI metro Access Transmission
Service, LLC**



Michelle Singer Nelson
Attorney
Counsel for MCI

**Dieca Communications, d/b/a
Covad. Communications Company**

Gregory Diamond
Attorney
Counsel for Covad

**AT&T Communications of the Midwest,
Inc.**

Letty S. D. Friesen
Sr. Attorney
Counsel for AT&T

SETTLEMENT OF
DISPUTED ISSUES

Page 8

QWEST CORPORATION

Laurel L. Burke
Sr. Attorney
Counsel for Qwest Corporation

**MCImetro Access Transmission
Service, LLC**

Michelle Singer Nelson
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Counsel for MCI

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Counsel for Covad

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DISPUTED ISSUES

QWEST CORPORATION

Laurel L. Burke
Sr. Attorney
Counsel for Qwest Corporation

**MCImetro Access Transmission
Service, LLC**

Michelle Singer Nelson
Attorney
Counsel for MCI

**Dieca Communications, d/b/a
Covad. Communications Company**

Gregory Diamond
Attorney
Counsel for Covad

**AT&T Communications of the Midwest,
Inc.**



Letty S. D. Friesen
Sr. Attorney
Counsel for AT&T

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **Settlement of Disputed Issues** to be served via electronic and U.S. Mail, postage prepaid, to the following on this 22nd day of September, 2005:

Ilona Jeffcoat-Sacco
Executive Secretary
North Dakota Public Service Commission
600 East Boulevard Avenue – 12th Floor
Bismarck ND 58505-0480
ijeffcoatsacco@state.nd.us

Greg Diamond, Attorney
Covad
7901 Lowry Blvd.
Denver, CO 80230
gdiamond@covad.com

Michele Singer-Nelson, Attorney
MCI
707 17th Street, Suite 4200
Denver, CO 80202
michele.singer_nelson@mci.com

Letty S. D. Friesen, Senior Attorney
AT&T
lsfriesen@att.com

Deborah Dunning



Public Service Commission

State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E Wefald
Kevin Cramer

Executive Secretary
Illona A Jeffcoat-Sacco

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Bismarck, North Dakota 58505-0480
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e-mail ndpsc@psc.state.nd.us
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

October 12, 2004

Melissa K Thompson
Qwest Corporation
1801 California St Ste 4900
Denver CO 80202

Dear Ms. Thompson:

On June 24, 2004, Qwest Corporation filed revisions to its Performance Assurance Plan, Case No. PU-04-303

Under Section 16.3 of the QPAP, if any agreements on adding, modifying or deleting PIDs are reached between Qwest and CLECs participating in an industry Regional Oversight Committee (ROC) PID administration forum, those agreements shall be incorporated into the QPAP and modify the agreement between CLEC and Qwest at any time those agreements are approved by the Commission. The Commission approved the revised SPAP by order dated October 8, 2004.

The Commission has marked the revisions to the Performance Assurance Plan document, as filed in this docket, with an effective date of October 8, 2004

Sincerely,

Sharon Helbling
Public Utilities Division

Sdh

c. Scott Macintosh
Mel Kambeitz

10 PU-04-303

Pages 1

Letter re Performance Assurance Plan

by Public Service Commission

10/12/2004

CC Comm Legal PUD (3)

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Qwest Corporation
Performance Indicator Definitions
Revision

Case No. PU-04-302

Qwest Corporation
Performance Assurance Plan
Approval

Case No. PU-04-303

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **11th day of October, 2004**, she deposited in the United States Mail, Bismarck, North Dakota **one** envelope with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Order

The envelope was addressed as follows:

Melissa K Thompson
Qwest Corporation
1801 California St Ste 4900
Denver CO 80202
Cert. No. 7003 2260 0001 3517 0920

Sharon Helbling further deposes and says that on the **11th day of October, 2004**, she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same

Scott Macintosh
Qwest Corporation
P O Box 5508
Bismarck ND 58502-5508

Each address shown is the respective addressee's last reasonably ascertainable post office address.

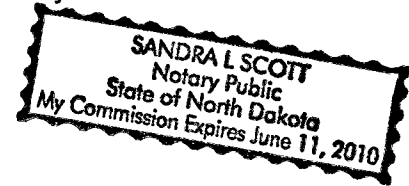
Subscribed and sworn to before me
this **11th day of October, 2004.**

SEAL

Sharon Hillblom

Sandra L Scott

Notary Public



MOTION

10-8-04
DATE: 10-8-04
RMF

October 8, 2004

**Qwest Corporation
Performance Indicator Definitions
Revision**

Case No. PU-04-302

**Qwest Corporation
Performance Assurance Plan
Approval**

Case No. PU-04-303

I move the Commission adopt the Order in Case No PU-04-302, Qwest Corporation's Performance Indicator Definitions, and Case No PU-04-303, Qwest Corporation's Performance Assurance Plan.

PJF/sdh

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Qwest Corporation
Performance Indicator Definitions
Revision**

Case No. PU-04-302

**Qwest Corporation
Performance Assurance Plan
Approval**

Case No. PU-04-303

ORDER

October 8, 2004

On June 24, 2004 Qwest Corporation (Qwest) filed revisions to its Performance Indicator Definitions (PIDs) document, Case No. PU-04-302, and revisions to its Performance Assurance Plan (PAP), Case No. PU-04-303. The PIDs define the method and procedures to measure Qwest's performance and quality in providing interconnection services to competitive local exchange companies. The PAP sets forth Qwest payments to competitive local exchange companies and to the state in the event of failing performance standards. Qwest's PAP references many PIDs.

Section 20.0 of Qwest's Statement of Generally Available Terms provides that changes to PIDs that are made by the Regional Oversight Committee are incorporated by reference. Therefore, any existing interconnection agreements between Qwest and competitive local exchange companies that incorporate the PIDs will be changed by these revised PIDs. For future interconnection agreements, the Commission has authority under N.D.C.C. §49-21-09 and N.D.C.C. § 49-21-01.7(9) to approve or disapprove the PID changes. The agreed-upon PID revisions fall into the following categories: order processing (PO-2, PO-20, PO-1, PO-5), order provisioning (OP-3, OP-4, OP-6), maintenance and repair (MR-5, MR-6, MR-7, MR-8), and gateway availability (GA-1). Generally, PID revisions take effect, without Commission action, 60 days after the date they are filed with the Commission. The Commission has authority to review PIDs at any date.

The PAP provides that if any agreements on adding, modifying or deleting performance measurements are reached between Qwest and competitive local exchange companies (CLECs) participating in an industry Regional Oversight Committee (ROC) PID administration forum, those agreements shall be incorporated into the QPAP and modify the agreement between CLEC and Qwest at any time those agreements are submitted to and approved by the Commission. The PAP agreed-upon revisions fall into the following categories: gateway availability (GA-1) and manual service order accuracy (PO-20). Any existing interconnection agreements between Qwest and competitive local exchange companies that incorporate the PAP would be changed if the Commission approves the revisions.

Qwest states that the proposed revisions to the PIDs and the PAP were reached between Qwest and the CLECs during Long Term PID Administration collaborative

meetings from December 18, 2003 through March 25, 2004 and during a subsequent impasse process.

In addition, Qwest is eliminating language in Section 11.3, 11.3.1, 11.3.2, and 11.3.3 of the PAP that established a ND CLEC Tier 1 Fund for the purpose of receiving a portion of Tier 1 payments paid to CLECs. Eliminating the ND CLEC Tier 1 Fund means that the dollars in that Fund could not be used by the Commission to meet continuing obligations and would be returned to the CLECs on a pro rata basis to CLECs as provided by the current PAP. This PAP change was not an issue brought forward by an industry Regional Oversight Committee (ROC) PID administration forum, however, no carriers have opposed this change.

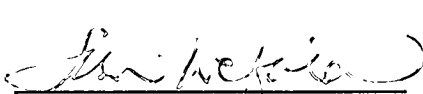
On August 4, 2004 the Commission issued a Notice of Opportunity to File Written Comments and Notice of Opportunity for Hearing in both Case No. PU-04-302 and PU-04-303 allowing comments or requests for hearing by September 15, 2004. No comments or requests for hearing were received.

The Commission does not find the changes to the PAP discriminatory against a telecommunications carrier that was not a party to the agreements.

Order

The Commission orders that the changes to the Performance Assurance Plan are APPROVED

PUBLIC SERVICE COMMISSION



Susan E. Wefald
Commissioner



Tony Clark
President



Kevin Cramer
Commissioner

Affidavit of Publication

Colleen Park, being duly sworn, state as follows:

1. I am the designated agent, under the provisions and for the purposes of, Section 31-04-06, NDCC, for the newspapers listed on the attached exhibits.
2. The newspapers listed on the exhibits published the advertisement of:
PSC, Cowest PU-04-302, 303, 1 time(s)
as required by law or ordinance.
3. All of the listed newspapers are legal newspapers in the State of North Dakota and, under the provisions of Section 46-05-01, NDCC, are qualified to publish any public notice or any matter required by law or ordinance to be printed or published in a newspaper in North Dakota.

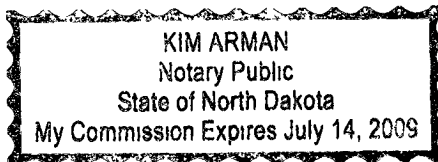
Signed: Colleen Park

State of ND

County of Burdick

Subscribed and sworn to before me this 22 day of August 2007.

Kim Arman



39 **PU-2342-03-153** Pages 1
Affidavit of Publication
by North Dakota Advertising Service, Inc
08/24/2004; Comm Legal PUD 3 Mike Gloria Shelly

6 **PU-04-302** Pages 1
Affidavit of Publication
by North Dakota Advertising Service, Inc
08/24/2004 CC Comm Legal PUD (3)

6 ✓ **PU-04-303** Pages 1
Affidavit of Publication
by North Dakota Advertising Service, Inc
08/24/2004 CC Comm Legal PUD (3)



North Dakota Newspaper Association

1435 Interstate Loop
Bismarck, ND 58503-0567
Ph (701) 223-6397 • Fax (701) 223-8185

RECEIVED
AUG 24 2004
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRET

INVOICE

Order 19440-04083PP0 Invoice # 42130

August 23, 2004

Attn: ILLONAA. JEFFCOAT-SACCO
PUBLIC SERVICE COMMISSION
600 E. BOULEVARD AVE.
STATE CAPITOL
BISMARCK, ND 58505

Advertiser Public Utilities Division
P O # PU-04-302 & 303

Voice 701-328-4076

Amount Due \$647.60
Amount Paid

Please detach and return this portion with your payment

Public Utilities Division Invoice # 19440-04083PP0-42130 PO# PU-04-302 & 303

Table with columns: Ad Size, Rate Type, Rate, Total, Discount (%), Caption, Page, Run Date. Includes rows for various newspapers like Bismarck Tribune, Devils Lake Daily Journal, etc.

Summary table with columns: Gross Advertising, Agency Discount, Other Discount, Service Charge, Total Misc, Tax, Total Billed, Unbilled, Amount Paid, Adjustments, Payment Date, Balance Due.

6 PU-04-302 Pages 1

Affidavit of Publication
by North Dakota Advertising Service, Inc
08/24/2004 CC Comm Legal PUD (3)

6 PU-04-303 Pages 1

Affidavit of Publication
by North Dakota Advertising Service, Inc
08/24/2004 CC Comm Legal PUD (3)

State Of North Dakota

Public Service Commission

Notice Of Opportunity To File Written Comments
and Notice Of Opportunity For Hearing

Case No: PU-04-302 Case# 04-303

Bismarck 8-11

Devils Lake 8-11

Dickinson 8-11

Fargo 8-16

Grand Forks 8-16

Jamestown 8-11

Minot 8-15

Valley City 8-11

Wahpeton 8-11

Williston 8-11

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Qwest Corporation
Performance Indicator Definitions
Revision

Case No. PU-04-302

Qwest Corporation
Performance Assurance Plan
Approval

Case No. PU-04-303

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **5th day of August, 2004**, she deposited in the United States Mail, Bismarck, North Dakota **one** envelope with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of

Notice of Opportunity to File Written Comments and Notice of Opportunity For Hearing

The envelope was addressed as follows:


Melissa K Thompson
Qwest Corporation
1801 California St Ste 4900
Denver CO 80202
Cert. No. 7002 2410 0003 4912 6168

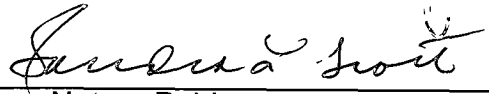
Sharon Helbling further deposes and says that on the **5th day of August, 2004**, she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same

Scott Macintosh
Qwest Corporation
P O Box 5508
Bismarck ND 58502-5508

Each address shown is the respective addressee's last reasonably ascertainable post office address

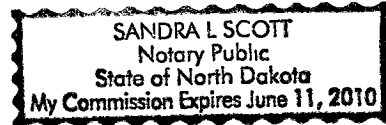
Subscribed and sworn to before me
this **5th day of August, 2004.**





Notary Public

SEAL



STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Qwest Corporation
Performance Indicator Definitions
Revision**

Case No. PU-04-302

**Qwest Corporation
Performance Assurance Plan
Approval**

Case No. PU-04-303

AFFIDAVIT OF SERVICE BY ORDINARY MAIL OR E-MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that.

she is over the age of 18 years and not a party to this action and, on the **5th day of August, 2004**, she deposited in the United States Mail, Bismarck, North Dakota, envelopes by first class mail, fully prepaid, securely sealed, and/or e-mailed a copy of:

**Notice of Opportunity to File Written Comments and Notice of Opportunity
for Hearing**

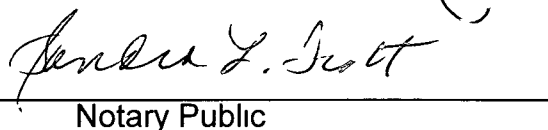
To:

See Attached List

Each address shown is the respective addressee's last reasonably ascertainable post office address.

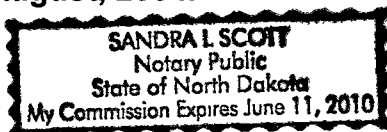


Subscribed and sworn to before me
this **5th day of August, 2004**.



Notary Public

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Absaraka ND 58002

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John Broten
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Arlington VA 22201

C12 Inc
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Atlanta GA 30339

Citizens Telecomm Co of Minnesota
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Stamford CT 06905

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Computer Integrated Communications Inc
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Evercom Systems Inc
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Irving TX 75063-2824

Dave Waters
Fairpoint Communications Solutions
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Charlotte NC 28202-2695

France Telecom Corporate Solutions LLC
2300 Corporate Park Dr Mailstop SP0606
Herndon VA 20171

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2100 Sanders Rd Ste 150
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Covista Inc
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Paramus NJ 07652-3908

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Chere Heintzmann
Extend America Inc
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Bismarck ND 58504-5654

Lawrence Freedman
Fleischman & Walsh
1400 16th ST NW
Washington DC 20036

Global Tel*Link Corporation
2609 Cameron St
Mobile AL 36607-3104

Granite Telecommunications LLC
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Quincy MA 02169

Lucille Nilson
Griggs County Telephone Co
Cooperstown ND 58425

Group Long Distance Inc
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Ft Lauderdale FL 33309

Houlton Enterprises Inc
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Council Bluffs IA 51501

HTC Services Inc
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Robert K Johnson
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David A. Huberman
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Nanette Edwards
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KMC Telecom V Inc
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St Louis Park MN 55426

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Law Offices of Thomas K Crowe PC
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Washington DC 20037

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Jan Lowe
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Public Communications Services Inc
11859 Wilshire Blvd Ste 600
Los Angeles CA 90025

Kristin L Smith
Qwest
1801 California St Ste 4700
Denver CO 80202

Qwest Interprise America Inc
1801 California St 49th Fl
Denver CO 80202

Reliant Communications Inc
801 International Pkwy 5th Fl
Lake Mary FL 32746

Sandra Adams
NewPath Holdings Inc
4364 114th St
Des Moines IA 50322
Arthur H Paquette
SNET America Inc
310 Orange St
North Haven CT 06510-1719

SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

Harris Saele
T P C Inc
PO Box 180
Devils Lake ND 58301-0180

Premiere Network Services Inc
1510 N Hampton Rd Ste 120
DeSoto TX 75115

Scott Lee
Protel Advantage Inc
1308 Medora Rd
St. Paul MN 55118-1734

QuantumShift Communications Inc
88 Rowland Way Ste 200
Novato CA 94945-5000

Melissa Thompson
Qwest Corporation
1801 California St 49th Fl
Denver CO 80202

Dean Polkow
RCC Network Inc
PO Box 2000
Alexandria MN 56308-2000

Kimberly Nielson
RTC-1
Legal & External Affairs
7277 164th Ave NE
Redmond WA 98052

ServiSense.com Inc
60 Glacier Dr #3000
Westwood MA 02090-1818

Andrew Jones
Sprint
6391 Sprint Pkwy
Overland Park KS 66251-6100

Randy Burckhard
SRT Communications Inc
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Minot ND 58702-2027

Tel Tech Inc
1300 W 57th St Ste G204
Sioux Falls SD 57108-2885

Jack Medaris
Telco Partners Inc
P O Box 807
Conshohocken PA 19428-0807

William Staycoff
Telcom Billing Services Inc
2989 Brookdale Dr
Brooklyn Park MN 55444

Al Bosch
Tele-Beep Company
PO Box 7072
Bismarck ND 58502-7072

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Campbell CA 95008

Jonathan Marashlian
The Helein Law Group P C
8180 Greensboro Dr Ste 700
McLean VA 22102

T-Netix Inc
P O Box 701028
Dallas TX 75370-1028

Kenneth Carlson
Turtle Mountain Communications
PO Box 729
Langdon ND 58249-0729

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Rancho CA 91730-5860

Sam Billingsley
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Norcross GA 30071-1562

Kenneth Carlson
United Telephone Mut Aid Corp
Langdon ND 58249

Christina Tygielski
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Chicago IL 60606-6307

Dennis Houston
Universal Network Services of ND
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Orange CA 92867

Val-Ed Joint Venture LLP
150 2nd St SW
Perham MN 56573

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Irving TX 75038

Molli Harper
Verizon Wireless
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Greenwood Village CO 80111

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Darrell Henderson
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Company
PO Box 39
Bison SD 57620-0039

Doris Cooper
West River Long Distance Co
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Hazen ND 58545-0467

Mick Grosz
West River Telecomm Coop
PO Box 467
Hazen ND 58545-0467

Western CLEC Corporation
3650 131st Ave SE #400
Bellevue WA 98006

WTC Competitive Services Inc
P O Box 129
Wolverton MN 56594

XO Network Services Inc
11111 Sunset Hills Rd
Reston VA 20190

Z-Tel Communications Inc
601 S Harbour Island Blvd Ste 220
Tampa FL 33602-5925

Helbling, Sharon D.

From: Helbling, Sharon D
Sent: Thursday, August 05, 2004 7 30 AM
To: ndna (ndna)
Subject: Attached Notices

Colleen Park
North Dakota Newspaper Association

Colleen:

Please have the attached Notice of Opportunity to File Written Comments and Notice of Opportunity for Hearing, and the Notice of Intent to Amend Order and Request for Comments published as legal publications in the next issue of the ten North Dakota daily newspapers, and run them as "News Item Only" articles as well

Send the bill to the Public Service Commission, along with a tear sheet for billing purposes.

If you have any questions, let me know.

Thank you.

Sharon Helbling
Public Utilities Division



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MOTION

August 4, 2004

**Qwest Corporation
Performance Indicator Definitions
Revision**

Case No. PU-04-302

**Qwest Corporation
Performance Assurance Plan
Approval**

Case No. PU-04-303

I move the Commission issue a Notice of Opportunity to File Written Comments and Notice of Opportunity for Hearing in Case No. PU-04-302, Qwest Corporation's Performance Indicator Definitions, and Case No. PU-04-303, Qwest Corporation's Performance Assurance Plan.

PJF/sdh

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Qwest Corporation
Performance Indicator Definitions
Revision**

Case No. PU-04-302

**Qwest Corporation
Performance Assurance Plan
Approval**

Case No. PU-04-303

**NOTICE OF OPPORTUNITY TO FILE WRITTEN COMMENTS AND
NOTICE OF OPPORTUNITY FOR HEARING**

August 4, 2004

On June 24, 2004 Qwest Corporation (Qwest) filed revisions to its Performance Indicator Definitions (PIDs) document, Case No. PU-04-302, and revisions to its Performance Assurance Plan (PAP), Case No. PU-04-303. The PIDs define the method and procedures to measure Qwest's performance and quality in providing interconnection services to competitive local exchange companies. The PAP sets forth Qwest payments to competitive local exchange companies and to the state in the event of failing performance standards. Qwest's PAP references many PIDs.

Section 20.0 of Qwest's Statement of Generally Available Terms provides that changes to PIDs that are made by the Regional Oversight Committee are incorporated by reference. Therefore, any existing interconnection agreements between Qwest and competitive local exchange companies that incorporate the PIDs will be changed by these revised PIDs. For future interconnection agreements, the Commission has authority under N D C.C. §49-21-09 and N D C.C § 49-21-01.7(9) to approve or disapprove the PID changes. The agreed-upon PID revisions fall into the following categories: order processing (PO-2, PO-20, PO-1, PO-5), order provisioning (OP-3, OP-4, OP-6), maintenance and repair (MR-5, MR-6, MR-7, MR-8), and gateway availability (GA-1).

The PAP provides that if any agreements on adding, modifying or deleting performance measurements are reached between Qwest and competitive local exchange companies (CLECs) participating in an industry Regional Oversight Committee (ROC) PID administration forum, those agreements shall be incorporated into the QPAP and modify the agreement between CLEC and Qwest at any time those agreements are submitted to and approved by the Commission. The PAP agreed-upon revisions fall into the following categories: gateway availability (GA-1) and manual service order accuracy (PO-20). Any existing interconnection agreements between Qwest and competitive local exchange companies that incorporate the PAP would be changed if the Commission approves the revisions.

Qwest states that the proposed revisions to the PIDs and the PAP were reached between Qwest and the CLECs during Long Term PID Administration collaborative

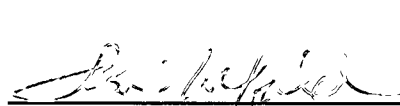
meetings from December 18, 2003 through March 25, 2004 and during a subsequent impasse process.

In addition, Qwest proposes to eliminate PAP language in Section 11.3, 11.3.1, 11.3.2, and 11.3.3 that established a ND CLEC Tier 1 Fund for the purpose of receiving a portion of Tier 1 payments paid to CLECs. If the ND CLEC Tier 1 Fund is eliminated, the dollars in that Fund could not be used by the Commission to meet continuing obligations and would be returned to the CLECs on a pro rata basis to CLECs as provided by the PAP.

The Commission will receive written comments and requests for hearing on these matters until September 15, 2004. If deemed appropriate, the Commission can determine the matter without a hearing

For more information contact the Public Service Commission, State Capitol, Bismarck, North Dakota 58505, 701-328-2400; or Relay North Dakota 1-800-366-6888 TTY If you require any auxiliary aids or services, such as readers, signers, or Braille materials please notify Jon Mielke, Executive Secretary

PUBLIC SERVICE COMMISSION



Susan E. Wefald
Commissioner



Tony Clark
President



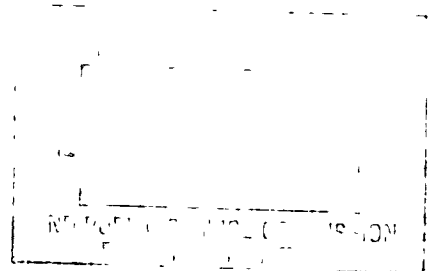
Kevin Cramer
Commissioner

Melissa K. Thompson
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melissa.thompson@qwest.com



June 23, 2004

Ms. Ilona Jeffcoat-Sacco
Executive Secretary
North Dakota Public Service Commission
600 East Boulevard Avenue -- 12th Floor
Bismarck, North Dakota 58505-0480



Re: Notice of Modification to the SGAT, Notice of Qwest's Changes to its Performance Assurance Plan, and Motion for Tier Designation, Volume Differentiated Benchmark and Measurement Stabilization Period for the Revised PID PO-20

Dear Ms. Jeffcoat-Sacco:

Please find enclosed for filing one original and 7 copies of Qwest Corporation's Notice of Modification to the SGAT Exhibit B, Notice of Qwest's Changes to its Performance Assurance Plan, and Motion for Tier Designation, Volume Differentiated Benchmark and Measurement Stabilization Period for the Revised PID PO-20. Along with the Notice, Qwest is submitting both "clean" and "redlined" versions of Exhibit B for the Commission's convenience.

Thank you for your help with this filing. Please contact me if you have any questions or concerns.

Sincerely,

Melissa K. Thompson

Encl.

cc: Scott Macintosh
Mel Kambertz

STATE OF NORTH DAKOTA
BEFORE THE PUBLIC SERVICE COMMISSION

Qwest Corporation's Notice of Modification to the Statement of Generally Available Terms and Conditions ("SGAT") Exhibit B, Notice of Qwest's Changes to its Performance Assurance Plan and Motion for Tier Designation, Volume Differentiated Benchmark and Measurement Stabilization Period for the revised PID PO-20

Case No. PU-_____

Qwest Corporation ("Qwest") submits an updated Exhibit B to the Statement of Generally Available Terms and Conditions ("SGAT"), which is the Performance Indicator Definitions ("PIDs"). Copies of updated Exhibit B are attached.¹ Qwest also submits its revised Qwest Performance Plan ("QPAP") for North Dakota to modify the QPAP, reflect changes from Long Term PID Administration ("LTPA") discussions as well as request determination regarding the tier designation, measurement stabilization period, and volume-differentiated benchmark related to the new PID, PO-20 (Expanded) Manual Service Order Entry. Attached is the revised QPAP.²

In support of these notices and motion for approval, Qwest states as follows:

These submissions result from work during LTPA sessions where participants identified and agreed upon a number of modifications to the PIDs. Some of those modifications may impact the QPAP. The agreements were reached between Qwest and the CLECs in the LTPA meetings from December 18, 2003 through March 25, 2004 and during the subsequent impasse process.

¹ Qwest is submitting "clean" and "red-lined" versions of Exhibit B, as modified

² The QPAP can also be found as Exhibit K to the SGAT. Qwest submits a "clean" and redline version of the QPAP, as modified

A. Changes to Exhibit B appearing in Version 7.1

1. Version 7.1 of Exhibit B contains changes to PO-2, Electronic Flow-Through and adds PO-20, (Expanded) Manual Service Order Accuracy.

2. In LTPA, Qwest offered to begin reporting flow-through performance of UNE-P Centrex 21 on a combined basis with UNE-P POTs, which is an existing product category in PO-2. The issue was disputed by one CLEC in LTPA and the issue went to impasse. Recently, Qwest reached agreement with that CLEC and now submits this change as an agreed-upon change. Accordingly, Exhibit B has been updated to reflect that UNE-P POTs and UNE-P Centrex 21 will be reported in PO-2 on a combined basis.

3. Qwest is implementing the new PO-20 in four phases beginning with Phase 1 in May of 2004. Thus, Qwest will begin reporting results for this enhanced PO-20 with the May results on the July report. Qwest proposes that Phase 1 be subject to the QPAP beginning with August results that are reported in October and paid in November or what equates to three months later for the reasons contained below.

4. The expanded PO-20 includes: an electronic evaluation of the universe of eligible orders as well as an increase in the number of additional products and fields; and a "safety net" that encompasses both pre-completion and post-completion activities. The phased implementation schedule of fields reviewed has been agreed to by the participants of LTPA.

5 Specifically in Phase 1, Qwest will review and measure all service orders within the defined scope of PO-20, creating review of an estimated 18,000 service orders per month. The expanded PO-20 measures Resale POTS, UNE-P POTS, Resale Centrex 21, UNE-P Centrex 21, and eight unbundled loop types (Analog, non-loaded 2-wire, non-loaded 4-wire, DS1 Capable, DS3 Capable and higher, ADSL Compatible, XDSL-I Capable, and ISDN-BRI Capable). Included in this measure are certain escalation tickets related to service order errors that are opened by the CLEC with Qwest. In terms of the number of fields reviewed, each phase adds new fields and field entry combinations. In Phase 1, Qwest will be reviewing 29 fields and will begin reviewing the accuracy of 205 possible feature codes (universal service order codes – “USOCs”) in the service and equipment (“S&E”) section of the service order.

6 Phase 2 adds four additional fields and the evaluation of the accuracy of 29 floated³ fields after specified USOCs

7 In Phase 3, Qwest adds the BLOCK field to the PO-20 review. This field establishes various blocking options on a line, such as long distance blocking or 976 blocking. Although it is a single field on the LSR, it can equate to multiple entries on the service order.

³ On the service order USOCs are entered to request specific products or services from Qwest. Floated fields (FIDs or Field Identifiers) are entered after these USOCs to provide additional information needed for the product. For example a TN (Telephone Number) or HTG (hunting) might be floated after a USOC requesting an inward line.

8. Qwest finishes the expansion of the automated portion of PO-20 in Phase 4 by adding four more fields to the review and completing the second stage of implementation for the BLOCK field. With implementation of this phase, the automated field-to-field comparison will evaluate 39 potential fields, 205 feature codes (USOCs), 29 feature detail codes and a multitude of combinations of these entries on all electronically-submitted manually-processed LSRs for the products and activity types specified in the definition

B. Brief Explanation of certain Exhibit B modifications from Version 6.0 and 7.0 with no redline changes required in the QPAP

9 On January 29, 2004, the LTPA agreed to add two preorder transactions to PO-1, Pre-Order/Order Response Times: Connecting Facility Assignment and Meet Point Inquiry. These two transactions are identified as the 9th and 10th pre-order transactions. Benchmarks of 25 seconds and 30 seconds, respectively, were also agreed upon for these transactions.⁴ The QPAP does not require redline changes because PO-1 in North Dakota does not delineate each transaction.

10. The parties agreed on January 15, 2004, to add DS-1 level Enhanced Extended Loops (EELs-DS1) as a product group to PO-5, Firm Order Confirmations (FOCs) On Time.⁵ Therefore, activity for EELs-DS1 will be included in the reporting of PO-5B(b) and PO-5C(b). No QPAP changes are required since the product categories are not delineated separately

⁴ See LTPA Meeting Minutes for January 29, 2004

⁵ See LTPA Meeting Minutes for January 15, 2004.

11. Further, although several modifications were made to Exhibit B as a result of the parties' agreement to begin reporting EELs on a disaggregated basis, no changes to the QPAP are required.⁶ The aggregate category for EELs was removed from OP-3, OP-4, OP-6, MR-5, MR-6, MR-7, & MR-8. This aggregate category was replaced with the disaggregations of DS-0, DS-1 and DS-3. Agreement was reached to apply the EEL standards from the Colorado PAP, consequently, the standards that are applied to EELs DS-1 in the CPAP are applied to the PIDs OP-3, OP-4, OP-6A⁷, MR-5, MR-6, MR-7 and MR-8. A diagnostic standard was applied to EELs DS-0 and EELs DS-3 in the PIDs OP-3, OP-4, OP-6, MR-5, MR-6, MR-7 and MR-8.

12. Unlike EELs reporting, with regard to line splitting, the parties were able to reach agreement in several instances but remain at impasse in other instances. In the PID OP-3, Installation Commitments Met, LTPA agreed on March 25, 2004, that line splitting would be reported on a disaggregated basis with a 95% benchmark⁸. Similarly, in OP-4, Installation Interval, LTPA agreed on March 25, 2004, that line splitting would be reported on a disaggregated basis with a benchmark of 3.3 days⁹ and in OP-6, Delayed

⁶ Please note that the same changes for EELs were made to MR-6, Mean Time to Restore as the other PIDs; however, MR-6D, -6E which contain the EEL disaggregations are not in the PAP

⁷ OP-6B is diagnostic. OP-6B measures the average number of business days that service is delayed beyond the applicable due date for facility reasons attributed to Qwest.

⁸ See LTPA Meeting Minutes for March 25, 2004.

⁹ See LTPA Meeting Minutes for March 25, 2004.

Days, it was agreed that line splitting be reported on a disaggregated basis with a standard of parity with retail Qwest DSL.¹⁰

13 With respect to MR-7 and line splitting, the parties agreed to report line splitting on a disaggregation basis and apply a standard of parity with Qwest DSL.¹¹

14. LTPA agreed on January 15, 2004, to change the standard for line sharing in the OP-6 PID, Delayed Days from diagnostic to parity with retail Qwest DSL.¹²

15. On February 19, 2004, the parties agreed to change the methodology by which results for MR-7, Repair Repeat Report Rate, are reported to more closely tie a repeated trouble report with the initial trouble report.¹³ Thus, to provide time to identify a repeat trouble report within 30 days of the initial trouble report, this PID will be reported one month in arrears (i.e., July's results would be reported in September).

C. QPAP changes resulting from Version 6.0 of Exhibit B

16 On February 17, 2004, Qwest filed Version 6.0 of the PIDs in Exhibit B, which took effect 60 days later. Among the changes, only one item in Version 6.0 requires QPAP modifications.

¹⁰ See LTPA Meeting Minutes for March 11-12, 2004
¹¹ See LTPA Meeting Minutes for March 11-12, 2004.
¹² See LTPA Meeting Minutes for January 15, 2004
¹³ See LTPA Meeting Minutes for February 19, 2004

17. The administrative changes and substantive change to GA-1 were negotiated with participating CLECs and State Commission State Staffs in the LTPA collaborative forum in the last quarter of 2003 and final agreement was reached on December 18, 2003.¹⁴ Because the administrative changes are not of a substantive nature, they do not alter any provisions in the QPAP or have any impact on Qwest's obligations under the QPAP. Therefore, the administrative changes filed in Version 6.0 require no changes be made to the QPAP.

18. However, the change to GA-1 Gateway Availability – IMA-GUI, does require a modification to the QPAP. The LTPA agreed to remove two subparts to GA-1 and replace them with another. Specifically, subparts GA-1B, (“Fetch-N-Stuff”) and GA-1C (“Data Arbiter”) were replaced with GA-1D (“SIA”). Fetch-N-Stuff and Data Arbiter were two components of the electronic gateways through which CLECs interact electronically with Qwest's Operational Support Systems (“OSS”). These components were retired in December, 2002 and replaced by a new component called SIA. During the conversion from Fetch-N-Stuff and Data Arbiter to SIA, Qwest reported gateway availability performance for all three components; however, after the retirement of the former two components, Qwest stopped reporting their performance, but continued reporting performance for SIA; Qwest continues to report on SIA today. During the conversion, GA-1D was monitored with respect to provisions under the QPAP and because SIA has never missed its standard, no QPAP payments arose; however, the QPAP requires that GA-1 be accordingly modified.

¹⁴ See LTPA Meeting Minutes for December 18, 2003.

D. Additional QPAP Administrative Changes

In previous versions of the QPAP, the footnote “c” table reference for OP-3 referred to a non-existent footnote and has accordingly been deleted in the attached QPAP.

The QPAP has been modified at the request of the Commission to reflect removal of the requirement to establish and utilize a ND CLEC Tier 1 Fund

E. QPAP Changes resulting from Version 7.1 of Exhibit B

Since PO-2 does not appear in the QPAP, no changes are required or included. However, as to PO-20, Qwest requests that the Commission determine the appropriate tier designation, apply a low-volume-differentiated benchmark (to avoid requiring 100% perfect performance in any reporting period), and allow a maximum of a 3 month measurement stabilization period prior to each implementation phase. As support for these requests, Qwest states as follows:

19 The PO-20 modifications were discussed by the LTPA in one or more of the weekly LTPA sessions and numerous ad hoc meetings. A number of Staff from various state commissions attended those discussions as well. The parties agreed that these substantive changes would be submitted together after completion of the negotiation sessions, rather than individually as agreement was reached. The version of PO-20 included in the attached Exhibit B was circulated to the LTPA collaborative on June 8, 2004 with comments requested by June 16, 2004.¹⁵ This email contained the following

¹⁵ See the Qwest’s email to the LTPA, dated June 8, 2004 at 4:43 PM (Denver time)

language: "If comments are not received on or before June 16, 2004, the attached version will be included in Qwest's anticipated Exhibit B filings as the agreed upon PO-20." One CLEC responded indicating they had no concern with the language. Qwest now submits the attached Exhibit B

20. However, it should be noted that while the parties reached agreement in LTPA on the PID definition and implementation of the enhanced PO-20, the parties only briefly addressed its treatment in the QPAP during ad hoc meetings in March 2004. Therefore, Qwest requests that the enhanced PO-20 be assigned a tier designation of Tier 1 Low, no Tier 2; a low volume differentiated benchmark for a specific number of orders be applied; and that a maximum 3 month measurement stabilization period apply for each phase of implementation before the phase is subject to the QPAP

21. Given the types of errors captured by PO-20 and the fact that customer impact may or may not result, the designation of Tier 1 low, and no Tier 2, appropriately reflects the importance of these types of errors. The majority of errors that PO-20 will capture are associated with feature-only activity. Feature only activity orders do not involve interconnection, switching of customers, collocation, or access to unbundled loops. Even though PO-20 measures orders for inward line activity as well as feature only activity, most of the errors on the competitively sensitive inward activity (and conversion activity) can be detected and corrected before the due date and thus, result in no end user impact. Appropriately, these types of activities have not risen to anything above a Tier 1 Low designation in any other measure.

22. Additionally, simply because a PO-20 error is identified does not mean that an end user customer will be impacted, or that the impact will necessarily translate to end user customer harm. In fact, PO-20 does not have the capacity to quantify the harm, if any, to an end user customer; it can only quantify the existence of error.

23. Finally, it must be noted that several of the errors that PO-20 is designed to capture will be captured in other PIDs. For example, if a service order error results in an installation problem on an inward-line order, either OP-5A – which measures the percentage of inward line service orders that are free of repair trouble reports -- could capture that condition or OP-5B – which measures the percentage of inward line service orders that are free of provisioning trouble reports -- could report the error. If the PO-20 error results in incorrect billing, that error will be reflected in BI-3A, billing accuracy results. In the preceding examples, in the case of OP-5A and BI-3A, Qwest is already subject to payments to CLECs for the perceived error.

24. *Volume-Differentiated Benchmark* A different benchmark for low volumes of orders received is appropriate because Qwest would be held to a standard of perfection if a single order error would otherwise cause the benchmark to be missed. In this case, where the benchmark is otherwise 95%, when a CLEC's order volumes in a particular month are 20 orders or below, the standard should be, "no greater than one order in error." Failure to make this volume differentiation will mean that, for order volumes of

20 or fewer orders, Qwest could only satisfy the 95% benchmark if its performance were perfect on every order, which is not reasonable.

Measurement Stabilization Period A “burn in” or measurement stabilization period is appropriate because past experience with respect to implementation of new measures demonstrates that Qwest will need time to test and make adjustments to its systems to ensure that the systems accurately report the measure. There are some elements of the reporting system that simply cannot be evaluated without being in active production. The enhancements and expansion of PO-20 requires systems changes that are not simple and essentially result in two performance measurements during the overlapping reporting timeframe.

With this filing and pursuant to section 16 of the QPAP, Qwest has modified the QPAP to reflect certain changes. The new PO-20 measurement reporting will begin with May results reported in July. During implementation of Phase 1, reporting will occur on the new PO-20 in Exhibit B, Version 7.1. No payments will be made until such time as the measurement stabilization for Phase 1 on the new Exhibit B, Version 7.1 PO-20 has expired. Qwest requests that it be granted a maximum three month measurement stabilization period for each Phase to adequately assess the measurement’s reliability and validate results.

F. Conclusion

By making this filing, Qwest requests that the Commission approve the QPAP, as revised and modified, designate a tier for PO-20, establish a low-volume-differentiated benchmark for PO-20, and allow PO-20 a measurement stabilization for no more than three months with the implementation of each phase, meaning that Qwest will make any required payments for PO-20

on the prior phase beginning with the implementation of Phase 2 until the expiration of the measurement stabilization period.

Qwest requests that the Commission permit the amended Exhibit B to go into effect no later than 60 days after submission in accordance with 47 U.S.C. § 252(f)(3). Qwest will report on the expanded PO-20 contained within Exhibit B until such time the Commission determines the appropriate tier designation, measurement stabilization period and whether a low volume differentiated benchmark should apply.

Further, Qwest requests that, pursuant to Section 16 of the QPAP, the changes shall automatically apply to all existing interconnection agreements that currently contain Exhibit B and the QPAP, Exhibit K as exhibits.

RESPECTFULLY SUBMITTED this 23rd day of June, 2004.

QWEST CORPORATION

By: 
Melissa K. Thompson, Senior Attorney
Qwest Services Corporation
1801 California Street, 49th Floor
Denver, Colorado 80212
(303) 672-2734

Exhibit K

PERFORMANCE ASSURANCE PLAN

1.0 Introduction

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

2.0 Plan Structure

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

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

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

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

2.4 For performance measurements that have no Qwest retail analogue, agreed upon benchmarks shall be used. Benchmarks shall be evaluated using a "stare and compare" method. For example, if the benchmark for a particular performance measurement is 95% or better, Qwest performance results must be at least 95% to meet the benchmark. Percentage benchmarks will be adjusted to round the allowable number of misses up or down to the closest integer, except when a benchmark standard and low CLEC volume are such that a 100% performance result would be required to meet the standard and has not been attained. In such a situation, the determination of whether Qwest meets or fails the benchmark standard will be made using performance results for the month in question, plus a sufficient number of

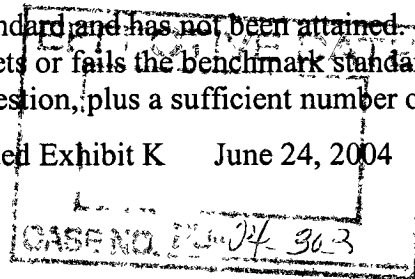


Exhibit K

PERFORMANCE ASSURANCE PLAN

consecutive prior months so that a 100% performance result would not be required to meet the standard. For purposes of section 6.2, a meet or fail determined by this procedure shall count as a single month. In cases where there is insufficient prior data to determine if the standard has been met or missed using this “look-back” procedure, Qwest shall be allowed to round the product of the benchmark and the sample size up to one, such that one miss would be permitted.

3.0 Performance Measurements

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

4.0 Statistical Measurement

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

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

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

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

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

Where:

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

Handwritten notes and stamps in the right margin, including a circular stamp and the handwritten text "Cik 3a 3".

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M_{QWEST} = Qwest average or proportion

M_{CLEC} = CLEC average or proportion

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

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

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

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

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

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

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

Calculate the modified z-statistic for the actual arrangement of the data

Pool and mix the CLEC and Qwest data sets

Perform the following 1000 times:

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

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

Count the number of times the z-statistic for a permutation of the data is greater than the actual modified z- statistic

Compute the fraction of permutations for which the statistic for the rearranged data is greater than the statistic for the actual samples

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

5.0 Critical Z-Value

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

TABLE 1: CRITICAL Z-VALUE

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

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

6.0 Tier 1 Payments to CLEC

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

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

6.2 Determination of the Amount of Payment: Tier 1 payments to CLEC, except as provided for in sections 6.3 and 10.0, are calculated and paid monthly based on the number of performance measurements exceeding the critical z-value. Payments will be made on either a

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per occurrence or per measurement basis, depending upon the performance measurement, using the dollar amounts specified in Table 2 below. The dollar amounts vary depending upon whether the performance measurement is designated High, Medium, or Low and escalate depending upon the number of consecutive months for which Qwest has not met the standard for the particular measurement.

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

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

TABLE 2: TIER-1 PAYMENTS TO CLEC

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

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

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

TABLE 3: TIER-1 COLLOCATION PAYMENTS TO CLECS

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

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

7.0 Tier 2 Payments to the State

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

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

7.3 **Determination of the Amount of Payment:** Except as provided in section 7.4, Tier 2 payments are calculated and paid monthly based on the number of performance measurements

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failing performance standards for a third month in any twelve month period for Tier 2 measurements with Tier 1 counterparts and for a second month in any twelve month period for Tier 2 measurements that do not have Tier 1 counterparts. Payment will be made on either a per occurrence or per measurement basis, whichever is applicable to the performance measurement, using the dollar amounts specified in Table 4 or Table 5 below. Except as provided in section 7.4, the dollar amounts vary depending upon whether the performance measurement is designated High, Medium, or Low.

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

TABLE 4: TIER-2 PAYMENTS TO STATE FUNDS

Per Occurrence

Measurement Group	
High	\$500
Medium	\$300
Low	\$200

Per Measurement/Cap

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

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

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

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

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

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

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

7.5 Payment of Tier 2 Funds: Payments to a state fund shall be used for any purpose determined by the Commission that is allowed to it by state law. Until such time as the North Dakota Legislature determines the uses by the Commission of Tier 2 funds, Tier 2 payments shall be made to the ND Performance Assurance Fund as set forth in QPAP Section 11.3 and its subsections. Upon the effective date of legislation, the receipt and administration of Tier 2 funds shall be as directed by the North Dakota Legislature.

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

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

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

8.2.1 Performance Measurements that are Averages or Means:

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

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the z-statistic for the measurement shall be used. (For benchmark measurements, the benchmark value shall be used.)

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

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

8.2.2 Performance Measurements that are Percentages:

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

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

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

8.2.3 Performance Measurements that are Ratios or Proportions:

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

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

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

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

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

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

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

9.1.2 Tier 2 payments for performance measurements listed on Attachment 1 shall be made in the current month when 1) for Tier 2 measurements that have Tier 1 counterparts it is determined that Qwest missed the performance standard for a third month in any twelve-month period or 2) for Tier 2 measurements that do not have Tier 1 counterparts it is determined that Qwest missed the performance standard for a second month during any twelve-month period.

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

9.2.1 Performance Measurements that are Averages or Means:

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

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

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

9.3 Performance Measurements that are Percentages:

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

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

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

9.4 Performance Measurements that are Ratios or Proportions:

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

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

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

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

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

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10.0 Low Volume, Developing Markets

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

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

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

11.0 Payment

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

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

11.3 A ND Performance Assurance Fund shall be created for the purpose of receiving Tier 2 payments.

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11.3.1 Qwest shall establish the ND Performance Assurance Fund as an interest bearing escrow account upon FCC section 271 approval of the PAP. Qwest shall deposit all Tier 2 payments into the ND Performance Assurance Fund. The cost of the escrow account will be paid for from account funds.

11.3.2 All charges against the funds shall be presented to the Commission.

11.3.3 Qwest shall advance, upon request, sufficient funds to any consolidated multistate Special Fund established by participating states, set up for the purpose of a regional audit as specified in sections 15.1-15.4, not to exceed \$200,000 (or \$500,000 in the event 6 or more states participate in the regional audit) in order to meet initial claims against that fund to the extent that contributions from Tier 2 payments directed to the fund by the participating states are insufficient. Qwest shall be allowed to recover any such advances plus interest from the fund at the rate that such an escrow account would have earned from future Tier 2 payments.

12.0 Cap on Tier 1 and Tier 2 Payments

12.1 There shall be an annual cap on the total payments made by Qwest beginning with the effective date of the PAP for the State of North Dakota. The annual cap, beginning with the effective date of the PAP for the State of North Dakota, shall be 36% of the 1999 ARMIS Net Return (which is \$13,000,000). Subsequent annual caps determined pursuant to section 12.2 and its subsections are expressed as a percent and are applied to Qwest's most recently reported ARMIS Net Return to determine the dollar amount of the annual cap. CLEC agrees that this amount constitutes a maximum annual cap that shall apply to the aggregate total of any Tier-1 liquidated damages (including any such damages paid pursuant to this Agreement or voluntary payments made by Qwest pursuant to any North Dakota interconnection agreement with a performance remedy plan) and Tier-2 Assessments or voluntary payments made by Qwest pursuant to any North Dakota interconnection agreement with a performance remedy plan.

12.2 The 36% annual cap may increase to 44% of ARMIS Net Return as follows:

12.2.1 An increase in the "existing annual cap" of 4 percentage points at any one time (i.e. first to 40 percent then to 44 percent) shall occur in cases where the cap would have been exceeded for any consecutive period of 24 months by that same 4 percent or more. Qwest may file a petition with the NDPSC seeking relief for payments exceeding the existing annual cap. Qwest will not be required to make payments in excess of the existing annual cap pending the outcome of the proceeding before the Commission. Qwest shall have the burden of establishing that it could not have remained below the existing annual cap through use of reasonable and prudent effort. If the Commission determines that Qwest should make payments in excess of the existing annual cap, Qwest shall make any and all payments that were suspended with interest.

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12.2.2 A decrease in the existing annual cap of a maximum of 4 percentage points at any one time shall occur upon order by the Commission that it is appropriate to do so after performance for any consecutive period of 24 months which produces calculations of total payment responsibility that is 8 or more percentage points (i.e., 26 percent or less) below the cap amount for that period, provided that:

- a. the Commission shall determine that the preponderance of the Qwest evidence shows the performance results underlying those payment calculations results from an adequate Qwest commitment to meeting its responsibilities to provide adequate wholesale service and to keeping open its local markets, and
- b. the Commission shall have made that determination after providing all interested parties an opportunity to be heard.

12.2.3 The provisions of 12.2.1 and 12.2.2 shall be applicable to the next 24 month period commencing at the completion of the first, provided that the maximum annual cap shall be 44 percent; the minimum annual cap shall be 36 percent.

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

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

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

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

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

13.0 Limitations

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

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

13.3 Qwest shall not be obligated to make Tier 1 or Tier 2 payments for any measurement if and to the extent that non-conformance for that measurement was the result of any of the following: 1) with respect to performance measurements with a benchmark standard, a Force Majeure event as defined in section 5.7 of the SGAT. Qwest will provide notice of the occurrence of a Force Majeure event within 72 hours of the time Qwest learns of the event or within a reasonable time frame that Qwest should have learned of it; 2) an act or omission by a CLEC that is contrary to any of its obligations under its interconnection agreement with Qwest or under federal or state law; an act or omission by CLEC that is in bad faith. Examples of bad faith conduct include, but are not limited to: unreasonably holding service orders and/or applications, "dumping" orders or applications in unreasonably large batches, "dumping" orders or applications at or near the close of a business day, on a Friday evening or prior to a holiday, and failing to provide timely forecasts to Qwest for services or facilities when such forecasts are explicitly required by the SGAT; 3) problems associated with third-party systems or equipment, which could not have been avoided by Qwest in the exercise of reasonable diligence, *provided, however*, that this third party exclusion will not be raised in the State more than three times within a calendar year. If a Force Majeure event or other excusing event recognized in this section merely suspends Qwest's ability to timely perform an activity subject to a performance measurement that is an interval measure, the applicable time frame in which Qwest's compliance with the parity or benchmark criterion is measured will be extended on an hour-for-hour or day-for-day basis, as applicable, equal to the duration of the excusing event.

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

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

13.4 Qwest's agreement to implement these enforcement terms, and specifically its agreement to pay any "liquidated damages" or "assessments" hereunder, will not be

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considered as an admission against interest or an admission of liability in any legal, regulatory, or other proceeding relating in whole or in part to the same performance.

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

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

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

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

13.7 Any liquidated damages payment by Qwest under these provisions is not hereby made inadmissible in any proceeding related to the same conduct where Qwest seeks to offset the payments against any other damages a CLEC may recover; whether or not the nature of the damages sought by the CLEC is such that an offset is appropriate will be determined in the relevant proceeding.

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

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

13.10 Qwest will not attempt to recover in intrastate rates payments made under the QPAP.

14.0 Reporting

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

14.2 Qwest will also provide the Commission a monthly report of aggregate CLEC performance results pursuant to the PAP by the last day of the month following the month for which performance results are being reported. However, Qwest shall have a grace period of five business days, so that Qwest shall not be deemed out of compliance with its reporting obligations before the expiration of the five business day grace period. Individual CLEC reports of participating CLECs will also be available to the Commission upon request. By accepting this PAP, CLEC consents to Qwest providing CLEC's report and raw data to the State Commission. Pursuant to the terms of an order of the Commission, Qwest may provide

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CLEC-specific data that relates to the PAP, provided that Qwest shall first initiate any procedures necessary to protect the confidentiality and to prevent the public release of the information pending any applicable Commission procedures and further provided that Qwest provides such notice as the Commission directs to the CLEC involved, in order to allow it to prosecute such procedures to their completion. Data files of participating CLEC raw data, or any subset thereof, will be transmitted, without charge, to the Commission in a mutually acceptable format, protocol, and transmission form.

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

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

15.0 Integrated Audit Program/Investigations of Performance Results

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

15.1.1 [This section intentionally left blank.]

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

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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 OSS report. The two-year cycle will examine risks likely to exist across that period and the past history of testing, in order to determine what combination of high and more moderate areas of risk should be examined during the two-year cycle. The first year of a two-year cycle will concentrate on areas most likely to require follow-up in the second year.

15.1.3 The Commission will attempt to coordinate its audit plan with other audit plans that may be conducted by other state commissions so as to avoid duplication. The audit shall be conducted so as not to 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 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

15.2 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 QPAP. 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 15.2.1 and 15.2.2).

15.2.1 Qwest shall be allowed to change the Performance Measurement and Reporting System as defined in Section 15.2 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 to the change log shall result in Qwest being required to pay a \$250 fine, plus interest at the prime rate as reported in the Wall Street Journal accrued from the time the change took effect. The payment shall go to the Tier 2 ND Performance Assurance Fund and does not count against the annual cap described in QPAP Section 12.

15.2.2 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.,

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a fundamental change to its measurement system), Qwest shall record the proposed change to the change log and notify the Commission staff and the Auditor retained for the purpose of auditing performance measurements under this QPAP to request an evaluation of the proposed change. The Commission staff or 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 this report on the public QPAP website. Upon receiving the report of the impact evaluation from the Commission staff or the Auditor, the Commission shall have 15 days to take action to prevent Qwest from making such a change and to decide on a process for resolving the issue. During the first seven-day period following the filing and recording of the Commission staff or Auditor's report, interested parties may file comments on the proposed change and the report. If the Commission takes no action on the issue during the 15-day period, Qwest shall be free to make the proposed change.

15.2.3 If Qwest makes a fundamental change pursuant to Section 15.2.2 without obtaining approval, it shall be liable for \$10,000 payable to the ND Performance Assurance Fund. If Qwest cannot reproduce reliable performance data, the Commission shall determine what payments are due based upon the data collected by the affected CLECs plus interest at the prime rate as reported in the Wall Street Journal accrued from the time the change took effect.

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

15.4 Expenses for the audit of the PAP and any other related expenses, except that which may be assigned under section 15.3, shall be paid first from the Tier 2 funds. If Tier 2 funds are not sufficient to cover audit costs, the Commission will develop an additional funding method which may include contributions from CLEC's Tier 1 payment.

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

16.0 Reviews

16.1 Every six (6) months, beginning six months after the effective date of the first Section 271 approval by the FCC of one of the states that participated in the multi-state QPAP review proceeding, Qwest, CLECs, and the Commission shall review the performance measurements in the QPAP to determine whether measurements should be added, deleted, or modified; whether the applicable benchmark standards should be modified or replaced by parity standards; and whether to move a classification of a measurement to High, Medium, or Low or Tier 1 to Tier 2. The criterion for reclassification of a measurement shall be whether the actual volume of data points was less or greater than anticipated. Criteria for review of performance measurements, other than for possible reclassification, shall be whether there exists an omission or failure to capture intended performance, and whether there is duplication of another measurement. Any disputes regarding adding, deleting, or modifying performance measurements shall be resolved by the Commission. The NDPSC retains the right to add topics and criteria to the six-month review, retains the ability to order changes if the QPAP is not in the public interest, and retains the ability to hear any disputes regarding the six-month review. The Commission may conduct joint reviews with other states. Any changes at the six-month review pursuant to this section shall apply to and modify this agreement between Qwest and CLEC.

16.1.1 To limit the potential for increased liability due to changes in the PAP, Qwest shall be allowed to limit its liability for changes made pursuant to the six-month review. Accordingly, Qwest shall calculate, separately, payments owed under the PAP that do not include changes made at the six month review (baseline PAP), as well as payments owed under a PAP revised to reflect changes made at the six month review (revised PAP). If payments calculated under the revised PAP are more than 110% of payments calculated under the baseline PAP, Qwest shall limit payments for the changed measurements to the affected LECs and to the Special Fund to a 10% increase (10% collar) above the total baseline PAP payment liability. At any six-month review, if the total payment liability for the revised PAP is below 110% of the total payment liability for the baseline PAP for the preceding six-month period, the revised PAP shall become the baseline PAP for the next six-month period, otherwise, the same baseline PAP shall remain in effect for the next six month period.

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16.2 Two years after the effective date of the first Section 271 approval by the FCC of one of the states that participated in the multi-state QPAP review proceeding, the Commission may conduct a review by an independent third party to examine the continuing effectiveness of the PAP as a means of inducing compliant performance. This review shall not be used to open the PAP generally to amendment, but would serve to assist the Commission in determining existing conditions and reporting to the FCC on the continuing adequacy of the PAP to serve its intended functions. The Commission may conduct a joint review with other states.

16.3 Notwithstanding section 16.1, if any agreements on adding, modifying or deleting performance measurements as permitted by section 16.1 are reached between Qwest and CLECs participating in an industry Regional Oversight Committee (ROC) PID administration forum, those agreements shall be incorporated into the QPAP and modify the agreement between CLEC and Qwest at any time those agreements are submitted to and approved by the Commission, whether before or after a six-month review. Any changes made pursuant to this section shall be subject to and included in the calculation and application of the 10% payment collar identified in section 16.1.

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

17.0 Voluntary Performance Assurance Plan

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

18.0 Dispute Resolution

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

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

Performance Measurement		Tier 1 Payments			Tier 2 Payments		
		Low	Med	High	Low	Med	High
GATEWAY							
Timely Outage Resolution	GA-7						X
PRE-ORDER/ORDERS							
LSR Rejection Notice Interval	PO-3 ^a	X					
Firm Order Confirmations On Time	PO-5	X				X	
Work Completion Notification Timeliness	PO-6 ^b	X					
Billing Completion Notification Timeliness	PO-7 ^b	X					
Jeopardy Notice Interval	PO-8	X					
Timely Jeopardy Notices	PO-9	X					
Release Notifications	PO-16						X
(Expanded) – Manual Service Order Accuracy	PO-20 ^c	X					
ORDERING AND PROVISIONING							
Installation Commitments Met	OP-3			X		X	
Installation Intervals	OP-4 ^d			X		X	
New Service Quality	OP-5a			X		X	
Delayed Days	OP-6 ^e			X		X	
Number Portability Timeliness	OP-8			X		X	
Coordinated Cuts On Time – Unbundled Loops	OP-13a			X		X	
LNP Disconnect Timeliness	OP-17			X		X	
MAINTENANCE AND REPAIR							
Out of Service Cleared within 24 hours	MR-3			X			
All Troubles Cleared within 4 hours	MR-5			X			
Mean time to Restore	MR-6a,b,c			X			
Repair Repeat Report Rate	MR-7			X		X	
Trouble Rate	MR-8			X		X	
LNP Trouble Reports Cleared within 24 Hours	MR-11			X		X	
LNP Trouble Reports—Mean Time to Restore	MR-12			X		X	
BILLING							
Time to Provide Recorded Usage Records	BI-1	X					X
Billing Accuracy-Adjustments for Errors	BI-3	X					
Billing Completeness	BI-4	X				X	
NETWORK PERFORMANCE							
Trunk Blocking	NI-1			X			X
NXX Code Activation	NP-1			X			X

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

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

- c. For PO-20, where CLEC order volumes are 1 – 20, apply a benchmark standard of “not greater than one order in error.” Under this provision, no payment applies if there is only one order with an error. For each phase beginning with Phase 1, there will be no more than a 3 month measurement stabilization period for all fields introduced in that phase. Additional fields are not subject to payments during the measurement stabilization period.

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

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

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Attachment 2: Performance Measurements Subject to Per Measurement Caps

Billing

Time to Provide Recorded Usage Records – BI-1 (Tier 1/Tier 2)

Billing Accuracy – Adjustments for Errors – BI-3 (Tier 1)

Billing Completeness – BI-4 (Tier 1/Tier 2)

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1.0 Introduction

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

2.0 Plan Structure

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

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

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

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

2.4 For performance measurements that have no Qwest retail analogue, agreed upon benchmarks shall be used. Benchmarks shall be evaluated using a “stare and compare” method. For example, if the benchmark for a particular performance measurement is 95% or better, Qwest performance results must be at least 95% to meet the benchmark. Percentage benchmarks will be adjusted to round the allowable number of misses up or down to the closest integer, except when a benchmark standard and low CLEC volume are such that a 100% performance result would be required to meet the standard and has not been attained. In such a situation, the determination of whether Qwest meets or fails the benchmark standard

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will be made using performance results for the month in question, plus a sufficient number of consecutive prior months so that a 100% performance result would not be required to meet the standard. For purposes of section 6.2, a meet or fail determined by this procedure shall count as a single month. In cases where there is insufficient prior data to determine if the standard has been met or missed using this “look-back” procedure, Qwest shall be allowed to round the product of the benchmark and the sample size up to one, such that one miss would be permitted.

3.0 Performance Measurements

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

4.0 Statistical Measurement

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

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

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

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

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

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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 measurement

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

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

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

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

Calculate the modified z-statistic for the actual arrangement of the data

Pool and mix the CLEC and Qwest data sets

Perform the following 1000 times:

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

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

Count the number of times the z-statistic for a permutation of the data is greater than the actual modified z- statistic

Compute the fraction of permutations for which the statistic for the rearranged data is greater than the statistic for the actual samples

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

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5.0 Critical Z-Value

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

TABLE 1: CRITICAL Z-VALUE

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

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

6.0 Tier 1 Payments to CLEC

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

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

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

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

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

TABLE 2: TIER-1 PAYMENTS TO CLEC

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

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

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

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

TABLE 3: TIER-1 COLLOCATION PAYMENTS TO CLECS

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

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

7.0 Tier 2 Payments to the State

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

7.2 **Determination of Non-Conforming Measurements:** The determination of non-conformance will be based upon the aggregate of all CLEC data for each Tier 2 performance measurement. Non-conforming service is defined in section 4.2 (for parity measurements)

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and 4.3 (for benchmark measurements), except that a 1.645 critical z-value shall be used for all parity measurements but MR-2 and OP-2. The critical z-value is the statistical standard that determines for each performance measurement whether Qwest has met parity.

7.3 Determination of the Amount of Payment: Except as provided in section 7.4, Tier 2 payments are calculated and paid monthly based on the number of performance measurements failing performance standards for a third month in any twelve month period for Tier 2 measurements with Tier 1 counterparts and for a second month in any twelve month period for Tier 2 measurements that do not have Tier 1 counterparts. Payment will be made on either a per occurrence or per measurement basis, whichever is applicable to the performance measurement, using the dollar amounts specified in Table 4 or Table 5 below. Except as provided in section 7.4, the dollar amounts vary depending upon whether the performance measurement is designated High, Medium, or Low.

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

TABLE 4: TIER-2 PAYMENTS TO STATE FUNDS

Per Occurrence

Measurement Group	
High	\$500
Medium	\$300
Low	\$200

Per Measurement/Cap

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

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

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

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

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

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

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

7.5 Payment of Tier 2 Funds: Payments to a state fund shall be used for any purpose determined by the Commission that is allowed to it by state law. Until such time as the North Dakota Legislature determines the uses by the Commission of Tier 2 funds, Tier 2 payments shall be made to the ND Performance Assurance Fund as set forth in QPAP Section 11.3 and its subsections. Upon the effective date of legislation, the receipt and administration of Tier 2 funds shall be as directed by the North Dakota Legislature.

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

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

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

8.2.1 Performance Measurements that are Averages or Means:

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

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

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

8.2.2 Performance Measurements that are Percentages:

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

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

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

8.2.3 Performance Measurements that are Ratios or Proportions:

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

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

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

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

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

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

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

9.1.2 Tier 2 payments for performance measurements listed on Attachment 1 shall be made in the current month when 1) for Tier 2 measurements that have Tier 1 counterparts it is determined that Qwest missed the performance standard for a third month in any twelve-month period or 2) for Tier 2 measurements that do not have Tier 1 counterparts it is determined that Qwest missed the performance standard for a second month during any twelve-month period.

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

9.2.1 Performance Measurements that are Averages or Means:

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

9.2.2.2 Step 2: The percentage difference between the actual averages and the calculated averages for each month shall be calculated. The calculation for parity measurements is % diff = (actual average – calculated average)/calculated average. The percent difference shall

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be capped at a maximum of 100%. In all calculations of percent differences in section 8.0 and section 9.0, the calculated percent difference is capped at 100%.

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

9.3 Performance Measurements that are Percentages:

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

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

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

9.4 Performance Measurements that are Ratios or Proportions:

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

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

9.4.1.2 Step 3: For each performance measurement, the total number of data points shall be multiplied by the difference calculated in the previous step for each month. The average for

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three months shall be calculated (rounded to the nearest integer) and multiplied by the result of the per occurrence dollar amounts taken from the Tier 2 Payment Table to determine the payment to the State.

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

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

10.0 Low Volume, Developing Markets

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

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

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

11.0 Payment

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

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

11.3 A ND Performance Assurance Fund shall be created for the purpose of receiving Tier 2 payments.

11.3.1 Qwest shall establish the ND Performance Assurance Fund and ND CLEC Performance-as-an interest bearing escrow accounts upon FCC section 271 approval of the PAP. Qwest shall deposit all Tier 2 payments into the ND Performance Assurance Fund. The cost of the escrow accounts will be paid for from account funds.

11.3.2 All charges against the funds shall be presented to the Commission.

11.3.3 Qwest shall advance, upon request, sufficient funds to any consolidated multistate Special Fund established by participating states, set up for the purpose of a regional audit as specified in sections 15.1-15.4, not to exceed \$200,000 (or \$500,000 in the event 6 or more states participate in the regional audit) in order to meet initial claims against that fund to the extent that contributions from participating states are insufficient. Qwest shall be allowed to recover any such advances plus interest from the fund at the rate that such an escrow account would have earned from future Tier 2 payments.

12.0 Cap on Tier 1 and Tier 2 Payments

12.1 There shall be an annual cap on the total payments made by Qwest beginning with the effective date of the PAP for the State of North Dakota. The annual cap, beginning with the effective date of the PAP for the State of North Dakota, shall be 36% of the 1999 ARMIS Net Return (which is \$13,000,000). Subsequent annual caps determined pursuant to section 12.2 and its subsections are expressed as a percent and are applied to Qwest's most recently reported ARMIS Net Return to determine the dollar amount of the annual cap. CLEC agrees that this amount constitutes a maximum annual cap that shall apply to the aggregate total of any Tier-1 liquidated damages (including any such damages paid pursuant to this Agreement

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or voluntary payments made by Qwest pursuant to any North Dakota interconnection agreement with a performance remedy plan) and Tier-2 Assessments or voluntary payments made by Qwest pursuant to any North Dakota interconnection agreement with a performance remedy plan.

12.2 The 36% annual cap may increase to 44% of ARMIS Net Return as follows:

12.2.1 An increase in the “existing annual cap” of 4 percentage points at any one time (i.e. first to 40 percent then to 44 percent) shall occur in cases where the cap would have been exceeded for any consecutive period of 24 months by that same 4 percent or more. Qwest may file a petition with the NDPSC seeking relief for payments exceeding the existing annual cap. Qwest will not be required to make payments in excess of the existing annual cap pending the outcome of the proceeding before the Commission. Qwest shall have the burden of establishing that it could not have remained below the existing annual cap through use of reasonable and prudent effort. If the Commission determines that Qwest should make payments in excess of the existing annual cap, Qwest shall make any and all payments that were suspended with interest.

12.2.2 A decrease in the existing annual cap of a maximum of 4 percentage points at any one time shall occur upon order by the Commission that it is appropriate to do so after performance for any consecutive period of 24 months which produces calculations of total payment responsibility that is 8 or more percentage points (i.e., 26 percent or less) below the cap amount for that period, provided that:

- a. the Commission shall determine that the preponderance of the Qwest evidence shows the performance results underlying those payment calculations results from an adequate Qwest commitment to meeting its responsibilities to provide adequate wholesale service and to keeping open its local markets, and
- b. the Commission shall have made that determination after providing all interested parties an opportunity to be heard.

12.2.3 The provisions of 12.2.1 and 12.2.2 shall be applicable to the next 24 month period commencing at the completion of the first, provided that the maximum annual cap shall be 44 percent; the minimum annual cap shall be 36 percent.

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

12.3.1 The amount by which any month’s total year-to-date Tier 1 and Tier 2 payments exceeds the sum of the year-to-date monthly caps (a month’s cap is defined as 1/12th of the annual cap in effect during that month) shall be calculated and apportioned between Tier 1

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and Tier 2 according to the percentage that each bore of total payments for the year-to-date. The Tier 1 apportionment resulting of this calculation shall be known as the “Tracking Account.”

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

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

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

13.0 Limitations

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

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

13.3 Qwest shall not be obligated to make Tier 1 or Tier 2 payments for any measurement if and to the extent that non-conformance for that measurement was the result of any of the following: 1) with respect to performance measurements with a benchmark standard, a Force Majeure event as defined in section 5.7 of the SGAT. Qwest will provide notice of the occurrence of a Force Majeure event within 72 hours of the time Qwest learns of the event or within a reasonable time frame that Qwest should have learned of it; 2) an act or omission by a CLEC that is contrary to any of its obligations under its interconnection agreement with Qwest or under federal or state law; an act or omission by CLEC that is in bad faith. Examples of bad faith conduct include, but are not limited to: unreasonably holding service orders and/or applications, “dumping” orders or applications in unreasonably large batches, “dumping” orders or applications at or near the close of a business day, on a Friday evening or prior to a holiday, and failing to provide timely forecasts to Qwest for services or facilities when such forecasts are explicitly required by the SGAT; 3) problems associated with third-party systems or equipment, which could not have been avoided by Qwest in the exercise of reasonable diligence, *provided, however*, that this third party exclusion will not be raised in the State more than three times within a calendar year. If a Force Majeure event or other excusing event recognized in this section merely suspends Qwest’s ability to timely perform

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an activity subject to a performance measurement that is an interval measure, the applicable time frame in which Qwest's compliance with the parity or benchmark criterion is measured will be extended on an hour-for-hour or day-for-day basis, as applicable, equal to the duration of the excusing event.

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

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

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

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

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

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

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damages provided for herein is not intended to foreclose other noncontractual legal and non-contractual regulatory claims and remedies that may be available to a CLEC.

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

13.7 Any liquidated damages payment by Qwest under these provisions is not hereby made inadmissible in any proceeding related to the same conduct where Qwest seeks to offset the payments against any other damages a CLEC may recover; whether or not the nature of the damages sought by the CLEC is such that an offset is appropriate will be determined in the relevant proceeding.

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

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

13.10 Qwest will not attempt to recover in intrastate rates payments made under the QPAP.

14.0 Reporting

Qwest North Dakota SGAT Sixth Revision, Second Amendment Exhibit K
May 30, 2006/June 27, 2007

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

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

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

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

15.0 Integrated Audit Program/Investigations of Performance Results

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

15.1.1 [This section intentionally left blank.]

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 OSS report. The two-year cycle will examine risks likely to exist across that period and the past history of testing, in order to determine what combination of high and more moderate areas of risk should be examined during the two-year cycle. The first year of a two-year cycle will concentrate on areas most likely to require follow-up in the second year.

15.1.3 The Commission will attempt to coordinate its audit plan with other audit plans that may be conducted by other state commissions so as to avoid duplication. The audit shall be conducted so as not to 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 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

15.2 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 QPAP. The Performance Measurement and Reporting System is defined to include at least: elements of Qwest's Regulatory Reporting System that

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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 15.2.1 and 15.2.2).

15.2.1 Qwest shall be allowed to change the Performance Measurement and Reporting System as defined in Section 15.2 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 to the change log shall result in Qwest being required to pay a \$250 fine, plus interest at the prime rate as reported in the Wall Street Journal accrued from the time the change took effect. The payment shall go to the Tier 2 ND Performance Assurance Fund and does not count against the annual cap described in QPAP Section 12.

15.2.2 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 Commission staff and the Auditor retained for the purpose of auditing performance measurements under this QPAP to request an evaluation of the proposed change. The Commission staff or 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 this report on the public QPAP website. Upon receiving the report of the impact evaluation from the Commission staff or the Auditor, the Commission shall have 15 days to take action to prevent Qwest from making such a change and to decide on a process for resolving the issue. During the first seven-day period following the filing and recording of the Commission staff or Auditor's report, interested parties may file comments on the proposed change and the report. If the Commission takes no action on the issue during the 15-day period, Qwest shall be free to make the proposed change.

15.2.3 If Qwest makes a fundamental change pursuant to Section 15.2.2 without obtaining approval, it shall be liable for \$10,000 payable to the ND Performance Assurance Fund. If Qwest cannot reproduce reliable performance data, the Commission shall determine what payments are due based upon the data collected by the affected CLECs plus interest at the prime rate as reported in the Wall Street Journal accrued from the time the change took effect.

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PERFORMANCE ASSURANCE PLAN

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

15.4 Expenses for the audit of the PAP and any other related expenses, except that which may be assigned under section 15.3, shall be paid first from the Tier 2 funds. If Tier 2 funds are not sufficient to cover audit costs, the Commission will develop an additional funding method which may include contributions from CLEC's Tier 1 payment.

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

16.0 Reviews

16.1 Every six (6) months, beginning six months after the effective date of the first Section 271 approval by the FCC of one of the states that participated in the multi-state QPAP review proceeding, Qwest, CLECs, and the Commission shall review the performance measurements in the QPAP to determine whether measurements should be added, deleted, or modified; whether the applicable benchmark standards should be modified or replaced by parity

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standards; and whether to move a classification of a measurement to High, Medium, or Low or Tier 1 to Tier 2. The criterion for reclassification of a measurement shall be whether the actual volume of data points was less or greater than anticipated. Criteria for review of performance measurements, other than for possible reclassification, shall be whether there exists an omission or failure to capture intended performance, and whether there is duplication of another measurement. Any disputes regarding adding, deleting, or modifying performance measurements shall be resolved by the Commission. The NDPSC retains the right to add topics and criteria to the six-month review, retains the ability to order changes if the QPAP is not in the public interest, and retains the ability to hear any disputes regarding the six-month review. The Commission may conduct joint reviews with other states. Any changes at the six-month review pursuant to this section shall apply to and modify this agreement between Qwest and CLEC.

16.1.1 To limit the potential for increased liability due to changes in the PAP, Qwest shall be allowed to limit its liability for changes made pursuant to the six-month review. Accordingly, Qwest shall calculate, separately, payments owed under the PAP that do not include changes made at the six month review (baseline PAP), as well as payments owed under a PAP revised to reflect changes made at the six month review (revised PAP). If payments calculated under the revised PAP are more than 110% of payments calculated under the baseline PAP, Qwest shall limit payments for the changed measurements to the affected LECs and to the Special Fund to a 10% increase (10% collar) above the total baseline PAP payment liability. At any six-month review, if the total payment liability for the revised PAP is below 110% of the total payment liability for the baseline PAP for the preceding six-month period, the revised PAP shall become the baseline PAP for the next six-month period, otherwise, the same baseline PAP shall remain in effect for the next six month period.

16.2 Two years after the effective date of the first Section 271 approval by the FCC of one of the states that participated in the multi-state QPAP review proceeding, the Commission may conduct a review by an independent third party to examine the continuing effectiveness of the PAP as a means of inducing compliant performance. This review shall not be used to open the PAP generally to amendment, but would serve to assist the Commission in determining existing conditions and reporting to the FCC on the continuing adequacy of the PAP to serve its intended functions. The Commission may conduct a joint review with other states.

16.3 Notwithstanding section 16.1, if any agreements on adding, modifying or deleting performance measurements as permitted by section 16.1 are reached between Qwest and CLECs participating in an industry Regional Oversight Committee (ROC) PID administration forum, those agreements shall be incorporated into the QPAP and modify the agreement between CLEC and Qwest at any time those agreements are submitted to and approved by the Commission, whether before or after a six-month review. Any changes made pursuant to this section shall be subject to and included in the calculation and application of the 10% payment collar identified in section 16.1.

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

17.0 Voluntary Performance Assurance Plan

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

18.0 Dispute Resolution

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

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

Performance Measurement		Tier 1 Payments			Tier 2 Payments		
		Low	Med	High	Low	Med	High
GATEWAY							
Timely Outage Resolution	GA-7						X
PRE-ORDER/ORDERS							
LSR Rejection Notice Interval	PO-3 ^a	X					
Firm Order Confirmations On Time	PO-5	X				X	
Work Completion Notification Timeliness	PO-6 ^b	X					
Billing Completion Notification Timeliness	PO-7 ^b	X					
Jeopardy Notice Interval	PO-8	X					
Timely Jeopardy Notices	PO-9	X					
Release Notifications	PO-16						X
(By the time of a major Service Order / Jeopardy)	PO-20 ^c	X					
ORDERING AND PROVISIONING							
Installation Commitments Met	OP-3			X		X	
Installation Intervals	OP-4 ^d			X		X	
New Service Quality	OP-5a			X		X	
Delayed Days	OP-6 ^e			X		X	
Number Portability Timeliness	OP-8			X		X	
Coordinated Cuts On Time – Unbundled Loops	OP-13a			X		X	
LNP Disconnect Timeliness	OP-17			X		X	
MAINTENANCE AND REPAIR							
Out of Service Cleared within 24 hours	MR-3			X			
All Troubles Cleared within 4 hours	MR-5			X			
Mean time to Restore	MR-6a,b,c			X			
Repair Repeat Report Rate	MR-7			X		X	
Trouble Rate	MR-8			X		X	
LNP Trouble Reports Cleared within 24 Hours	MR-11			X		X	
LNP Trouble Reports—Mean Time to Restore	MR-12			X		X	
BILLING							
Time to Provide Recorded Usage Records	BI-1	X					X
Billing Accuracy-Adjustments for Errors	BI-3	X					
Billing Completeness	BI-4	X				X	
NETWORK PERFORMANCE							
Trunk Blocking	NI-1			X			X
NXX Code Activation	NP-1			X			X

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

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

c. For PO-20, where CMAA order volumes are 20, apply a performance standard of “no greater than one order in error.” Under this provision, no payment applies if there is only one order with an error. For each phase beginning with Phase 1, there will be no more than 3 months measurement stabilization period for all TdEs. Reduced TdEs will be subject to a maximum of 4 months of the measurement stabilization period.

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

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

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Attachment 2: Performance Measurements Subject to Per Measurement Caps

Billing

Time to Provide Recorded Usage Records – BI-1 (Tier 1/Tier 2)

Billing Accuracy – Adjustments for Errors – BI-3 (Tier 1)

Billing Completeness – BI-4 (Tier 1/Tier 2)

PU-04-302, PU-04-303

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3 Also complete item 4 if Restricted Delivery is desired
- Print your name and address on the reverse so that we can return the card to you
- Attach this card to the back of the mailpiece, or on the front if space permits

1 Article Addressed to
 1801 California St Ste 4900
 Denver CO 80202

2 Article Number
 (Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A Signature Agent
 Addressee

B Received by (Printed Name) C Date of Delivery
 [Signature] 10/7/04

D Is delivery address different from item 1? Yes
 If YES, enter delivery address below No

3 Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C O D

4 Restricted Delivery? (Extra Fee) Yes

7003 2260 0001 3517 0920

PU-04-302, PU-04-303

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3 Also complete item 4 if Restricted Delivery is desired
- Print your name and address on the reverse so that we can return the card to you
- Attach this card to the back of the mailpiece, or on the front if space permits

1 Article Addressed to
 Melissa K Thompson
 Quwati
 1801 California St Ste 4900
 Denver CO 80202

2 Article Number
 (Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A Signature Agent
 Addressee

B Received by (Printed Name) C Date of Delivery
 [Signature] 8/10/04

D Is delivery address different from item 1? Yes
 If YES, enter delivery address below No

3 Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C O D

4 Restricted Delivery? (Extra Fee) Yes

7002 2410 0003 4912 6168