

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Qwest Performance Assurance Plan  
Investigation**

**Case No. PU-06-58**

**QWEST COMMENTS TO THE NOTICE OF 6-MONTH REVIEW,  
NOTICE OF OPPORTUNITY FOR COMMENT, AND  
NOTICE OF OPPORTUNITY FOR HEARING**

Qwest Corporation (“Qwest”), through undersigned counsel, submits this filing to respond to the Notice of 6-Month Review, Notice of Opportunity for Comment, and Notice of Opportunity for Hearing, dated February 22, 2006. Specifically, the Commission requested that parties provide comments concerning the 6-Month Performance Assurance Plan (“PAP”) Review, requests for hearing, and requests for intervention. Qwest responds as follows:

**COMMENTS**

**The Settlement of Disputed Issues Filed on September 22, 2005 Should Be Adopted.**

On September 22, 2005, and as later modified in an errata filing on October 25, 2005, Qwest, MCImetro Access Transmission Service, LLC (now d/b/a “Verizon Access Transmission Services”), DIECA Communications d/b/a Covad Communications Company (“Covad”), and AT&T Communications of the Midwest, Inc. (now “AT&T”) (collectively the “Stipulating Parties”) filed a Settlement of Disputed Issues and recommended that the Commission adopt the parties’ settlement. This settlement modified and superceded two previously filed stipulations: the Washington Stipulation filed on September 15, 2004, and the Arizona Stipulation filed on November 30, 2004. These stipulations resolved issues

among the Stipulating Parties from the Washington 2<sup>nd</sup> Six-Month PAP Review and the Arizona 1<sup>st</sup> Six-Month PAP Review. The agreements apply to the North Dakota PAP as well. The September 22<sup>nd</sup> Stipulation placing those two agreements in one document should be adopted by this Commission.

**Additional Changes Should Be Made to the North Dakota PAP.**

In its February 22<sup>nd</sup> notice, the Commission invited the parties to address five issues:

1. Whether there exists an omission or failure of existing performance measures to capture intended performance.
2. Whether there is duplication of another performance measurement.
3. Whether such omission, failure, or duplication of a performance measure justifies the addition, modification, or removal of a performance measure.
4. Whether any benchmark standards should be modified or replaced by parity standards.
5. Whether the actual volume of data points has been less or greater than anticipated and, if so, whether there is justification for the reclassification of a performance measurement.

Recently, Qwest and some CLECs in Colorado either discussed the above issues directly or had a formal opportunity to raise them, and have reached agreement on a large number of PAP issues falling within the scope of these five issues. In the latter half of 2005, Qwest and participating CLECs raised 74 PAP issues in the Colorado 3<sup>rd</sup> Year CPAP Review. There was an opportunity to discuss the above five issues, and in fact, the parties discussed and resolved issues directly related to issues two through five. When the discussions ended, the parties resolved all of the 74 issues except one Colorado-specific issue. Since the parties resolved a large number of issues in the Colorado 3<sup>rd</sup> Year Review and they cover the scope of the five issues above, Qwest proposes that the agreed-upon

issues from the Colorado proceeding that would apply to the North Dakota PAP be placed on the issues list in this Six-Month PAP Review. Those issues are described below.

Changes from the Colorado 3<sup>rd</sup> Year CPAP Review That Should be Applied to the North Dakota PAP.

*1. Remove PIDS from the PAP Subject to a Reinstatement/Removal Process.*

Specific PIDs should be removed from the North Dakota PAP and made subject to a reinstatement/removal process. PIDs or their sub-parts (depending upon the particular PID) that are removed from the PAP would be reinstated if the PID or PID sub-part missed the applicable aggregate standard for three consecutive months. Likewise, if reinstated, the PID or PID sub-part would be removed again if the applicable aggregated standard is met for three consecutive months. Associated reporting, payment, and root cause analysis provisions agreed-upon by the parties in the Colorado 3<sup>rd</sup> Year CPAP Review would apply.

*2. Apply One Allowable Miss to Benchmark and Non-Interval Parity Measurements.*

One allowable performance miss (for example, one order, LSR, or trouble ticket, as applicable) should apply to benchmark and non-interval parity measurements where 100% performance would otherwise be required to meet the standard. This change does not apply to interval parity measurements because, unlike benchmark and non-interval parity measurements, interval parity measurements are not based on a “yes/no” determination. In those situations involving interval parity measurements, the appropriate statistical test – the permutation test – is generally designed to evaluate the varying degrees of performance and account for the effects of low volumes where the requirement for 100% performance arises.

3. *Remove Low Volume Product Disaggregations.*

Certain product disaggregations should be removed from the PAP where little or no order volumes have been reported in the metric OP-3, Installation Commitments Met, since the inception of the PAP through December, 2005.

Additional Changes That Should Be Made to the North Dakota PAP.

4. *Revise Minimum Payment Provisions*

Section 6.4 should be revised so that minimum payments are made only to smaller CLECs who were originally intended to benefit from the provision and operate so as to maintain a reasonable relationship with levels of performance. For example, as performance levels improve, minimum payments should decrease.

5. *Remove Section 10 – Low Volume, Developing Markets*

Given the impact of certain performance misses the additional protections provided to CLECs by Section 10, result in excessive payments. Section 10 should be removed in its entirety.

**Qwest and CLECs Should First Discuss Issues 1-5 in Qwest’s Regional PID Management Process and Then the Commission Should Consider Them in This Review.**

Issues 1-5 also apply to Qwest’s other twelve local service region states.<sup>1</sup> Because these issues are not North Dakota specific, but rather regional in nature, Qwest requests that this Commission allow the parties, as businesses operating in the region, an opportunity to discuss these issues through Qwest’s PID Management Process (“PMP”). The PMP will

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<sup>1</sup> Issues one through three apply to thirteen states: Arizona, Idaho, Iowa, Minnesota, Montana, New Mexico, Nebraska, North Dakota, South Dakota, Oregon, Utah, Washington and Wyoming. The fourth issue applies to these thirteen states except Minnesota. The fifth issue applies to Arizona, Idaho, Iowa, Montana, New Mexico, Nebraska, North Dakota, South Dakota, Oregon, Utah, Washington, and Wyoming.

allow the parties an opportunity to explore a region-wide agreement and potentially create a more efficient use of resources related to the issues at hand. PMP business to business discussions among the interested CLECs and Qwest are scheduled to begin May 19, 2006. Any agreement on these issues will be presented to the Commission for its consideration and approval under section 16.1 of the PAP. In the event that parties do not reach agreement, the disputed items may also be brought back by the interested party for the Commission's resolution.

Qwest's PMP is posted on Qwest's public website at <http://www.qwest.com/wholesale/clecs/reqmodpid.html>. This process provides for notice to and allows all CLECs operating under an interconnection agreement with Qwest in its fourteen local service states to participate in discussions on issues related to PIDs and PAPs. When agreements are reached, they are filed with the applicable state commissions for approval or adoption, depending upon the state and the issue. Any party may take disputed items to any of the fourteen state commissions to which the dispute applies. Furthermore, state commission staffs are notified of the discussions after Qwest and CLECs have initially addressed them from a business perspective and may attend those discussions if they so desire. Thus, the process would naturally include the North Dakota Commission Staff after initial discussions with the participating CLECs.

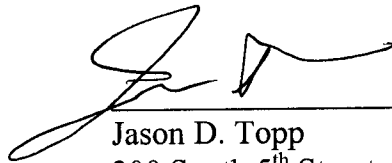
**The Determination of the Need for a Hearing Should Be Made After the Parties Conclude Their Discussions in the PID Management Process.**

The parties may reach agreement on all of the issues presented in this Six-Month PAP Review, and if agreement is not reached on all of the issues, it may be feasible to adequately address the remaining disputes in comments or briefs submitted to the Commission. In this

instance, the time and resources of the Commission to conduct a hearing would not be warranted. Reserving its right to request a hearing at a later appropriate date, Qwest proposes that the determination of whether or not a hearing is necessary be made after the parties conclude their discussions in the PMP.

Dated this 10<sup>th</sup> day of May, 2006.

QWEST CORPORATION

A handwritten signature in black ink, appearing to read "Jason D. Topp", is written over a solid horizontal line.

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