

January 15, 2010

Via electronic filing UPS Overnight Express Mail

Darrell Nitschke
Director of Administration/Executive Secretary
Public Service Commission
600 East Boulevard, Department 408
Bismarck, North Dakota 58505

Re: Public Service Commission
Qwest Performance Assurance Plan Investigation
Case No. PU-06-58

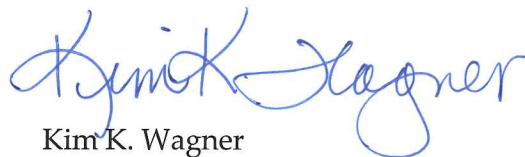
Public Service Commission
Qwest Performance Assurance Plan Investigation
Case No. PU-07-256

Public Service Commission
Qwest Performance Assurance Plan Investigation
Case No. PU-08-920

Dear Mr. Nitschke:

Enclosed for filing are an original and seven copies of the Comments of Integra Telecom of North Dakota, Inc. in connection with the above-referenced matters.

Sincerely,



Kim K. Wagner
Legal & Regulatory Administrator
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Enclosures

cc: Jason D. Topp, Qwest

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**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

Public Service Commission
Qwest Performance Assurance Plan Investigation

Case No. PU-06-58

Public Service Commission
Qwest Performance Assurance Plan Investigation

Case No. PU-07-256

Public Service Commission
Qwest Performance Assurance Plan Investigation

Case No. PU-08-920

COMMENTS OF INTEGRA TELECOM OF NORTH DAKOTA, INC.

January 15, 2010

Integra Telecom of North Dakota, Inc. (“Integra”) respectfully submits these comments in response to the Commission’s Notice of Opportunity for Comment¹ regarding Qwest’s performance assurance plan and the Liberty Consulting Group Report regarding Qwest’s Performance Assurance Plans prepared for the Regional Oversight Committee (“Liberty Report”).²

The Commission sought comment on five areas regarding Qwest’s Performance Assurance Plan. These five areas are essentially: (1) whether there are missing performance measures; (2) whether there are duplicate performance measures; (3) whether the claim for missing or duplicate measures justifies a change to the plan; (4) whether performance standards should be modified; and (5) whether performance measures should be reclassified based on the volume of data points.³ The Commission also referenced the Liberty Report and noted that the report “offers several recommendations for changes to the PAP⁴ and performance measures.”⁵

¹ *Notice of Opportunity for Comment and Notice of Opportunity for Hearing* (“Notice for Comment”), Public Service Commission Qwest Performance Assurance Plan Investigation, Case Nos. PU-06-58, PU-07-256, and PU-08-920, November 25, 2009.

² Analysis of Qwest’s Performance Assurance Plans Final Report, Prepared for: The Qwest Regional Oversight Committee, by Liberty Consulting Group, June 30, 2009 (“Liberty Report”)

³ Notice for Comment, pp. 2-3.

⁴ Integra will use both PAP and QPAP to refer to Qwest’s Performance Assurance Plan in North Dakota.

⁵ Notice for Comment, p. 2.

Integra's March 27, 2009 comments⁶ addressed the first 4 questions.⁷ In those comments Integra recommended the Commission add performance measures associated with unbundled network element ("UNE") facility assignment, expedited ordering and chronic troubles.⁸ In addition, Integra recommended modifications to the performance measure MR-6 as well as modification to multiple measures to properly include EDI/XML.⁹ Integra's September 30, 2009 Comments¹⁰ addressed additional issues related to the questions posed by this Commission, including the importance of the North Dakota Performance Assurance Plan ("PAP") and associated Performance Indicators ("PIDs") and the recommendations of the Liberty Consulting Report. Integra's March 27, 2009 and September 30, 2009 comments are incorporated here by reference and are not repeated here.

The comments below address Qwest's September 30, 2009 comments as they relate to Qwest's inadequate proposal to remove and replace the existing PAP in North Dakota.¹¹ Qwest's comments also contain criticisms of the Liberty Report.¹² For the most part these comments do not address Qwest's criticisms of the Liberty Report. The Liberty Report speaks for itself. Integra does note that Liberty Consulting defended its report against the Comments made by Qwest in a recent workshop before the Colorado Public Utility Commission.¹³ Liberty's presentation, as well as the transcript from this workshop, are available on the Colorado Commission's website.¹⁴

Introduction

Integra is a facilities-based competitive local exchange carrier ("CLEC") that provides integrated voice and data communications services to small and medium-sized businesses in 13 western states, including North Dakota. Integra relies extensively on unbundled network

⁶ *Comments of Integra telecom of North Dakota, Inc., Public Service Commission Qwest Performance Assurance Plan Investigation, Case No. PU-08-920, ("Integra's September 30, 2009 Comments"), September 30, 2009.*

⁷ Regarding the 2nd question, Integra does not believe that any current performance measures are duplicates.

⁸ Integra's March 27, 2009 Comments, p. 4 and Attachments A, A2, A3, A4, and B.

⁹ Integra's March 27, 2009 Comments, p. 5 and Attachments A and A5.

¹⁰ *Comments of Integra telecom of North Dakota, Inc., Regarding Qwest's Performance Assurance Plan Review, Public Service Commission Qwest Performance Assurance Plan Investigation, Case No. PU-08-920, ("Integra's March 27, 2009 Comments"), March 27, 2009, pp. 4-5.*

¹¹ *Qwest's Comments on the Final Report of the Regional Oversight Committee's Analysis of Qwest's Performance Assurance Plan(s), Public Service Commission Qwest Performance Assurance Plan Investigation, Case No. PU-08-920, ("Qwest's September 30, 2009 Comments"), September 30, 2009.*

¹² *Qwest's September 30, 2009 Comments, pp. 13-32 and attachments 1a and 1b.*

¹³ In the Matter of Qwest's Corporation's Colorado Performance Assurance Plan, Docket No. 02M-259T, November 10, 2009 workshop.

¹⁴ See Liberty Presentation (https://www.dora.state.co.us/pls/efi/EFI.Show_Document?p_session_id=&p_dms_document_id=18802) and Transcript (https://www.dora.state.co.us/pls/efi/EFI.Show_Document?p_session_id=&p_dms_document_id=19320).

elements (“UNEs”) purchased from Qwest.¹⁵ Integra combines these network elements purchased from Qwest with Integra’s own facilities in order to serve its end user customers. In almost all cases where Integra purchases unbundled facilities from Qwest, there are no wholesale alternatives to the Qwest network. As a result, the service quality of facilities purchased from Qwest has a direct impact on the service quality Integra is able to provide to its customers and is therefore essential to Integra’s success in the telecommunications market.

Qwest is not only Integra’s largest wholesale provider of network facilities, but also Qwest is Integra’s largest competitor. Qwest’s dichotomous role as the predominate provider of both wholesale and retail services makes service quality standards, which in many cases are parity with Qwest’s retail performance, essential to assure Qwest does not leverage its position to eliminate competitors such as Integra from the market.

Qwest’s most recent proposal, Qwest Performance Assurance Plan – 2 (“QPAP-2”), to render wholesale service quality standards meaningless,¹⁶ is ill-timed¹⁷ and unacceptable. Qwest’s proposal reduces 53 performance measures to 6, significantly reduces the products considered with each measure, substantially weakens the standards to which Qwest is held accountable, entirely eliminates accountability in instances when Qwest fails to meet its proposed weakened standards, and reduces the reporting of substandard behavior from monthly¹⁸ to quarterly.¹⁹ Qwest’s proposed QPAP-2 sets the service quality bar so low as to essentially eliminate wholesale service quality obligations entirely.

The QPAP Continues to be Necessary for a Successful Competitive Market

Qwest argues that the North Dakota Qwest Performance Assurance Plan (“QPAP”) has “fulfilled its purpose,”²⁰ but provides no evidence that this is the case. Qwest instead argues that the QPAP document itself does not contain a stated purpose;²¹ the QPAP was not a requirement of the FCC;²² Qwest voluntarily agreed to the QPAP;²³ there is no indication that any party

¹⁵ This is true of CLECs in general that serve business customers. See, for example, Comments of Colorado Public Utilities Commission, In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160(c) in the Denver, Colorado Metropolitan Statistical Area, WC Docket No. 07-97, August 31, 2007 (“Commission Forbearance Comments”), pp. 28-29.

¹⁶ Qwest’s refers to its new proposal as Qwest Performance Assurance Plan – 2 (“QPAP-2”). See Qwest’s September 30, 2009 Comments, pp. 32-38 and Attachment 2. Integra uses Qwest’s term only as a reference device, so common terminology is used. Integra disagrees that Qwest’s proposal assures performance and, therefore, the proposal should not substantively be considered as a “QPAP.”

¹⁷ As Qwest obtains greater deregulation in its retail markets, the importance of Qwest’s PAP grows in order to ensure Qwest is not able to leverage its dichotomous role as the predominate provider of both wholesale and retail services.

¹⁸ QPAP Documentation, § 14.1.

¹⁹ Qwest’s Proposed QPAP-2, § 3.2.

²⁰ Qwest September 30, 2009 Comments, p. 1.

²¹ Qwest September 30, 2009 Comments, ¶. 20.

²² Qwest September 30, 2009 Comments, pp. 2-3.

²³ Qwest September 30, 2009 Comments, ¶. 14.

believed QPAP would be in place indefinitely;²⁴ and that though PAPs were pro-competitive measures,²⁵ they are no longer necessary since Qwest and the CLECs are aligned in their competitive battle with cable and wireless competitors.²⁶ None of these statements demonstrate that the QPAP is no longer necessary. In fact, Qwest's claims are contrary to the recent comments of Commissions in the Qwest region in response to Qwest's request for UNE forbearance.²⁷ For example, in response to Qwest's UNE forbearance petition, the Colorado Commission recognized that Qwest has a "virtual monopoly in the wholesale market"²⁸ and that barriers to entry in the market are as formidable today as they were in 1996.²⁹ As a result, the Colorado Commission determined that UNEs are a "necessary cog to cultivate competition"³⁰ and urged the FCC to take a granular approach in reviewing Qwest's request,³¹ a request that Qwest subsequently withdrew. The Colorado Commission concluded that "eliminating the unbundling requirement cannot have the effect of increasing competition, but rather may in fact threaten the existence of many of the competitive alternatives available to business customers served by CLECs in the current environment."³² These conclusions are similar to those reached by the other state Commissions where Qwest sought UNE forbearance and are consistent with the conclusion reached in the Liberty Consulting Report, which found that the Performance Assurance Plan ("PAP"), a crucial component of UNEs, is essential to telecommunications competition in North Dakota and the Qwest region.³³

The FCC views "the existence of a satisfactory performance monitoring and enforcement mechanism... as probative evidence that the BOC will continue to meet its section 271

²⁴ Qwest September 30, 2009 Comments, ¶. 9.

²⁵ Qwest September 30, 2009 Comments, p. 2.

²⁶ Qwest September 30, 2009 Comments, pp. 3-4.

²⁷ Comments of the Colorado Public Utilities Commission, In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160(c) in the Denver, Colorado, Minneapolis-St. Paul, Minnesota, Seattle, Washington and Phoenix, Arizona Metropolitan Statistical Areas, WC Docket No. 07-97, August 31, 2007 ("Colorado Commission Forbearance Comments"); Initial comments of the Arizona Corporation Commission, In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160(c) in the Denver, Colorado, Minneapolis-St. Paul, Minnesota, Seattle, Washington and Phoenix, Arizona Metropolitan Statistical Areas, WC Docket No. 07-97, August 31, 2007; Comments of the Washington Utilities and Transportation Commission, In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160(c) in the Denver, Colorado, Minneapolis-St. Paul, Minnesota, Seattle, Washington and Phoenix, Arizona Metropolitan Statistical Areas, WC Docket No. 07-97, August 31, 2007; and Ex Parte Comments of the Minnesota Public Utilities Commission, In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160(c) in the Denver, Colorado, Minneapolis-St. Paul, Minnesota, Seattle, Washington and Phoenix, Arizona Metropolitan Statistical Areas, WC Docket No. 07-97, February 8, 2008.

²⁸ Colorado Commission Forbearance Comments, p. 17.

²⁹ Colorado Commission Forbearance Comments, p. 9.

³⁰ Colorado Commission Forbearance Comments, p. 32.

³¹ Colorado Commission Forbearance Comments, p. 33.

³² Colorado Commission Forbearance Comments, p. 32.

³³ Analysis of Qwest's Performance Assurance Plans Final Report, Prepared for: The Qwest Regional Oversight Committee, by Liberty Consulting Group, June 30, 2009 ("Liberty Consulting Report"), p. 4.

obligations after a grant of such authority."³⁴ Further, the FCC concluded that the QPAP provides "assurance that the local market will remain open after Qwest receives section 271 authorization..."³⁵

The PAP was designed to address service quality issues; protect CLEC customers; provide mechanisms protecting Qwest's interests while recognizing the benefit to Qwest of gaining 271 authority; and save time and resources of all parties, including the Commission and Commission staff.

In light of the regulatory changes taking place to both the retail and wholesale telecommunications markets in North Dakota, the importance of the QPAP is greater today than ever before. As this Commission is aware, the FCC's decisions in its triennial review of section 251 unbundling obligations have eliminated obligations of Qwest and other RBOCs to provide certain wholesale services to CLECs at forward-looking economic cost.³⁶ These reduced obligations include high capacity loops in some Qwest central offices along with certain dedicated transport routes between Qwest offices. Where a CLEC can no longer purchase or access unbundled facilities from Qwest, Qwest has indicated that the protections of the QPAP surrounding these facilities would no longer apply.

In addition the FCC's *TRRO order* eliminated the availability of UNE-P effective March 11, 2006. As a result, most CLECs have opted into Qwest's commercial UNE-P replacement offering called QPP. This agreement specifically calls for the elimination of protections provided to CLECs – and the payments paid by Qwest -- under the QPAP relating to UNE-P like services.³⁷

Though significant protections afforded by the QPAP remain, the plan has clearly been weakened in the light of regulatory changes surrounding the *TRO and TRRO orders* by the FCC. This, in combination with regulatory relief on Qwest retail services, increases Qwest's incentives to exploit its position as the primary wholesale provider to its competitors in order to gain advantage in the market place. This increased incentive to behave in a competitively unfair manner is why the QPAP is even more crucial today than it ever has been.

The PAP and associated Performance Indicator Definitions ("PIDs") are particularly essential because the significant expense of filing a Commission complaint for each individual

³⁴ *Memorandum Opinion and Order*, In the Matter of Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming, WC Docket No. 02 - 314, Adopted December 20, 2002, ¶ 440.

³⁵ *Id.* ¶ 440

³⁶ See *Report and Order and Order on Remand and Futher Notice of Proposed Rulemaking*, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; and Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 01-338, 96-98 and 98-147, released August 21, 2003 ("*TRO order*") and, *Order on Remand*, In the Matter of Unbundled Access to Network Elements; and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, WC Docket No. 04-313 and CC Docket No. 01-338, released February 4, 2005 ("*TRRO order*").

³⁷ See Qwest's Master Services Agreement for QPP section 4.6, http://www.qwest.com/wholesale/downloads/2005/050504/QPPMSATemplateV3_042605Final.doc.

service quality problem would greatly exceed the cost of the particular individual problem, while the cumulative significant adverse effect of poor service quality would be harmful to CLECs and competition. Therefore, the expense of litigating individual issues deters a CLEC's ability to obtain a remedy for those Qwest service quality problems. The self-executing nature of remedies in the plan was one factor that the FCC relied upon to address this problem and ensure an open local market.³⁸

The Commission has Authority over the QPAP and Changes to the QPAP

Qwest's PAP Comments also argue that there is no legal basis to require the QPAP.³⁹ Qwest argues that because the QPAP was put into place as a result of Qwest's Section 271 application, state Commission regulation of the QPAP is tantamount to state Commission regulation of Section 271 of the Act, which Qwest claims the courts have prohibited the states from regulating.⁴⁰ Qwest also suggests that because Qwest voluntarily agreed to the terms of the QPAP in order to gain entry into InterLATA long distance telephone market, Qwest can now unvolunteer.⁴¹ These arguments are wrong. First, it is undisputed that, when CLECs elect to participate in the QPAP, it becomes a part of their interconnection agreement.⁴² Interconnection agreements are clearly under the jurisdiction of, and enforceable by, this Commission. Second, the fact that an agreement may be "voluntary" does not reduce the applicability or enforceability of the agreement. Section 252(a)(1) of the Act expressly recognizes that interconnection agreements may be arrived at through voluntary negotiations. Third, Qwest cites no court that has ruled state Commissions do not have authority over performance assurance plans. The only cases cited by Qwest dealt with whether State Commissions had Section 252 arbitration authority over 271 network elements, which is not an issue here. No case dealt with whether Commissions have authority over service quality standards for 252 unbundled network elements. For example, the court in the Arizona case cited by Qwest summed up the case's procedural history, stating:

The ACC's order interpreted the *Section 252* approval process as authorizing it to require that *Section 271* elements be placed in arbitrated interconnection agreements. The ACC also held it had "jurisdiction to impose unbundling requirements under Arizona law that the [FCC's] *TRO* or [the D.C. Circuit's] *USTA II* decisions struck down." Finally, the ACC ruled that the previous ACC-approved cost-based rates would remain in effect for *Section 271* elements pending a further proceeding within 30 days to set "just and reasonable rates consistent with state and federal law."⁴³

³⁸ *Memorandum Opinion and Order*, In the Matter of Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming, WC Docket No. 02 - 314, Adopted December 20, 2002, ¶ 442 ("FCC 271 Approval Order").

³⁹ Qwest September 30, 2009 Comments, ¶¶ 11-14.

⁴⁰ Qwest September 30, 2009 Comments, ¶ 11.

⁴¹ Qwest September 30, 2009 Comments, ¶ 14.

⁴² Performance Assurance Plan ("PAP Documentation"), Exhibit K, June 22, 2007, § 13.6.

⁴³ *Qwest v. Arizona Corporation Commission*, 567 F.3d 1118, at p. *4 (9th Cir. 2009).

The issue before the Commission in this proceeding is whether Section 251 elements that are subject to the QPAP should remain subject to the QPAP. The development of the QPAP in the context of Qwest's request for 271 authority to enter the long distance market has no bearing on whether Section 251 UNEs that are subject to measurement should remain subject to measurement. This proceeding does not deal with unbundling requirements that have been eliminated or with what rates may be applied. Consistent with the position that the above-quoted case did not affect its jurisdiction over the PAP, the Arizona Commission continues to oversee the Arizona PAP⁴⁴ and was a member of the ROC collaborative⁴⁵ that hired Liberty Consulting, which resulted in the Liberty Consulting Report.

Finally, the terms of the QPAP itself -- which Qwest agreed to in its interconnection agreements ("ICAs") with carriers -- detail precisely the Commission's authority to oversee the QPAP, including its expansion. For example, Section 16.0 of the PAP Documentation outlines the mechanism by which changes can be made to the QPAP, and indicates that changes will be approved by the Commission.⁴⁶ The first paragraph of the PAP Documentation states: "As set forth in this Agreement, Qwest and CLEC voluntarily agree to the terms of the following Performance Assurance Plan ('PAP'), initially 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 and *subsequently modified in accordance with the Commission's orders* and, where applicable, by operation of law."⁴⁷ This express provision of the PAP clearly recognizes the Commission's continued jurisdiction and role in any modifications to the PAP. The PAP, including this language, is part of the Qwest-Integra ICA in North Dakota, which is approved and enforceable by this Commission.

Liberty Consulting Report

Qwest also argues that the Liberty Consulting Report is "compromised"⁴⁸ and has side-tracked an appropriate review of Qwest's PAP.⁴⁹ Qwest argues that because the review performed by Liberty Consulting does not fit within the review contemplated by section 16.0 of the PAP, the Liberty Consulting Report cannot be used.⁵⁰

Agencies, such as this Commission, have the ability and discretion to evaluate evidence and comments filed in this docket and assign them the weight it deems appropriate. This Commission was one of 11 state Commissions which authorized the Liberty Consulting Report.⁵¹ This Commission has a long history with Qwest's PAP and is in an excellent position

⁴⁴ For example, at Qwest's request the Commission approved a settlement reach between Qwest and CLECs regarding the PAP and associated PIDs. See Decision No. 70386, In the matter of Qwest Corporation's Performance Assurance Plan, Docket No. T-01051B-03-0859, June 13, 2008.

⁴⁵ Liberty Consulting Report, p. 8.

⁴⁶ See, for example, PAP Documentation, §16.1 and §16.3.

⁴⁷ PAP Documentation, § 1.1. [emphasis added]

⁴⁸ Qwest's September 30, 2009 Comments, ¶ 23.

⁴⁹ Qwest's September 30, 2009 Comments, ¶ 15.

⁵⁰ Qwest's September 30, 2009 Comments, ¶ 23. Note, Integra does not agree with Qwest's claims.

⁵¹ Liberty Consulting Report, p. 8.

to evaluate the document and determine the weight of information provided in the report. In addition, the Commission has long made decisions in this docket based upon comments by various parties. The Liberty Consulting Report clearly states the evidence on which it relied and the process it took to arrive at its recommendations.⁵² Parties are free to argue with the report's methodology or conclusions.

Qwest argues that the Liberty Consulting Report addresses the wrong question because it doesn't use the explicit words contained in section 16 of the PAP. Section 16.4 states:

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.⁵³

However, the Liberty Consulting directly addressed this issue, determining that, "despite the improvement in Qwest's performance and reduction in PAP payments, the PAP incentive continues to be important in helping to ensure that Qwest's performance level does not deteriorate, because Qwest's wholesale services remain critical for the CLECs still relying on them."⁵⁴ The report also looked to determine what submeasures, in addition to the Tier 1A submeasures, should continue as part of the PAP⁵⁵ and made numerous additional recommendations to remove measures from the PAP.⁵⁶ The report's conclusions that certain measures are no longer needed and that additional measures are warranted are directly responsive to the question of whether the current PAP is necessary and appropriate.

This Commission should consider the Liberty Consulting Report in this docket and give it the weight the Commission deems appropriate. The Commission should not ignore this report created specifically to address Qwest's state PAPs any more than it would ignore the comments of any party in this case.

Qwest's QPAP-2 Proposal is Wholly Inadequate

Qwest's proposal reduces 53 performance measures to 6, reduces the products considered with each measure to 4 (from as high as 40), weakens the standards to which Qwest is held accountable, eliminates accountability in instances when Qwest fails to meet its proposed weakened standards, and reduces the reporting from monthly to quarterly. Qwest's proposed QPAP-2 sets the service quality standards so low that, combined with what is effectively no enforcement of the standards, they would render wholesale service quality meaningless. The chart below summarizes the comparison of Qwest's new proposal with the current PAP.

⁵² Sixth Year Review Report, pp. 8-9, and 15-23.

⁵³ PAP Documentation, § 16.4.

⁵⁴ Sixth Year Review Report, p. 4.

⁵⁵ Sixth Year Review Report, p. 90.

⁵⁶ Sixth Year Review Report, pp. 66-75, 78-81, 86 and 88.

	Current PAP	Qwest Proposed PAP
Measures	53	6
Products	Up to 40	4
Reporting	Monthly	Quarterly
Accountability / Enforcement	\$	none

Qwest’s proposed QPAP-2 would replace the automatic incentive mechanisms associated with the QPAP with 3 response levels that depend on the duration of substandard performance. Because Qwest’s QPAP-2 proposal changes what is currently reported on a monthly basis to quarterly,⁵⁷ the earliest Qwest would begin to act on substandard performance is 5 months after substandard performance begins.

For example, quarterly reporting in combination with Qwest’s proposed response level 1 – that is, 3 consecutive months of missed performance⁵⁸ -- means that Qwest will not even begin to address service quality issues⁵⁹ until the 5th month after a problem. Qwest’s description of Response Level 1 gives Qwest yet another month to respond to the problem.⁶⁰ Qwest’s response is described in 20 lines,⁶¹ 13 of which are dedicated to ways Qwest can show that the missed performance is not Qwest’s fault.⁶² Qwest’s response does not commit to resolving the issue by the end of the 5th month,⁶³ but merely to engage “in a good-faith effort to mitigate or resolve the issue.”⁶⁴

Response Level 2 as proposed by Qwest is triggered, in most cases, by 5 consecutive months of substandard performance.⁶⁵ Because of quarterly reporting, Qwest may not initiate this response level until the 7th month. This level calls for Qwest to re-evaluate its response under Level 1, check again to determine whether Qwest can claim that poor performance is not the fault of Qwest,⁶⁶ and “escalate the matter internally to vice president (VP) level for additional attention, priority and support.”⁶⁷ At this level, Qwest will also begin to “take into consideration applicable observations and comments received from CLECs.”⁶⁸

⁵⁷ Qwest’s Proposed QPAP-2, § 3.2. Qwest will post these quarterly results “by the first business day of the second calendar month in the next calendar quarter.” § 3.2.

⁵⁸ Qwest’s Proposed QPAP-2, § 4.3, Table 3.

⁵⁹ Qwest’s initial efforts to address service quality issues is identified as Response Level 1. See § 5.3.1.

⁶⁰ Qwest Proposed QPAP-2, § 5.3.1.

⁶¹ Qwest’s Proposed QPAP-2, p. 5.

⁶² Qwest’s Proposed QPAP-2, p. 5, §§ 5.3.1.1.1 & 2.

⁶³ Qwest only commits to reporting on the issue by the end of the 5th month. See § 5.3.1.

⁶⁴ Qwest’s Proposed QPAP-2, p. 5, § 5.3.1.2.2.

⁶⁵ Qwest’s Proposed QPAP-2, p. 4, § 4.3, Table 3.

⁶⁶ Qwest’s Proposed QPAP-2, p. 5, § 5.3.2.1.

⁶⁷ Qwest’s Proposed QPAP-2, p. 5, § 5.3.2.1.2.

⁶⁸ Qwest’s Proposed QPAP-2, p. 5, § 5.3.2.1.3.

Response Level 3 as proposed by Qwest is triggered by 7 consecutive months of substandard performance. Again, because of quarterly reporting, Qwest may not initiate this response level until the 11th month after substandard service quality begins. This level, which is the “highest level of attention,”⁶⁹ again calls for Qwest to look for ways to explain why the substandard performance is not Qwest’s fault.⁷⁰ It also calls for another “internal Vice President-level review,”⁷¹ and in addition, “Qwest will offer to have a Qwest Vice President... hold a conference call with representatives of the affected/interested CLECs to review the Action Plan, additional steps being taken, and the expected timeframes.”⁷² Qwest will also provide “up to bi-weekly... web postings,... emails, or conference calls.”⁷³ There is no Qwest commitment that any of these communications will result in correction of the service quality problem.

There are numerous problems with this proposal. First, Qwest has removed the automatic incentive mechanisms that have been in place and working since Qwest’s long distance approval. Even Qwest’s commercial agreements and UNE replacement products contain some incentives when Qwest fails to meet certain standards.⁷⁴ Second, Qwest has removed all but a handful of performance measures.⁷⁵ Third, as discussed below, Qwest has eliminated all but 4 products to which these measures apply. Fifth, as discussed below, Qwest has generally weakened the performance standard, making it much more likely that Qwest’s performance would pass the standard. Sixth, Qwest’s proposed time frames are longer than those available to CLECs currently for escalation of such issues to Qwest upper management. As part of re-design of Qwest’s Change Management Process (“CMP”),⁷⁶ Qwest committed to allow CLECs to escalate service issues through a service management escalation process that includes Vice President level Qwest employees at any time.⁷⁷ Although CLECs have had this

⁶⁹ Qwest’s Proposed QPAP-2, p. 6, § 5.3.3.

⁷⁰ Qwest’s Proposed QPAP-2, p. 6, § 5.3.3.1.

⁷¹ Qwest’s Proposed QPAP-2, p. 6, § 5.3.3.1.1

⁷² Qwest’s Proposed QPAP-2, p. 6, § 5.3.3.1.2.

⁷³ Qwest’s Proposed QPAP-2, p. 6, § 5.3.3.1.3.

⁷⁴ For example, Interstate Private Line circuits waive installation charges when a installation commitment is missed (FCC #1 5.2.1.C) and refund a portion of the cost of the service when the product is out of service (FCC #1 7.1.2.G).

⁷⁵ See the discussion below regarding Qwest’s six proposed performance indicators.

⁷⁶ Qwest’s witness testified in the Colorado Qwest-Eschelon ICA arbitration (Docket No. 06B-497T): “The CMP was evaluated as a part of the extensive section 271 investigation.” Hrg. Ex. No. 3 (Qwest Ms. Albersheim Direct), p. 5, line 20 (Dec. 15, 2006). She indicated the “redesign” of CMP occurred in 2002, *id.* p. 25, line 20, and acknowledged that Eschelon was an active participant in CMP redesign, *id.* p. 21, lines 1-5.

⁷⁷ A document entitled “Qwest Service Center and Manager Roles in Relation to CMP – Revised 06-06-02” was developed in CMP Redesign (see, e.g., discussion in CMP Redesign minutes from the April 2-4, 2002 meeting regarding Attachment 7). Qwest was required to make this document available on its website. See <http://qwestcommunications.net/wholesale/downloads/2002/020729/QwestServiceCenterManagerRolesRelationtoCMP06-06-02.doc>. The document reflects Qwest’s commitment in CMP redesign that CLECs may escalate service and compliance issues through the service management escalation process. That process reflects Qwest’s commitment that CLECs may escalate to Qwest’s vice president level. See <http://www.qwest.com/wholesale/clecs/exescover.html>. And, CLECs may go to the VP level *at any time*. In CMP redesign, when Qwest made commitments to obtain 271 approval, Qwest committed that CLECs

ability at least since it was documented in 2002, it did not reduce or eliminate the need for the QPAP during that time, just as it does not reduce or eliminate the need for the QPAP today. Protracted discussions at the VP level do not replace automatic enforcement mechanisms. Finally, the time frames in which Qwest will respond to service quality issues is extraordinarily long⁷⁸ and would have a debilitating effect on CLECs and their end user customers.

Not only are Qwest's response times extraordinarily long, in Integra's experience, raising an issue to Qwest's vice president level hardly guarantees an issue will be addressed. For example, Attachment 1 to these Reply comments describes a service quality issue, still unresolved, that Integra first raised with Qwest before October of 2007.⁷⁹ This issue involved provisioning and repair issues for certain digital loops that Integra purchases from Qwest for the purpose of providing advanced services to end user customers. Despite clear language in the FCC orders and rules,⁸⁰ Integra's citing to Qwest the relevant terms of interconnection agreements, use of Qwest's CMP (where Qwest denied Integra's requests), and vice president involvement over a period of years, this issue has not been resolved. Colorado end user customers and competitive choice, in addition to CLECs, are adversely impacted when service quality issues remain unresolved over long periods of time.

Description of Six Proposed Measures

Below is a description of each of Qwest's six proposed performance measures, and a comparison with the current measure contained in the QPAP.

FOC – Firm Order Confirmation (FOC) Timeliness

Qwest's proposed measure FOC compares to PO-5 in the QPAP. PO-5 measures the "timeliness with which Qwest returns Firm Order Confirmations (FOCs) to CLECs in response

may escalate any issue, at any time, for any reason. Qwest documented that commitment on its website, which states: "Escalations can be initiated for any issue, at anytime, and at any escalation point." See <http://www.qwest.com/wholesale/clecs/exesclover.html>. Therefore, CLECs may currently escalate immediately to the VP level escalation point as needed, in stark contrast to the delays inherent in Qwest's QPAP-2 proposal.

⁷⁸ Qwest refers to its response as "proactive" (Qwest's PAP Comments, p. 4). Attachment A shows that Qwest's response is, at best, reactive.

⁷⁹ Note that Attachment 1 only documents events after Integra's purchase of Eschelon (August 2007). This issue was raised by Integra to Qwest management prior to Integra's purchase of the Eschelon properties.

⁸⁰ E.g., TRO footnote 1925 to ¶ 635 ("Specifically, in the UNE Remand Order, the Commission held that incumbent LECs must remove certain devices, such as bridge taps, low-pass filters, and range extenders, from basic copper loops *in order to enable the requesting carrier to offer advanced services*. UNE Remand Order, 15 FCC Rcd at 3775, para. 172.") (emphasis added); FCC TRO at ¶ 7, p. 14, 2nd bullet (The ILEC's unbundling obligation includes conditioning loops "for the provision of digital subscriber line (xDSL) services."); TRO ¶ 642 ("CLECs are "impaired" without access to unbundled "xDSL-capable stand-alone copper loops"); see also 47 C.F.R. §51.319(a)(1)(iii)(A) (defining line conditioning); 47 C.F.R. §51.319(a)(1)(iii)(C) (ILEC "may not restrict its testing to voice transmission only").

to LSRs/ASRs received from CLECs.”⁸¹ While this measure includes all orders, FOC is limited to “electronically-received, manually-processed”⁸² FOCs. PO-5 was reported for 4 products, with 3 disaggregations,⁸³ while FOC is reported on a statewide basis with no disaggregations.⁸⁴ PO-5B⁸⁵ measures the percent of FOCs received within 24 hours for unbundled loops (2/4 wire analog), FOCs received within 48 hours for DS1 EELs, and FOCs received within 72 hours for 2/4 wire non-loaded loops and DS1 loops.⁸⁶ PO-5B contains a benchmark of 90%.⁸⁷ Qwest’s Proposed QPAP-2 FOC weakens the PO-5 standard by measuring the number of FOCs for unbundled loops and DS1 EELs received within 72 hours with a benchmark of 90%. Qwest’s performance over the past year for PO-5B⁸⁸ was 98.0% with the lowest month having a performance of 92.0%.⁸⁹ It is concerning that Qwest is proposing to lower a standard that it currently appears able to meet. The concern is that Qwest is giving itself the ability to diminish service quality in the future. This should not be allowed. If any changes are made to the service quality standards, they should be increased so they continue to provide incentives for good performance. The table below summarizes the comparison of the current standard to Qwest’s proposed standard.

⁸¹ Service Performance Indicator Definitions (PID), 14 State 271 PID Version 9.0, Exhibit B, June 22, 2007, (“PID Documentation”), p. 14.

⁸² Qwest Proposed QPAP-2, p. 8

⁸³ The disaggregations are fully electronic, electronic/manual, and manual. PID Documentation, p. 14.

⁸⁴ Qwest Proposed QPAP-2, p. 8.

⁸⁵ The results from this category most closely align with Qwest’s new measure.

⁸⁶ Note that PO-5B contains other product categories within its measure besides just loops and EELs.

⁸⁷ PID Documentation, pp. 15.

⁸⁸ Loops and EELs are combined in a single measure.

⁸⁹ Performance Results, North Dakota December 2008 – November 2009, December 11, 2009, (“North Dakota PID Results”), p. 30.

Name	PO-5	FOC
Terms	All Orders	Electronically received, manually processed
Products	4	1
Disaggregations	3	1
Measure	<ul style="list-style-type: none"> • analog loops within 24 hours • EELs within 48 hours • non-loaded loops and DS1 loops within 72 hours 	<ul style="list-style-type: none"> • analog loops within 24 hours • EELs within 72 hours • non-loaded loops and DS1 loops within 72 hours
Benchmark	90%	90%
Performance Incentives	\$\$\$	None
Actual Average Performance (12/08-11/09)	98.0%	

ICOM – Installation Commitments Met

Qwest’s proposed measure ICOM compares to OP-3 in the PAP. This measure “evaluates the extent to which Qwest installs services for Customers by the scheduled due date.”⁹⁰ OP-3 applies to 40 products⁹¹ while ICOM applies to only 4 (Unbundled Loop-Analog, Unbundled Loop-2-Wire Non-Loaded, Unbundled Loop-DS1-capable and EEL-DS1).⁹² Most of the digital loops ordered by CLECs are ADSL Compatible Loops, a category that Qwest doesn’t even include in its plan. The OP-3 contains 5 product disaggregation reports,⁹³ while ICOM is reported only statewide.⁹⁴ OP-3 has a 90% benchmark for 2-wire loops and DS1 EELs, while DS1 loops are measured at parity with Qwest’s private line service.⁹⁵ ICOM has a weaker, 80% standard for all products.⁹⁶ Qwest’s actual average performance over the past year for OP-3 was 98.4% for analog loops with a minimum monthly performance of 93.4%;⁹⁷ 98.7% for non-loaded loops with a monthly minimum of 92.0%;⁹⁸ 99.2% for DS1 loops with a minimum monthly of 83.3%;⁹⁹ and 100.0% for DS1 EELs.¹⁰⁰ The QPAP-2 weaker standard is especially concerning since Qwest generally is able to meet the current benchmark.

⁹⁰ PID Documentation, p. 35.
⁹¹ PID Documentation, pp. 36-37.
⁹² Qwest’s Proposed QPAP-2, p. 10.
⁹³ PID Documentation, p. 35.
⁹⁴ Qwest’s Proposed QPAP-2, p. 10.
⁹⁵ PID Documentation, pp. 36-37.
⁹⁶ Qwest’s Proposed QPAP-2, p. 10.
⁹⁷ North Dakota PID Results, p. 49.
⁹⁸ North Dakota PID Results, p. 49.
⁹⁹ North Dakota PID Results, p. 47.

Qwest’s proposed ICOM measure not only reduced the products to which the measure applies, but significantly reduces the standard to a level so far below Qwest’s current performance as to render the standard essentially meaningless. The table below summarizes the comparison of the current standard to Qwest’s proposed standard.

Name	OP-3	ICOM
Products	40	4
Disaggregations	5	1
Measure	<ul style="list-style-type: none"> • 90% benchmark for analog loops • 90% benchmark for non-loaded loops • 90% benchmark for EEL • Retail parity measure for DS1 loops 	<ul style="list-style-type: none"> • 80% benchmark for analog loops • 80% benchmark for non-loaded loops • 80% benchmark for EEL • 80% benchmark for DS1 loops
Performance Incentives	\$\$\$	None
Actual Average Performance (8/09-7/09)	<ul style="list-style-type: none"> • Analog loop 98.4% • Non-loaded loop 98.7% • EEL 100.0% • DS1 loop 99.2% 	

INST – Order Installation Interval

Qwest’s proposed measure INST compares to OP-4 in the PAP. This measure “evaluates the timeliness of Qwest’s installation services for customers, focusing on the average time to install service.”¹⁰¹ OP-4 applies to 40 products¹⁰² while INST applies to only 4 (Unbundled Loop-Analog, Unbundled Loop-2-Wire Non-Loaded, Unbundled Loop-DS1-capable and EEL-DS1).¹⁰³ The OP-4 contains 5 product disaggregation reports,¹⁰⁴ while INST is reported only statewide.¹⁰⁵ OP-4 has a benchmark of 6 days for analog loops, non-loaded loops, and DS1 EELs and a parity measure for DS1 loops.¹⁰⁶ INST also has a 6 day benchmark for analog loops, but is measured on parity for the other product categories.¹⁰⁷ Qwest’s actual average performance over the past year for OP-4 was 5.07 for analog loops with a maximum monthly

¹⁰⁰ North Dakota PID Results, p. 50.

¹⁰¹ PID Documentation, p. 38.

¹⁰² PID Documentation, pp. 39-40.

¹⁰³ Qwest’s Proposed QPAP-2, p. 11.

¹⁰⁴ PID Documentation, p. 38.

¹⁰⁵ Qwest’s Proposed QPAP-2, p. 11.

¹⁰⁶ PID Documentation, pp. 39-40.

¹⁰⁷ Qwest’s Proposed QPAP-2, p. 11.

performance of 5.16;¹⁰⁸ 3.06 for non-loaded loops with a monthly maximum of 3.80;¹⁰⁹ 8.27 for DS1 loops with a maximum monthly of 8.81;¹¹⁰ and 4.33 for DS1 EELs with a monthly maximum of 5.00.¹¹¹

It is unclear whether Qwest’s proposed INST measure reduces the performance standard, as Qwest changes most of these measures to retail parity and provides no information regarding retail performance. If the retail parity product used for comparison has low or no volumes, this could create instances where Qwest passes its performance test by default such as happens frequently for DS1 loops today. The table below summarizes the comparison of the current standard to Qwest’s proposed standard.

Name	OP-4	INST
Products	40	4
Disaggregations	5	1
Measure	<ul style="list-style-type: none"> • 6 day benchmark for analog loops • 6 day benchmark for non-loaded loops • 6 day benchmark for EEL • Retail parity measure for DS1 loops 	<ul style="list-style-type: none"> • 6 day benchmark for analog loops • Retail parity measure for non-loaded loops • Retail parity measure for EEL • Retail parity measure for DS1 loops
Performance Incentives	\$\$\$	None
Actual Average Performance (8/09-7/09)	<ul style="list-style-type: none"> • Analog loop 5.07 • Non-loaded loop 3.06 • EEL 4.33 • DS1 loop 8.27 	

TR – Trouble Rate

Qwest’s proposed measure TR compares to MR-8 in the PAP. This measure “evaluates the overall rate of trouble reports as a percentage of the total installed base of the service or element.”¹¹² Qwest’s proposed TR measure changes the description of the purpose of the measure to “evaluates the ‘health’ of the Qwest network serving specified products...”¹¹³ It is unclear whether this is a change of any significance, as Qwest’s comments do not explain the

¹⁰⁸ North Dakota PID Results, p. 58.

¹⁰⁹ North Dakota PID Results, p. 58.

¹¹⁰ North Dakota PID Results, p. 56.

¹¹¹ North Dakota PID Results, p. 59. Note, only 3 EELs were included in OP-4 in the past year in North Dakota.

¹¹² PID Documentation, p. 71.

¹¹³ Qwest’s Proposed QPAP-2, p. 12.

change. MR-8 applies to 34 products¹¹⁴ while TR applies to only 4 (Unbundled Loop-Analog, Unbundled Loop-2-Wire Non-Loaded, Unbundled Loop-DS1-capable and EEL-DS1).¹¹⁵ Both MR-8 and TR are reported at a statewide level.¹¹⁶ MR-8 has a parity standard with Qwest's retail and private line services,¹¹⁷ while TR has a benchmark of 5%.¹¹⁸ Qwest's actual average performance for CLECs over the past year for MR-8 was 0.82% for analog loops with a maximum monthly performance of 1.18%;¹¹⁹ 0.82% for non-loaded loops with a monthly maximum of 1.74%;¹²⁰ 2.33% for DS1 loops with a maximum monthly of 3.68%;¹²¹ and 2.33% for DS1 EELs with a maximum monthly of 14.29%.¹²²

Qwest's proposed 5% benchmark is well in excess of Qwest's retail performance for these products which is on average as low as 0.43% for the 2-wire non-loaded loop parity measure, 1.33% for 2-wire analog loop parity measure, and 1.37% for the DS1 and EEL-DS1 parity measure.¹²³ As a result, Qwest's proposed TR standard of 5% for all products effectively results in a significantly weakened standard – about 4 times weaker for analog loops, DS1 Loops and EEL-DS1s and almost 12 times weaker for non-loaded loops. The table below summarizes the comparison of the current standard to Qwest's proposed standard.

¹¹⁴ PID Documentation, pp. 72-73.

¹¹⁵ Qwest's Proposed QPAP-2, p. 12.

¹¹⁶ PID Documentation, p. 71 and Qwest's Proposed QPAP-2, p. 12.

¹¹⁷ PID Documentation, pp. 72-73.

¹¹⁸ Qwest's Proposed QPAP-2, p. 12.

¹¹⁹ North Dakota PID Results, p. 116.

¹²⁰ North Dakota PID Results, p. 117.

¹²¹ North Dakota PID Results, p. 117.

¹²² North Dakota PID Results, p. 119.

¹²³ North Dakota PID Results, pp. 116, 117 and 119.

Name	MR-8	TR
Description	Evaluates rate of trouble	Evaluates health
Products	34	4
Disaggregations	1	1
Measure	<ul style="list-style-type: none"> • Retail parity measure for analog loops • Retail parity measure for non-loaded loops • Retail parity measure for EEL • Retail parity measure for DS1 loops 	<ul style="list-style-type: none"> • 5% benchmark for analog loops • 5% benchmark for non-loaded loops • 5% benchmark for EEL • 5% benchmark for DS1 loops
Performance Incentives	\$\$\$	<i>None</i>
Actual Average Performance (8/09-7/09)	<ul style="list-style-type: none"> • Analog loop 0.82% • Non-loaded loop 0.82% • EEL 2.33% • DS1 loop 2.33% 	

TREI – Troubles Restored within Estimated Intervals

Qwest’s proposed measure TREI compares to MR-3 (troubles cleared within 24 hours) and MR-5 (troubles cleared within 4 hours) in the QPAP. This measure “evaluates timeliness of repair for specific services, focusing on the percentage of specified trouble report types that were restored within specified interval estimates.”¹²⁴ MR-3 and MR-5 apply to a total of 33 products¹²⁵ while TR applies to only 4 (Unbundled Loop-Analog, Unbundled Loop-2-Wire Non-Loaded, Unbundled Loop-DS1-capable and EEL-DS1).¹²⁶ MR-3 has 5 reporting disaggregations and MR-5 has 2,¹²⁷ while TREI has 2 levels of disaggregation, “troubles with a technician dispatched” and “troubles not dispatched.”¹²⁸ MR-3 and MR-5 have a parity standard with Qwest’s retail and private line services,¹²⁹ while TREI has a benchmark of 80% of troubles restored within 24 hours for analog and non-loaded loops, 80% within 4 hours for DS1 loops and DS1 EELs, without dispatch and 80% within 8 hours for DS1 loops and DS1 EELs with a dispatch.¹³⁰ The 8 hour repair time is twice as long as the 4 hour repair time against which Qwest is measured for MR-5 in the QPAP. The 8 hour proposed repair standard, a full business day, is an exceptionally long time for a business customer purchasing high capacity services to

¹²⁴ Qwest’s Proposed QPAP-2, p. 13.

¹²⁵ PID Documentation, pp. 60 and 64.

¹²⁶ Qwest’s Proposed QPAP-2, p. 13.

¹²⁷ PID Documentation, pp. 59 and 63.

¹²⁸ Qwest’s Proposed QPAP-2, p. 13.

¹²⁹ PID Documentation, pp. 60 and 64.

¹³⁰ Qwest’s Proposed QPAP-2, p. 13.

be out of service. Qwest's actual average performance over the past year for MR-3¹³¹ was 84.9% for analog loops with a minimum monthly performance of 73.9%;¹³² and 81.5% for non-loaded loops with a minimum monthly performance of 50.0%.¹³³ Qwest's performance for MR-5, which includes both dispatched and non-dispatch troubles cleared within 4 hours was 52.5% for DS1 loops with a minimum monthly of 23.8%;¹³⁴ and 71.4% for DS1 EELs with a monthly minimum of 0.0%.¹³⁵

Qwest's actual average performance for the 2-wire analog loop parity measure was 77.4% and for the 2-wire non-loaded loop parity measure was 100.0%.¹³⁶ The results for DS1 loops and DS1 EELs can't be directly compared to Qwest's proposed standard, since Qwest's current performance results include both dispatched and non-dispatched repairs while Qwest proposed two separate standards, 8 hours and 4 hours, for these cases. The table below summarizes the comparison of the current standard to Qwest's proposed standard.

¹³¹ MR-3 measures the percent of troubles restored within 24 hours for analog loops and non-loaded loops, among other products. This most closely corresponds to Qwest's TREI for analog and non-loaded loops.

¹³² North Dakota PID Results, p. 91.

¹³³ North Dakota PID Results, p. 91.

¹³⁴ North Dakota PID Results, p. 97.

¹³⁵ North Dakota PID Results, p. 98.

¹³⁶ North Dakota PID Results, p. 91.

Name	MR-3 & MR-5	TREI
Products	33	4
Disaggregations	5	2
Measure	<ul style="list-style-type: none"> • Retail parity measure for analog loops • Retail parity measure for non-loaded loops • Retail parity measure for EEL • Retail parity measure for DS1 loops 	<ul style="list-style-type: none"> • 80% within 24 hours for analog loops • 80% within 24 hours for non-loaded loops • 80% within 4 hours for EEL without dispatch • 80% within 8 hours for EEL with dispatch • 80% within 4 hours for DS1 loop without dispatch • 80% within 8 hours for DS1 loop without dispatch
Performance Incentives	\$\$\$	None
Actual Average Performance (8/09-7/09)	<ul style="list-style-type: none"> • Analog loop 84.9% • Non-loaded loop 81.5% • EEL (dispatch and no dispatch) 52.5% • DS1 loop (dispatch and no dispatch) 71.4% 	

MTTR – Mean Time to Restore

Qwest’s proposed measure MTTR compares to MR-6 in the QPAP. This measure “evaluates the timeliness of repair, focusing on how long it takes to **restore services to proper operation.**”¹³⁷ Qwest’s proposed QPAP-2 describes the MTTR purpose, “evaluates timeliness of repair, focusing on the average interval for **restoring reported troubles.**”¹³⁸ It is unclear what *restoring reported troubles* means and how it is different from “proper operation” as contained in the QPAP. Qwest’s QPAP-2 Comments do not explain this, or any language changes. Integra’s recent experience with Qwest, regarding repair of unbundled loops leads Integra to believe that Qwest views *restoring reported troubles* as different from *restoring service to proper operation*. Qwest has told Integra that it has no obligation to restore troubles associated with 2-wire digital loops to proper operation, but only to voice parameters. Integra is concerned

¹³⁷ PID Documentation, p. 65. [emphasis added]

¹³⁸ Qwest’s Proposed QPAP-2, p. 14. [emphasis added]

that Qwest's unexplained language change to the purpose of this measure is intended to excuse Qwest from repairing service. In addition, MTTR restricts its measure to troubles reported during business hours,¹³⁹ while MR-6 contains no such restriction. Qwest has also changed the language describing when the clock starts for the repair time from when "Qwest is first notified of the trouble by CLEC"¹⁴⁰ to "time of receipt."¹⁴¹ Again this difference is unexplained. MR-6 applies to 35 products¹⁴² while MTTR applies to only 4 (Unbundled Loop-Analog, Unbundled Loop-2-Wire Non-Loaded, Unbundled Loop-DS1-capable and EEL-DS1).¹⁴³ MR-6 contains 5 product disaggregation reports,¹⁴⁴ while MTTR contains 2, troubles involving dispatch and troubles not involving dispatch.¹⁴⁵ Both the MR-6 and MTTR standard is compared with Qwest retail and private line performance.¹⁴⁶ Qwest's actual average performance over the past year for MR-6 was 15:09 for analog loops with a maximum monthly performance of 21:07;¹⁴⁷ 13:02 for non-loaded loops with a monthly maximum of 24:41;¹⁴⁸ 8:33 for DS1 loops with a maximum monthly of 24:18;¹⁴⁹ and 3:04 for DS1 EELs with a monthly maximum of 4:48.¹⁵⁰ While Qwest proposes to keep the parity measure for this product it should be noted that because Qwest's volumes for the 2-wire non-loaded loop parity measure are low (zero in many months), in 4 of the last 12 there was no Qwest data to make a parity comparison and thus under Qwest's proposal it would pass the parity test by default. The table below summarizes the comparison of the current standard to Qwest's proposed standard.

¹³⁹ Qwest's Proposed QPAP-2, p. 14.

¹⁴⁰ PID Documentation, p. 65.

¹⁴¹ Qwest's Proposed QPAP-2, p. 14.

¹⁴² PID Documentation, pp. 66 - 67.

¹⁴³ Qwest's Proposed QPAP-2, p. 14.

¹⁴⁴ PID Documentation, p. 65.

¹⁴⁵ Qwest's Proposed QPAP-2, p. 14.

¹⁴⁶ PID Documentation, p. 65 and Qwest's Proposed QPAP-2, p. 14..

¹⁴⁷ North Dakota PID Results, p. 102.

¹⁴⁸ North Dakota PID Results, pp. 102.

¹⁴⁹ North Dakota PID Results, pp. 102.

¹⁵⁰ North Dakota PID Results, pp. 104.

Name	MR-6	MTTR
Description	Restore service to proper operation	Restoring reported troubles
Observations	All troubles	Troubles reported during business hours
Clock starts	When Qwest first notified	Time of receipt
Products	35	4
Disaggregations	5	2
Measure	<ul style="list-style-type: none"> • Retail parity measure for analog loops • Retail parity measure for non-loaded loops • Retail parity measure for EEL • Retail parity measure for DS1 loops 	<ul style="list-style-type: none"> • Retail parity measure for analog loops • Retail parity measure for non-loaded loops • Retail parity measure for EEL • Retail parity measure for DS1 loops
Performance Incentives	\$\$\$	None
Actual Average Performance (8/09-7/09)	<ul style="list-style-type: none"> • Analog loop 15:09 • Non-loaded loop 13:02 • EEL (dispatch and no dispatch) 3:04 • DS1 loop (dispatch and no dispatch) 8:33 	

Conclusion and Recommendations

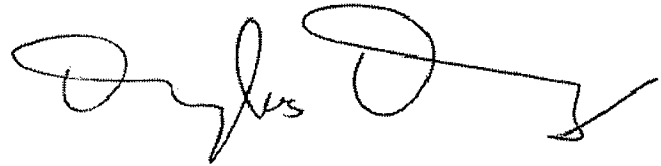
The end user customer demands reliable service and values its provider’s commitment to quality. But the end user customer rarely has the patience to discern who is responsible when its service no longer works or when its order is not filled on time -- the customer simply demands reliable service. The end user customer's experience is with its retail service provider regardless of who is providing the underlying network components. Thus, poor wholesale performance by Qwest necessarily negatively impacts the CLEC utilizing these facilities.

Qwest's gain from poor wholesale service performance thus translates directly to CLEC and end user customer harm. The gains to Qwest are wins in the marketplace and a potentially tarnished CLEC reputation. By offering poor wholesale service quality despite performance payments, Qwest perpetuates this pattern. When it proposes lower standards for its performance measurement, Qwest places a lower threshold on the gains it receives, which are the harms suffered by the CLEC and customers.

The PAP today is more crucial than it ever has been. The opportunities for Qwest to use poor wholesale service performance to create a competitive advantage in the market place are greater now than ever before, especially as Qwest gains greater regulatory flexibility in its own retail offerings.

Qwest's proposal to eliminate the PAP and meaningful performance assurance is bad for end user customers and competition. Qwest's proposal should be rejected.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Douglas Denney". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Douglas Denney
Company Representative
Integra Telecom, Inc.
1201 NE Lloyd Blvd., Suite 500
Portland, OR 97232

Attachment 1

xDSL¹ Summary of Key Events Since October 2007

Note: Qwest requires CLECs to order xDSL capable loops, such as HDSL2, as non-loaded loops.

October 11, 2007 through June 20, 2008 – Escalation to Qwest Service Management, Including VP Level - Unsuccessful

Qwest repair personnel told Integra that Qwest assigns a 24 hour repair commitment time (which is the repair commitment time for the 2 wire analog loop) to a 2 wire non loaded loop, even though the repair commitment time should be 4 hours² because Qwest repair cannot differentiate between a 2 wire *non loaded* loop (which Qwest requires CLECs to use to order xDSL loops, *i.e.*, digital capability) and a 2 wire *analog* loop (which may be described as a voice grade loop).³ On October 11, 2007, Integra escalated a repair issue to Qwest's service manager regarding this Qwest claim and also told Qwest service management that Qwest repair is not testing to HDSL digital parameters (*i.e.*, Qwest is limiting testing to voice parameters), and Qwest would not remove interfering bridged tap that could allow the circuit to carry applicable digital services.

For a period of more than eight (8) months, Integra made significant efforts to resolve the issue with Qwest service management via email correspondence and face to face meetings. Integra's Senior Vice President of Engineering and Corporate operations escalated the issue to Brian Stading at Qwest (Qwest's Vice President of service management). Responses and correspondence from Qwest generally came from Ken Beck at Qwest (Qwest's Regional Vice President of service management).

Qwest service management was unable to resolve the issue at any level. On June 20, 2008, Ken Beck *referred Integra to the Qwest Change Management Process* ("CMP").

1

The North Dakota SGAT (as well as any CLEC ICAs based on an opt-in of the SGAT), Section 4.0 (Definitions) contains the following definition: "Digital Subscriber Loop" or "DSL" refers to a set of service-enhancing copper technologies that are designed to provide digital communications services over copper Loops either in addition to or instead of normal analog voice service, sometimes referred to herein as xDSL, including but not limited to the following: . . . "HDSL" or "High-Data Rate Digital Subscriber Line" is a synchronous baseband DSL technology operating over one or more copper pairs. HDSL can offer 784 Kbps circuits over a single copper pair, T1 service over 2 copper pairs, or future E1 service over 3 copper pairs. "HDSL2" or "High-Data Rate Digital Subscriber Line 2" is a synchronous baseband DSL technology operating over a single pair capable of transporting a bit rate of 1.544 Mbps."

² Per Qwest's own Service Interval Guide (SIG), the repair commitment time for a 2 wire non loaded loop is 4 hours. See page 61 of Qwest's SIG which shows that the repair commitment time for a 2 wire non loaded loop is 4 hours http://www.qwest.com/wholesale/downloads/2009/090413/InterconnSIG_PV95.doc

³ Although the industry uses certain "NC/NCI" codes to indicate the particular type of xDSL capable loop (*e.g.*, HDSL2) (see, *e.g.*, North Dakota SGAT §§9.2.6.2 & 9.3.5.1.2), Qwest has indicated that it nonetheless treats the latter ("NCI") codes as informational only, and Qwest does not actually rely on the applicable industry codes when assigning and provisioning facilities (as discussed further in the CMP documents discussed below).

August 28, 2008 through April 3, 2009 - Both CMP Requests Denied

On August 28, 2008 Integra submitted a Qwest CMP Change Request (CR) entitled “Design, Provision, Test, and Repair Unbundled Loops to the requirements requested by CLEC, including NCI/SECNCI Code Industry Standards” (“**Provision Loops per Request CR**” or “**NC/NCI CR.**”).

Qwest indicated in CMP it was moving forward to implement a new Universal Service Ordering Code (USOC) in mid April 2009 that would help ensure that appropriate digitally capable loops were assigned when CLECs ordered xDSL services. Qwest then shifted position and indicated that, although it had said implementation of this USOC would improve its facilities assignment process, Qwest would condition moving forward with implementing the USOC on CLECs (including Integra) agreeing to perform cooperative testing on 100% of the installs. In other words, CLECs with a right to basic installations in their ICAs would no longer be able to order basic installations at Commission-approved rates and instead would have to order a form of testing that requires additional coordination and scheduling of personnel, at a higher rate, for 100% of these installs, even though such additional work may only be needed in a minority of cases. Qwest never justified tying these two things together. Qwest denied Integra’s CR.

On February 4, 2009, Integra submitted a Qwest CMP CR entitled “Qwest will implement the USOC to correct the facility assignment for HDSL” (“**Facilities Assignment USOC CR**”) in an effort to get Qwest to move forward with implementing the USOC while discussion of other issues continued. Qwest denied Integra’s CR, even though Qwest had previously indicated that implementation of the USOC would help with resolution of the problem.

Integra escalated Qwest’s denial of both CRs. Qwest denied both escalations.

For the CMP Detail, including copies of Integra’s change requests and escalations, and Qwest’s denials, see Attachment D, NC/NCI CR #PC082808-1IGXES (Escalation #45), and Attachment E, Facilities Assignment USOC CR #PC020409-1EX (Escalation #44).⁴

April 9, 2009 through Present – VP Level Escalations - Unsuccessful to Date

On April 9, 2009, Integra (Stephen Fisher, VP Corporate Operations) notified Qwest (Warren Mickens, VP Qwest Corporation and Qwest Director of Interconnection) that it was escalating these issues and invoking the dispute resolution process under its interconnection agreements. Also on April 9, 2009, Integra (Dan Wigger, VP of Operations, Minnesota) provided notice to Qwest (John Stanoch, President, Minnesota). [See Attachment C, pp. 001-005.] Counsel for Integra also contacted counsel for Qwest and provided additional authority for Integra’s position. On April 16, 2009, Mr. Mickens responded for Qwest by stating: “Ken Beck will be Qwest’s representative under section

⁴ These documents are also available on Qwest’s CMP website: <http://www.qwest.com/wholesale/cmp/>

5.18.2 of the Eschelon Minnesota ICA. He will represent Qwest regarding the issues you raised in your letter of April 9, 2009. . . .” Although Integra had escalated to a higher level at Qwest, Mr. Beck is the same individual who had been representing Qwest in discussions since at least October of 2007.

Qwest submitted a proposal to Integra on May 15, 2009, and Integra responded on June 4, 2009. On July 20, 2009, Integra contacted Qwest as it had received no response. Qwest responded on July 23, 2009, and Integra replied on August 4, 2009. On August 21, 2009, Qwest submitted questions to Integra about its reply. Most recently, company representatives met in Denver on November 13, 2009.

Although discussions are ongoing, Qwest has not yet provided any solution or proposal, via its service management team, executives, legal team, or CMP, that indicates the issue will be resolved without Commission action. In the meantime, the problem continues.

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Qwest Performance Assurance Plan
Investigation

Case No. PU-08-920

Public Service Commission
Qwest Performance Assurance Plan
Investigation

Case No. PU-07-256

Public Service Commission
Qwest Performance Assurance Plan
Investigation

Case No. PU-08-920

CERTIFICATE OF SERVICE


I, Kim K. Wagner, state that on January 15, 2010, I filed the attached Comments of Integra Telecom of North Dakota, Inc. electronically at ndpsc@nd.gov and by overnight mail delivery to:

Darrell Nitschke
Director of Administration/Executive Secretary
Public Service Commission
600 East Boulevard, Department 408
Bismarck, North Dakota 58505

With a copy to:

Jason D. Topp
Qwest Corporation
Law Department
200 South Fifth Street, Room 2200
Minneapolis, MN 55402

Dated: January 15, 2010



Kim K. Wagner