

September 29, 2009

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

PUBLIC SERVICE COMMISSION

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

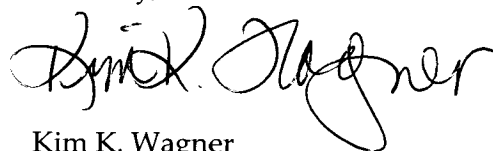
Public Service Commission
Qwest Performance Assurance Plan Investigation
Case No. PU-07-256

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,



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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
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Public Service Commission
Qwest Performance Assurance Plan Investigation

Case No. PU-08-920

COMMENTS OF INTEGRA TELECOM OF NORTH DAKOTA, INC.

September 29, 2009

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

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, primarily within the local service territory of Qwest. Integra Telecom does business in eastern North Dakota in the Fargo, Fargo West and Grand Forks area with over 2,000 customers with more than 14,000 access lines. Integra primarily purchases unbundled loops from Qwest and connects these loops to its collocation cages. These cages are connected via transport facilities to Integra’s switch. In some instances, Integra relies on the Qwest Local Service Platform (“QLSP”) product, which is essentially the Unbundled Network Element – Platform (“UNE-P”) at higher prices, to reach customers where it does not have collocations. For example, to serve a multi-location customer with one location outside of the area served by Integra’s collocation, Integra may have to serve that one location with QLSP to retain the

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, August 12, 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”)

customer's business for the remaining locations served via a loop leased by Qwest along with Integra's switch and collocation facilities.

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 PAP and performance measures."⁴

Integra's March 27, 2009 comments⁵ addressed the first 4 questions.⁶ In those comments Integra recommended the Commission add performance measures associated with unbundled network element ("UNE") facility assignment, expedited ordering and chronic troubles.⁷ In addition, Integra recommended modifications to the performance measure MR-6 as well as modification to multiple measures to properly include EDI/XML.⁸ Integra's March 27, 2009 comments are incorporated here by reference and are not repeated here. It should be noted that a number of the issues raised by Integra in its March 27, 2009 comments were considered in the Liberty Report.

The comments below address the Liberty Report, which contains recommended changes that impact the five questions raised by this Commission.

Introduction

As recognized in the Liberty Report the Performance Assurance Plan ("PAP") is essential to telecommunications competition in North Dakota and the Qwest region.⁹ Many of the standards in the PAP are parity with Qwest's retail performance. 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.¹⁰ While competition has been slowly growing in the Qwest region,¹¹ elimination

³ Notice for Comment, pp. 2-3.

⁴ Notice for Comment, p. 2.

⁵ *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.

⁶ Regarding the 2nd question, Integra does not believe that any current performance measures are duplicates.

⁷ Integra's March 27, 2009 Comments, p. 4 and Attachments A, A2, A3, A4, and B.

⁸ Integra's March 27, 2009 Comments, p. 5 and Attachments A and A5.

⁹ Liberty Report, p. 4.

¹⁰ Other agencies have recognized the inherent issues resulting from this dichotomous role. For example, the Minnesota commission said: "As a provider of monopoly and bottleneck wholesale services, as well as the best-known provider of retail services, Qwest has unparalleled opportunities to manipulate the wholesale service transfer process to its benefit." Order, *In The Matter of a Request by Eschelon Telecom for an Investigation Regarding Customer Conversion by Qwest and Regulatory Procedures*, Minnesota PUC Docket P-421/C-03-616 (July 30, 2003), p. 7.

¹¹ Local Telephone Competition: Status as of June 30, 2007, Table 8.

or meaningful reductions in wholesale service quality standards (PIDs) and the automatic enforcement mechanism associated with these standards (PAP) would certainly weaken competition across Qwest's region and introduce a serious risk of back-sliding after the 271 incentive is long gone.

The PAP and associated Performance Indicator Definitions ("PIDs") are particularly essential because the expense of filing a Commission complaint for each individual service quality problem would greatly exceed the cost of the particular individual problem, while the cumulative significant adverse affect 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 (as described in the next paragraph).¹² 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. It continues to serve its intended wholesale service quality role today. Attempts to further¹³ limit the application of the PAP and associated PIDs will hinder their ability to continue to serve these purposes and prevent back-sliding.

The PIDs and PAP were put into place in conjunction with the FCC's 271 Approval Order to "provide assurance that the local market will remain open after Qwest receives section 271 authorization..."¹⁴ The FCC found that the plans were "likely to provide incentives that are sufficient to foster post-entry checklist compliance;"¹⁵ and based this conclusion on "total liability at risk in the plan; performance measurement standards and definitions; structure of the plan; self-executing nature of remedies in the plan; data validation and audit procedures in the plan; and accounting requirements."¹⁶

Integra distinguishes itself through its customer relationships and its ability to offer customers reliable and diverse voice and data network. Because Integra relies, in part, upon network facilities leased from Qwest, the quality of service received from Qwest is an important component of Integra's ability to serve customers well. There are no generally available, last mile wholesale substitutes available to Integra to serve end user customers across Qwest's region.¹⁷ That there are no last mile substitutes for products subject to the PIDs and PAP as implemented by Qwest is undisputed, because Qwest applies the PIDs and PAP only to products

¹² *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").

¹³ In addition to previous express modifications to the PIDs/PAP such as those made via the Joint Stipulation discussed below, Qwest does not apply the PIDs/PAP after a UNE is delisted or its availability is limited (e.g., due to a finding of non-impairment), as discussed below, so the application of the PIDs/PAP is reduced each time UNE availability is reduced.

¹⁴ FCC 271 Approval Order, ¶ 440.

¹⁵ FCC 271 Approval Order, ¶ 440.

¹⁶ FCC 271 Approval Order, ¶ 442.

¹⁷ See also Liberty Report, p. 4.

for which the FCC has found that CLECs are impaired without access to them, as discussed below. As a result, Qwest's behavior can have a significant impact on Integra's customer relationships. Since Qwest is Integra's predominant supplier of connections to end user customers¹⁸ and Qwest is also Integra's largest competitor, Qwest has the incentives and the ability to limit Integra's success in the market through poor wholesale service. This is why the PAP, its continued operation, and strict enforcement are essential for the preservation of competitive markets across Qwest's region. This is also why it is essential that the PIDs be calculated and the PAP implemented for individual CLECs rather than aggregate CLEC results. Integra interfaces with its customers as Integra and needs to be able to provide reliable service as Integra.

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 obligations after a grant of such authority."¹⁹ Further, the FCC concluded that the PAP provides "assurance that the local market will remain open after Qwest receives section 271 authorization..."²⁰

The PAP was designed to provide Qwest incentives to meet wholesale performance standards. If the plan provides for proper incentives to avoid poor service quality, then Qwest will avoid making payments under the Plan by improving its service relative to the standard it is being measured against (either a benchmark or Qwest retail parity). The Plan should not be modified in any way that allows Qwest to avoid liability under the PAP by modifying a PID instead of correcting a performance problem that is properly causing Qwest to pay PAP payments.

Qwest's gain from poor wholesale service performance translates directly to harm to CLECs and competition. 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 is placing a lower bound on the gains it receives, which are the harms suffered by the CLEC.

The end user customer demands reliable service and values met commitments. The end user customer rarely has the patience to take sides 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.

¹⁸ In some markets, Integra has its own facilities to serve the last mile to a number of customers. However, overall, Integra relies upon Qwest's last mile facilities to access nearly all of its customers in every market across Qwest's region. This does not mean that Integra is not a facilities-based provider for these customers. For example, Integra often serves the customer using its own switch and collocation facilities, while leasing the loop from Qwest for the last mile piece.

¹⁹ FCC 271 Approval Order, ¶ 440.

²⁰ FCC 271 Approval Order, ¶ 440.

Comments on the Liberty Report

The PAP is Crucial to Competition

The Colorado Commission, when approving the PAP in its state, summed up the importance and significance of the PAP, stating: "we regard the CPAP, or Colorado Performance Assurance Plan, **as the single most important innovation of this § 271 process**. On a **going-forward basis**, the CPAP provides meaningful incentives for Qwest to meet its wholesale unbundling obligations, compensates CLECs for harm suffered, and provides flexibility to adapt to changing market conditions."²¹ The Colorado Commission continued to note that "the CPAP is the **most vital element** in Qwest's application on a **going-forward basis**" and that "the regulatory regime it established will remain **a crucial legacy** of the § 271 process."²²

Over Time, Qwest has Reduced its Obligations Under the PAP

The FCC's decisions in its triennial review of section 251 unbundling obligations have eliminated obligations of Qwest and other Regional Bell Operating Carriers ("RBOCs") to provide certain wholesale services to CLECs at forward-looking economic cost.²³ 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 taken the position that the protections of the PAP surrounding these facilities no longer apply.²⁴ In addition, after the FCC's *TRRO order* eliminated the availability of UNE-P effective March 11, 2006, many CLECs have opted into Qwest's commercial UNE-P replacement offering, currently called QLSP. Qwest only makes its replacement UNE-P agreements available under terms that specifically call for the elimination of protections provided to CLECs – and the payments paid by Qwest – under the PAP relating to UNE-P like services.²⁵ Though the PAP continues to offer certain protections, the plan – and

²¹ *Evaluation of the Colorado Public Utilities Commission*, In the Matter of Application by Qwest Communications International, Inc., for Provision Of In-Region, InterLATA Services in Colorado, Idaho, Iowa, Nebraska and North Dakota, WC Docket No. 02 - 148, p. 3 (emphasis added).

²² *Id.* p. 54 (emphasis added).

²³ See *Report and Order and Order on Remand and Father 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*").

²⁴ The exception is in Washington, where Qwest agreed to expand the PAP to UNE alternatives as part of Qwest's AFOR docket. See *In the Matter of the Petition of QWEST CORPORATION For an Alternative Form of Regulation Pursuant to RCW 80.36.135*, Docket No. UT-061625, Order No. 8, September 6, 2007 (<http://www.wutc.wa.gov/rms2.nsf/177d98baa5918c7388256a550064a61e/b43f23f167c695138825734e00793f01!OpenDocument>).

²⁵ See Qwest's Master Services Agreement for QLSP section 4.6, (<http://www.qwest.com/wholesale/clecs/commercialagreements.html>).

associated incentives – has clearly weakened in the light of regulatory changes surrounding the *TRO and TRRO orders* by the FCC, as implemented by Qwest. The changes as a result of the *TRRO order* didn't stop with the release of that order, but continue as Qwest identifies a greater number of facilities which meet the FCC's non-impairment test.

This, in combination with regulatory relief on many Qwest retail services across the region, 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 a key reason why the PAP is even more crucial today than it ever has been.

Where a CLEC can continue to purchase or access unbundled facilities from Qwest, however, it is because the FCC has found that CLECs are “impaired” without access to those facilities.²⁶ Only for these bottleneck unbundled products does Qwest apply the PIDs and PAP. In other words, the FCC has found that lack of access to these unbundled facilities “*poses a barrier or barriers to entry . . . that are likely to make entry into a market uneconomic*” for a reasonably efficient competitor.²⁷ The PAP is particularly necessary to provide protections in the face of these recognized barriers to entry that Qwest would have the commissions ignore.²⁸

On the heels of the successful discussions and negotiations associated with the Colorado Three-Year Review²⁹ in May of 2006, Qwest sent an email to CLECs inviting them to participate in region-wide discussions regarding PID and PAP issues. A number of CLECs responded to Qwest's request and the result was a stipulation, dated June 12, 2007, among Qwest, Eschelon,³⁰ Covad, TDS Metrocom and McLeod. This stipulation was the result of more than a year of negotiations which included: frequent telephone conferences; detailed discussions of potential changes to the PIDs and PAP; hundreds of emails among the parties; and an exchange of data surrounding PID and PAP changes examining various solutions to the issues raised. The result was a stipulation (“Joint Stipulation”) that significantly changed Qwest's PIDs and PAPs across the Qwest region. A key CLEC interest in negotiating the Joint Stipulation was to maintain the protection mechanisms built into the PAP and associated PIDs, but allow for changes to the PID and PAP, as requested by Qwest, that would not result in a deterioration of service. North Dakota approved the Joint Stipulation effective January 1, 2008.³¹

This collaborative process is consistent with the FCC's observation “that competitive LECs have been involved in the development of these plans, and we anticipate that they will provide input in those forums which will review the plans in the future.”³²

²⁶ For example, the FCC has found that CLECs are “impaired” without access to unbundled “xDSL-capable stand-alone copper loops.” (TRO ¶642.) See response to input question no. 10.

²⁷ TRRO ¶22, emphasis added.

²⁸ See also Liberty Report, p. 4 and 55.

²⁹ The Colorado three-year review is discussed in the Liberty Report on pages 12-14.

³⁰ Note that Integra purchased Eschelon in August 2007.

³¹ *Order*, Public Service Commission Qwest Performance Plan Investigation, Case No. PU-06-58, December 14, 2007.

³² FCC 271 Approval Order, ¶ 445. Note that the FCC refers to the “forums which will review the plans in the future.” *Id.* Qwest's position that CLECs need to bring proposed changes to the PIDs directly to

Many of the changes that were extensively discussed as part of the Joint Stipulation are discussed and expanded upon in the Liberty Report.³³

The changes that were a result of the Colorado Three-Year Review and the Joint Stipulation, were the result of a comprehensive review of the existing PID and PAPs. The PID and the PAP were altered, changed, and certain provisions eliminated in a manner that provided Qwest with a significant opportunity to reduce the payments it makes under the PAP, while attempting to protect CLECs and customers by continuing to provide incentives for Qwest to perform on the most crucial PID measures. While a plan as complex as Qwest's PIP and PAP may be improved upon, any additional reduced protections need to be made with caution and with the goals of assuring future performance and protecting end user customers well in mind. The Liberty Report recognized that it was not able to benefit from the "give and take" process of direct discussions between CLECs and Qwest,³⁴ but instead relied upon the "specific requirements of the review outlined by the ROC Collaborative Committee."³⁵

Qwest also has the ability to reduce its payments under the PAP by improving performance. In fact, Qwest's overall performance has improved over time.³⁶ Those situations when Qwest has performed satisfactorily in the past may be strong evidence that the PAP is working as intended and no changes are necessary, while consistent poor performance and unmeasured performance in problem areas indicate that further investigation and PID/PAP development is necessary.³⁷ Consistent poor performance likely indicates that the automatic incentives built into the PAP are not sufficient to incent Qwest's performance and thus need to be updated.

Liberty Report Recommendations

Note, Recommendation 8 and Recommendation 9 apply only to Colorado and Recommendation 10 applies only to Montana. These recommendations are not commented on here.

Recommendation 1. Low Volume Adjustments

The Liberty Report recommends adjustments to the PAP to improve upon performance tests in instances of low volumes.³⁸ Integra generally supports changes to the PAP that will improve upon the measure of Qwest's performance and thus the mechanisms to incent performance. Qwest and a number of CLECs undertook such an effort as part of the Joint Stipulation. The Joint Stipulation modified the PAP to allow for one allowable miss for benchmark and non-interval parity measures. In situations when volumes are low, there are

Qwest, rather than to an industry group such as Liberty Consulting or another group including state commission staffs, is contrary to the notion of outside review of these plans.

³³ Liberty Report, pp. 14-15.

³⁴ Liberty Report, p. 20.

³⁵ Liberty Report, p. 20.

³⁶ Liberty Report, pp. 25 and 39.

³⁷ See also Liberty Report, p. 55.

³⁸ Liberty Report, pp. 62-65.

cases when the only chance that Qwest has to meet its performance standard is to have perfect performance for a CLEC for a particular measure. For example, assume a benchmark of 90%, but a CLEC volume of 5. A single miss would result in 80% performance, which fails the standard. While this single miss is most likely customer impacting for the CLEC whose performance was missed, Qwest was provided no margin of error. There are a substantial number of product disaggregations in the PIDs and PAP that are crucial products, but have low enough monthly order volumes that perfect performance became the standard. The result is that stipulating CLECs agreed to a one allowable miss in cases when perfect performance would otherwise be required. In order to assure that Qwest's incentives to meet its standards remain, Qwest must first meet the benchmark or non-interval standard at the aggregate CLEC level before the one allowable miss provision can be applied. This assurance was built in for cases to protect CLECs from the case when Qwest was performing poorly for the CLEC community as a whole, but would otherwise be exempted from incentive payments because of the one allowable miss standard.³⁹

The Liberty Report noted that “[d]espite these changes, Liberty observed that there continue to be very frequent low-volume situations that are not accounted for in these changes.”⁴⁰ As a result the Liberty Report recommends “a new aggregation mechanism to minimize low-volume tests in determining payments.”⁴¹ Integra supports these changes.

Recommendation 2. Additions to Reinstatement/Removal Process

The Liberty Report recommends that measures currently on the Reinstatement/Removal list should remain on the list⁴² and that six additional measures were recommended “as additions to the Reinstatement/Removal list.”⁴³

The Colorado 3-Year Review and the Joint Stipulation created a reinstatement/removal process that allowed Qwest to remove certain PIDs from being subject to PAP payments, but allowed for the PID to be reinstated to be subject to PAP payments if Qwest's performance for those PIDs deteriorated to a certain level.

Products should be removed from measure and/or payment with extreme caution. Strong performance by Qwest in many of the PID categories is an indication that the PAP is working as intended. The PAP is intended to provide incentives to Qwest for good wholesale service performance. In retrospect, the reinstatement provisions created too high a hurdle, such that it is unlikely these measures would ever be reinstated even if Qwest's performance deteriorated consistently over an extended period of time. The reinstatement process (see section 3.3 of the

³⁹ See also Liberty Report, pp. 62-63.

⁴⁰ Liberty Report, p. 63.

⁴¹ Liberty Report, p. 85.

⁴² Liberty Report, pp. 66-67. The measures are GA-3, GA-4, GA-7, PO-2B, PO-3, PO-5D, PO-7, PO-8, PO-16, OP-7, OP-17, MR-11, BI-4, NI-1, NP-1 and CP-3. The Liberty Report recognized that five of these measures (PO-2B, PO-3, PO-7, OP-17, and BI-4) would have continued to generate payments if not on the Reinstatement/Removal list. (Report, p. 66.)

⁴³ Liberty Report, p. 69. The measures are PO-9, PO-19, PO-20, CP-1, CP-2, and CP-4.

PAP) requires Qwest's performance to fail to meet the standard, at the aggregate CLEC level, for three consecutive months. This means that Qwest could consistently fail the standard for a number of CLECs, as long as they met the measure for CLECs as a whole. This means Qwest could consistently miss the standard for a particular CLEC without the automatic incentive mechanisms built into the PAP to rectify the problem. The three consecutive month standard in the PID context also means that Qwest could fail to meet the standard up to eight times a year and not have the measure reinstated into the payment mechanism of the PAP.

There is value in the PIDs and PAP as a whole. For example, if you cannot expand to new markets in a timely fashion; access Qwest's gateway for ordering, perform pre-order and ordering steps; and verify billing, the CLEC's ability to effectively enter the market and obtain customers would be eliminated. On the other hand, the ability to enter markets and obtain customers is worth very little if you can not install and provide quality service to the customer. Individual PIDs should not be looked at in isolation but rather considered with respect to the entire set of PIDs and the PAP. CLECs recently undertook this evaluation as reflected in the Joint Stipulation process and resulting agreement. As part of the process leading to the Joint Stipulation, both PIDs and products were reviewed to determine what changes, if any, could be made to the PIDs and PAP. Substantial changes were made through the creating of the reinstatement/removal process and the elimination of a number of product disaggregations.

For example, Integra's relationships with its customers extend beyond simply turning up a service, but also rely upon accurate and timely communication between Integra and its customers. Jeopardy notices (PO-9 – Timely Jeopardy Notices) impact the communication and expectations set between the CLEC and the customer and, as a result, impact the CLEC's ability to compete with Qwest. CLECs rely upon timely jeopardy notices to both set customer expectations and to plan the CLEC's workforce to ensure that service is delivered as expected. In addition, Qwest uses the jeopardy notices to indicate to the CLEC that the CLEC or the CLEC's customer must perform work, such as adding conduit, in order to make the customer ready. Timely receipt of these notices can be used to ensure that an end-user customer is provisioned on time. The CLEC's ability to maintain a credible relationship with its customer impacts its ability to both obtain and maintain customers.

Another example is CP-1 – Collocation Completion Interval. This measure captures a CLEC's ability to timely enter a market. The performance measure and incentive mechanisms remain important in order for the CLEC to effectively compete with Qwest. Once a decision is made to enter a market, delays can be costly, as the process of marketing to customers starts in advance of facilities being completed. Delays also provide competitors more time to respond to a new entrant potentially limiting the effectiveness of the CLEC's entry into the market. Delays retard a CLEC's ability to make full use of its large investment in switching facilities. A CLEC's investors and lenders look at, among other factors, the CLEC's ability to generate revenue from each dollar of capital invested. Delay in completing collocations renders this ratio lower than it otherwise would be. Most important, delays hurt consumers by limiting consumer choice. A CLEC's acquisition product set does not necessarily mirror what is available from the Incumbent Local Exchange Carrier ("ILEC").

Integra opposes expanding the list of PIDs subject to the Reinstatement/Removal process without first adjusting the reinstatement mechanism.

Recommendation 3. OP-5 and ISDN-BRI

The Liberty Report recommends including the diagnostic measure OP-5T in the PAP (subject to a parity standard) and removing the measures OP-5A and OP-5B from the PAP. OP-5A measures new service installation quality reported to repair, while OP-5B measures new service installation quality reported to provisioning. OP-5T is a combination of OP-5A and OP-5B. The Liberty Report makes this recommendation because of the low volumes associated with OP-5B.⁴⁴

While the distinction between troubles reported to repair and troubles reported to provisioning is important, Integra is not opposed to using OP-5T in the PAP as long as OP-5A and OP-5B continue to be reported.

The Liberty Report also recommends that wholesale products that are measured as parity to Qwest's retail ISDN-BRI be measured by a different standard – a different Qwest retail product or a benchmark standard.⁴⁵ This is because Qwest's ISDN-BRI product "rarely has any order volumes" thus in effect no standard applies.

Integra supports this recommendation and recommends the use of a benchmark for these measures. Most interconnection agreements contain an installation interval commitment for the loops that are compared with Qwest's retail ISDN-BRI of five days.⁴⁶ Qwest's installation interval could be used as the benchmark.

Recommendation 4. Low-Volume Products

The Colorado Three-year review and the Joint Stipulation removed a number of product disaggregations from the PAP. Certain product disaggregations, with low volumes, were removed from OP and MR PAP payment obligations, though Qwest would continue to report on these PIDs. The Liberty Report proposes to expand this list to include unbundled DS-3 Loops, UDIT – Above DS-1, Unbundled 4-Wire Non-Loaded Loops, Loops with Conditioning, Unbundled ISDN Capable Loops and Line Sharing.⁴⁷

As with the Reinstatement/Removal process, products should be removed from measure and/or payment with extreme caution. The additional products identified in the Liberty Report were carefully considered by CLECs as part of the Joint Stipulation. Because developing technology can change the types of loops ordered and relied upon by CLECs, CLECs were reluctant to remove the products listed. The product ADSL capable loops is a good example. This product was removed during the Colorado Three-Year Review because of low order

⁴⁴ Liberty Report, p. 76.

⁴⁵ Liberty Report p. 77.

⁴⁶ For example, see Exhibit C, Service Interval Tables, to Qwest's Statement of Generally Accepted Terms ("SGAT"), p. 1

(<http://www.qwest.com/about/policy/sgats/SGATSDocs/northDakota/North+Dakota+6th+Revised+SGAT+Exhibit+C+5-30-02+clean.pdf>).

⁴⁷ Liberty Report p. 79.

volumes, but since that time its volumes have dramatically increased and it was not removed as part of the Joint Stipulation.⁴⁸

Because of changes to the mechanism for calculation payments for low volume products (i.e. one allowable miss), there is no harm to including a low volume product in the PAP. There will be no payments if Qwest's performance meets the standard or if no volumes exist. However, elimination of a measure, and thus the performance protections associated with that measure, from the PAP that subsequently becomes important to a CLECs business can harm the CLEC if Qwest's performance is sub-par. The PAP is a dynamic process automatically adjusting to changes in demand for a product, only if that product is included in the PAP. For these reasons, Integra opposes removal of the additional measures identified as low volumes.

Recommendation 5. MR-4 and Diagnostic Submeasures

The Liberty Report makes a number of recommendations to PID definitions, including MR-4, "all troubles cleared within 48 hours," OP-4, "installation interval", MR-7, "repair repeat trouble rate" and OP-3, "installation commitments met."⁴⁹

MR-4 – "All Troubles Cleared within 48 Hours"

MR-4 currently reports the number of troubles, both out of service and service affecting, cleared within 48 hours. MR-3 reports the number of out of service troubles cleared within 24 hours. Because MR-4 includes the troubles contained in MR-3 (out of service) plus service affecting troubles the Liberty Report recommends that out of service troubles be removed from the MR-4 measures.⁵⁰ A similar measure, MR-5, measures all troubles cleared within 4 hours. MR-3 and MR-4 applies to 2-wire loops, while MR-5 applies to DS1 loops.⁵¹

Integra supports the Liberty Report Recommendation. This will allow parties along with this Commission to more easily monitor Qwest's repair of service affecting conditions. Currently the PAP only contains MR-3, but does not include MR-4. As a result, service affecting troubles for 2-wire loops that do not result in an out of service condition are currently not a part of the PAP. A separate measure of service affecting conditions that excludes out of service conditions, will allow parties to more easily determine whether this measures should be added to the PAP.

⁴⁸ Liberty Report, p. 81.

⁴⁹ Liberty Report, pp. 82-83 and 88.

⁵⁰ Liberty Report p. 82.

⁵¹ These measures apply to additional products as well. The products contained in MR-5 are different from those contained in MR-3 and MR-4.

OP-4 – “Installation Interval”

The Liberty Report recommends the creating of a new diagnostic sub-measure “regarding Qwest’s ability to install service on a reduced interval in circumstances that call for it.”⁵² This recommendation is consistent with a recommendation by the Commission Staff in Arizona. In the Qwest-Eschelon interconnection agreement (“ICA”) Section 252 arbitration in Arizona,⁵³ the Arizona Staff concludes that:

[T]here are no current requirements in the Qwest Performance Assurance Plan that specifically address the expedite process. Therefore, there are no performance measurements or benchmarks. The Qwest Performance Assurance Plan (“PAP”) incorporates performance measurements that ensure Qwest’s service performance to competitors can be measured and monitored so that any degradation of the agreed upon level of service is detected and corrected. Performance measurements were developed in the 271 collaborative workshops. Each of the measurements have been given a precise definition, called a Performance Indicator Definition (“PID”), that includes specification of the unit of measure, the data to be utilized in the measurement, and the standard. The standard may be a parity comparison of CLEC service performance with the Qwest retail analogue. When no retail analogue exists the standard is a benchmark.⁵⁴

MR-7 – “Repair Repeat Trouble Rate”

MR-8 reports the trouble rate by evaluating “the overall rate of trouble reports as a percentage of the total installed base of the service or element.”⁵⁵ MR-7 reports repeated troubles by evaluating “focusing on the number of repeated trouble reports received for the same line/circuit within a specified period (30 calendar days).”⁵⁶ A repeated trouble report is defined as: “Any trouble report that is a second (or greater) report on the same telephone number/circuit ID and at the same premises address within 30 days. The original report can be any category, including excluded reports, and can carry any disposition code.”⁵⁷ What is missing from the PIDs, and is of serious customer impacting concern, is a measure of chronic troubles. Chronic troubles would be trouble reports greater than a second report for the same service to the same customer within a fixed time frame. For chronic troubles, the time frame should not be limited to 30 days as the situation can exist over extended periods of time.

⁵² Liberty Report, p. 82.

⁵³ *In re. Petition of Eschelon Telecom, Inc. for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b)*, Docket No. T-03406A-06-0572; T-01051B-06-0572. The citations to the record in the following footnotes in this response are to the record in this case.

⁵⁴ Hrg. Ex. S-1 (Staff Testimony), p. 32, line 23 – p. 33, line 10.

⁵⁵ Qwest North Dakota SGAT Sixth Revision, Seventh Amended Exhibit B (“North Dakota PID Document”) regarding MR-8, p. 71.

⁵⁶ North Dakota PID Document regarding MR-7, p. 68.

⁵⁷ North Dakota PID Document Repeat Report definition, p. 102.

While repeat troubles are an important issue that should not be ignored, chronic troubles consistently adversely impact customers over a more extended period of time and can cause extensive harm to a CLEC's reputation. The Liberty Report recommends the addition of a diagnostic measure for chronic troubles noting, "it is possible that the repeat trouble report metric is missing an important component of reporting on chronic troubles that may be indicative of faulty facilities, other network problems and/or Qwest repair process problems."⁵⁸

Integra supports the Liberty Report recommendation to create a new diagnostic measure for chronic troubles.⁵⁹

OP-3 – "Installation Commitments Met"

The Liberty Report recommends that a new diagnostic measure be introduced to measure "the percent of coordinated appointments that Qwest is able to meet."⁶⁰ As the Liberty Report notes, CLECs pay higher non-recurring installation charges for coordinated installation.⁶¹ Failure to meet this appoints imposes a cost upon CLECs and thus CLEC customers as CLEC resources are dedicated to the coordinated installation process which costs both money and the time that the resources could be dedicated to other activities.

Section 9.2.2.9.3 of the North Dakota SGAT⁶² contains the following provision, which calls for Qwest to waive non-recurring charges in the event that it misses a scheduled appointment:

Coordinated Installation with Cooperative Testing. Coordinated installation with cooperative testing may be ordered for new or existing service. For both new and existing service, CLEC must designate a specific "Appointment Time" when it submits the LSR. On the Due Date (DD), at CLEC designated "Appointment Time", the Qwest Implementor/Tester contacts CLEC to ensure CLEC is ready for installation. If CLEC is not ready within thirty (30) minutes of the scheduled appointment time, then CLEC must reschedule the installation by submitting a supplemental LSR for a new Due Date and appointment time. If Qwest is not ready within thirty (30) minutes of the scheduled appointment time, Qwest will waive the nonrecurring charge for the installation option, and the Parties will attempt to set a new appointment for the same day. If Qwest fails to perform cooperative testing due to Qwest's fault, Qwest will waive the nonrecurring charge for the installation option. If CLEC still desires cooperative testing, the

⁵⁸ Liberty Report, pp. 82-83.

⁵⁹ Liberty Report p. 83.

⁶⁰ Liberty Report p. 83.

⁶¹ Liberty Report p. 83.

⁶² A copy of the North Dakota SGAT is available at:
<http://www.qwest.com/about/policy/sgats/SGATSDocs/northDakota/North+Dakota+6th+Revised+SGAT+Clean+5-30-02.pdf>.

Parties will attempt to set a new appointment time on the same day and, if unable to do so, Qwest will issue a jeopardy notice and a FOC with a new Due Date.

A new diagnostic measure will aid parties in determining whether provisions, such as contained in the North Dakota SGAT, are providing Qwest with the proper incentive to meet its appointments. Integra supports the Liberty Report recommendation.

Recommendation 6. Cost of PAP Administration Functions

Recommendation 6, the Liberty Report uses language from the Colorado PAP as an example of the standard that should be used in other states to assure that states have the resources available to them to monitor the PAP.⁶³ Integra also does not take a position on the recommendation as this Commission is in a better position to determine the necessity of this provision.

Recommendation 7. EDI and XML

In Colorado, Utah and Washington, Qwest agreed to changes that consisted of updating the PID to address the retirement of the Electronic Data Interchange (EDI) interface and its replacement with the Extensible Mark-up Language (XML) interface and making such other related PID and PAP changes. Attachment 1 contains a December 15, 2008 letter from Qwest to the Utah Public Service Commission⁶⁴ agreeing to make these changes and describing these changes in detail. Integra supports this recommendation.

Conclusion and Recommendations

Qwest's gain from poor wholesale service performance translates directly to CLEC 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 is placing a lower bound on the gains it receives, which are the harms suffered by the CLEC.

The end user customer demands reliable service and values when commitments are kept. The end user customer rarely has the patience to take sides 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.

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

⁶³ Liberty Report, pp. 83 and 89.

⁶⁴ *In the Matter of Qwest Corporation's Petition to Open a Six-Month Review Under Section 16.1 of the Utah Performance Assurance Plan*, Docket No. 08-049-50, December 17, 2008. (<http://www.psc.state.ut.us/utilities/telecom/telecomindx/0804950indx.html>).

greater now than ever before, especially as Qwest gains greater regulatory flexibility in its own retail offerings.

Integra generally supports the review, analysis and recommendations contained in the Liberty Report. Competition and thus consumers in North Dakota will be well served by generally adopting the recommendations outlined in the Liberty Report, subject to the discussion described above.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Gregory Zeller / for".

Dated: September 29, 2009.

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