



2. The TWTC and XO ICAs do not include such a requirement or authorization.

Section 16.1.1 of the QPAP incorporated into those ICAs provides,

If any agreements on adding, modifying, or deleting performance measurements as permitted by section 16.1 are reached between Qwest and CLECs **participating in an industry Regional Oversight Committee (ROC) PID administration forum**, those agreements shall be incorporated into the QPAP and modify the agreement between CLEC and Qwest at any time those agreements are submitted to the Commission, whether before or after a six-month review. (Emphasis added.)

The Stipulation is not an agreement resulting from participation in a ROC performance indicator definition (“PID”) forum. Indeed, the ROC had no role whatsoever in developing the Stipulation’s proposed changes to the QPAP. The ICAs thus do not authorize automatic incorporation of agreements between Qwest and other CLECs. To incorporate the Stipulation into Qwest’s ICAs with TWTC and XO, Qwest must negotiate an amendment to those ICAs with TWTC and XO, just as Qwest would be required to do to make any other change to those ICAs.

3. TWTC and XO understand that the QPAP is intended to be a single set of performance indicators, measures, and self-executing remedies applicable to all CLECs that have incorporated the QPAP into their ICAs. Qwest has failed to recognize, however, that the QPAP was developed through a collaborative effort with state commissions and interested CLECs, and the QPAP expressly contemplates that changes to that plan will be developed through a comparable collaborative process. Section 16 of the QPAP governs periodic reviews of the QPAP, including any modifications, and states that Qwest, CLECs, and the Commission shall participate in such reviews. No such joint review has taken place with respect to the changes reflected in the Stipulation. Section 16.1 of the QPAP, moreover, provides, “After the Commission considers changes

proposed in the six-month review process, it shall determine what set of changes should be embodied in an amended [Statement of Generally Available Terms (“SGAT”)] that Qwest will file to effectuate these changes.” The Stipulation thus could be the starting point for the collaborative review required by the QPAP, but it cannot be considered the final product, as Qwest has proposed.

4. The procedural posture of this proceeding is further complicated by two other factors. First, the QPAP limits consideration of suggested changes to the QPAP (other than “highly exigent” changes) to the biannual review of the QPAP by Qwest, CLECs, and the Commission, but no such biannual review process has occurred. Second, Qwest no longer maintains an SGAT in Washington and thus the vehicle for reflecting uniform changes to the QPAP no longer exists. TWTC and XO would not object to Commission consideration of the Stipulation as the initial proposal in the collaborative review process contemplated by the QPAP, given that a biannual review is long overdue. TWTC and XO, however, do object to incorporation of the Stipulation into their ICAs without either the required review process or an individually negotiated amendment to their ICAs.
5. If the Commission initiates the collaborative review process contemplated in the QPAP, the issues should not be limited to those raised in the Stipulation. Most obviously, the Commission, Qwest, and interested CLECs should also consider revisions to Section 16 of the QPAP to reflect the absence of an SGAT and to modify the frequency (and perhaps existence) of the periodic QPAP review. This collaborative review should also include any changes required to the QPAP to reflect Qwest’s agreement with the wholesale service quality conditions in Commission Orders 06, 08, and 09 in Docket No. UT-061625 (the Qwest AFOR proceeding), including but not

necessarily limited to the extended expiration date of the QPAP and any changes necessary to apply the QPAP's coverage to other wholesale services.

6. TWTC and XO also have substantive concerns. TWTC and XO understand that some of the QPAP changes in the Stipulation will result in a reduction in the amount of payments these CLECs (and the State) have received in the past. TWTC and XO would welcome smaller QPAP payments if that reduction is attributable to better service quality from Qwest. Indeed, TWTC and XO look forward to the day when they receive no payments under the QPAP because Qwest is providing service at full parity with its retail service and at or above the benchmark levels established in the QPAP.
7. On the other hand, reduced QPAP payments are not appropriate without a tangible demonstration that Qwest's wholesale service quality has improved or is not reasonably likely to deteriorate. Section 16.1 of the QPAP establishes, for example, "Criteria for review of performance measurements, other than for possible reclassification, shall be whether there exists an omission or failure to capture intended performance, and whether there is duplication of another measurement." Other than some conclusory statements in Qwest's Narrative in Support of Settlement Agreement ("Narrative"), Qwest has not even attempted to demonstrate that the aspects of the Stipulation that would reduce Qwest's liability under the QPAP are warranted under these criteria or that the resulting reduced payments will provide Qwest with sufficient incentive to ensure adequate service quality to CLECs. The Commission should not adopt any of these proposed changes until Qwest has made such a showing.
8. TWTC and XO support at least one aspect of the Stipulation. As described on page 7 of the Narrative, "certain PIDs are removed from the PAP subject to Qwest's

continued obligation to report its performance on the measures and track avoided payments. If Qwest subsequently falls below set performance metrics for the PIDs, they will be reinstated with retroactive payments for the three months causing reinstatement.” Even if Qwest makes an adequate demonstration that the Stipulation will not adversely impact Qwest’s performance, such a showing necessarily would require predictive judgment. To verify that judgment, Qwest should continue to track its performance under both the revised and the former QPAP provisions, and consistent with the self-executing nature of the QPAP, the prior provisions of the QPAP should be reinstated automatically if Qwest’s performance declines under the revised provisions. This requirement, however, should be applied to *all* QPAP revisions, not just to the removal of certain PIDs.

#### CONCLUSION

9. For the reasons stated above, TWTC and XO recommend that the Commission not adopt the QPAP changes in the Stipulation but initiate a collaborative review process to consider those changes and other possible revisions to the QPAP. At a minimum, the Commission should not adopt the Stipulation unless and until Qwest demonstrates that the proposed changes will not adversely impact the service quality it provides to CLECs.

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DAVIS WRIGHT TREMAINE LLP  
Attorneys for Time Warner Telecom of  
Washington, LLC, and XO Communications  
Services, Inc.

By \_\_\_\_\_  
Gregory J. Kopta