BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of QWEST CORPORATION Petition for Commission Approval of Stipulation Regarding Certain Performance Indicator Definitions and Qwest Performance Assurance Plan Provisions.	DOCKET NO. UT-073034 COMMISSION STAFF'S INITIAL COMMENTS

1 In accordance with the Commission's August 23, 2007, Prehearing Conference Order, Commission Staff submits its initial comments on the Petition for Approval of Stipulation Regarding Certain Performance Indicator Definitions and Qwest Performance Assurance Plan Provisions.

2 Qwest and the stipulating competitive local exchange carriers (CLECs) propose various changes to Qwest's Performance Assurance Plan (QPAP or PAP) and to the associated Performance Indicator Definitions (PIDs). Staff recommends that the Commission approve those changes that are justified by changed circumstances, but reject others that reduce, without meaningful justification, Qwest's liability for failing to provide its competitors with wholesale service that is at least equal in quality with that it provides itself. Changes in the latter category are inconsistent with (1) the anti-backsliding objectives that informed prior Commission orders regarding the PAP and (2) Qwest's recent commitment to have in place standards or performance measures that ensure wholesale service quality for the term of its alternative form of regulation (AFOR).

I. PROCEDURAL BACKGROUND.

3 Qwest Corporation and four CLECs filed with the Commission a stipulation regarding various proposed modifications to Qwest's Performance Assurance Plan (PAP) and Performance Indicator Definitions (PIDs). The PAP and PIDs are included as exhibits to Qwest's Statement of Generally Available Terms (SGAT) and to numerous interconnection agreements between Qwest and various CLECs.

4 Qwest, and the stipulating CLECs, seek to have the Commission "approve the 2007 stipulation describing proposed changes to the PAP and the PID, apply the agreed upon changes to any interconnection agreements containing the PAP, and also allow the PID to go into effect no later than 60 days after this submission in accordance with 47 U.S.C. § 252(f)(3)."[1]

5 Staff and the non-stipulating CLECs (who have intervened in this proceeding) believe that the 60-day deadline does not apply to this filing. Qwest asserts that it does. During an August 21, 2007, prehearing conference, Qwest proposed to defer argument and decision on the issue of the application of the 60-day review period. Qwest agreed to waive the statutory deadline (if applicable) until November 30, 2007, to allow the parties time to fully investigate the stipulation and provide an opportunity for parties to file initial comments and responses concerning the stipulation. Accordingly, a schedule was established, providing for initial and responsive comments on the merits of the proposed changes to the PAP and PIDs.

6 Additionally, during the prehearing conference, Judge Rendahl directed Qwest and the stipulating parties to file with the Commission documentation "to demonstrate to the

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[1] Qwest Petition for Approval of PID/PAP Stipulation, ¶ 5.

commission that the proposal is consistent with the law and the public interest and that it is appropriate for adoption" as required by WAC 480-07-740(2). Qwest and the stipulating CLECs filed documentation on September 12, 2007.

II. PRIOR RELEVANT COMMISSION PROCEEDINGS.

A. Commission Orders Establishing Qwest's Washington PAP.

7 This Commission has sometimes characterized its actions with regard to the PAP (and the PIDs that contain the performance standards) as a matter of "approving" those documents as exhibits to the SGAT.[2] However, the PAP and PIDs aren't merely voluntary offerings by Qwest, nor are they just a contract between Qwest and the CLECs.[3] Together, they constitute a wholesale service quality requirement that, along with the PAPs of the thirteen other states in Qwest's territory, "are administered by state commissions and derive from authority the states have under state law. . . ."[4] They serve as a complement to the FCC's authority to preserve Qwest's compliance with the competitive checklist of 47 U.S.C. § 271(c)(2)(B) (*i.e.*, to prevent "backsliding" in Qwest's wholesale provisioning), after

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[2] However, approving the QPAP as Exhibits B and K of the SGAT has typically been handled as a kind of compliance filing *after* Commission has already ordered or agreed to a change in some aspect of the QPAP. In its 30th Supp. Order in Docket UT-003022 and UT-003040 (consolidated), at ¶ 109, this Commission concluded that it has "independent authority to review Qwest's overall service quality" and that it "will not relinquish its authority over service quality, nor is it required to do so in approving the QPAP." *See fn.10, infra. See also,* UT-033020 Order No. 08 (also UT-043010 Order no. 01) (approving Qwest's petition to modify QPAP in response to Washington's 6 month review and compliance filing in response to Long Term PID Administration recommendation – multistate group); UT-043007 Order No. 07 (also UT-043068 Order No. 01) (approving Qwest's petition to modify QPAP in response to Long Term PID Administration recommendation – multistate group); UT-043007 Order No. 10 (also UT-043088 Order No. 01) (approving Qwest's petition to modify QPAP in response to settlement following litigation and hearing); UT-043007 Order No. 15 (also UT-043119 Order No. 01) (approving Qwest's petition to modify QPAP in response to Arizona's 6 month review).

[3] "The QPAP is not just a contract between Qwest and CLECs. The QPAP is Qwest's performance assurance plan through which it assures this Commission, competing carriers, and the FCC that Qwest will continue to adhere to the requirements of Section 271 after it obtains section 271 authority." 39th Supplemental Order, Dockets UT-003022 and UT-003040 (consolidated), ¶ 19 (July 1, 2002).

[4] *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,* 17 FCC Rcd 26303, ¶ 459 (Dec. 23, 2002).

Qwest's entry into the market for interLATA toll services.[5] Many, if not most, of the key elements of the Washington plan were specified by Commission orders in the docket in which the PAP was developed.[6]

8 The Washington plan starts with performance indicator definitions for specific actions that Qwest is expected to take on behalf of its wholesale customers. One example is restoration of service after an outage. The performance indicator for this action is known as "MR-6 – Mean Time to Restore," and is composed of about 30 product sub-measures broken down (or "disaggregated") by specific services like Resale Frame Relay, Unbundled ADSL-Qualified Loops, and E911/911 Trunks.

9 Each performance indicator has an established performance standard either in the form of a benchmark or, as in the restoration of service example, in the form of parity with Qwest's performance with respect to its own retail services. In order to determine whether Qwest's actions on behalf of its wholesale customers (*i.e.*, its retail competitors) is at parity with that which it provides for its own retail services, it is necessary to determine a "retail analogue"—that is, a service that Qwest offers at retail that is analogous to what the CLECs offer using wholesale inputs from Qwest. There must be a retail analogue for each product sub-measure. Again, in the restoration of service example, the retail analogue for an Unbundled ADSL-qualified Loop is currently Qwest DSL.[7]

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[5] In its Verizon *New York Order*, 15 FCC Rcd 4164, n. 1316, the FCC stated with regard to performance assurance plans: "These mechanisms are generally administered by state commissions and derive from authority the states have under state law or under the federal Act. As such, these mechanisms can serve as critical complements to the [FCC's] authority to preserve checklist compliance pursuant to section 271(d)(6)."

[6] *See* 30th Supp. Order (establishing QPAP); 33rd Supp. Order (responding to Qwest petition for reconsideration), 37th Supp. Order (addressing compliance with commission orders); 47th Supp. Order (Order 01, Docket UT-033020) (directing participation in multi-state collaborative), Dockets UT-003022 and UT-003040 (consolidated) (various dates).

[7] Qwest's proposal would change the retail analogue from Qwest DSL to ISDN BRI (designed).

10 The PAP specifies how automatic payments to both CLECs (Tier 1) and the state (Tier 2) will work if Qwest does not meet the performance standards set out in the performance indicator definitions. Performance that directly affects a specific CLEC results in a Tier 1 payment designation for a particular PID, while PIDs that are critical to a CLEC's ability to compete and PIDs that must be evaluated on a regional basis have a Tier 2 payment designation. Some PIDs have both Tier 1 and Tier 2 payments. The automatic payment amounts also vary with the relative importance of each performance measure, designating each PID as Low, Medium, or High through consideration of the value of services within the PID.

11 Tier 1 and Tier 2 payments are triggered monthly, because in 2002, the Commission specifically ordered Qwest to change a provision in its proposed PAP that would have required Tier 2 payments only after three consecutive months of non-performance, stating "We question whether sufficient Tier 2 incentives will exist if Qwest can fail to meet the performance standards one-third of the time or more without consequence."[8] In its 33rd order on reconsideration in the same docket, the Commission found that "a plan that allows Qwest to miss significant performance measures one-third of the time without consequence does not fall within the FCC's zone of reasonableness, as the plan does not create a meaningful and significant incentive to comply. Nor would the plan adequately detect and sanction poor performance when it occurs."[9] Among other proposed changes discussed below, Qwest and the stipulating CLECs now propose this same previously rejected provision (or a very similar one).

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[8] 30th Supp. Order, Dockets UT-003022 and UT-003044 (consolidated), ¶¶ 81, 86 (April 5, 2002).
[9] [Internal quotes and citations omitted.] 33rd Supp. Order, Dockets UT-003022 and UT-003044 (consolidated), ¶ 102 (May 20, 2002).

12 The PAP includes monthly reporting of performance data and payments to both CLECs and the Commission. There are also provisions for regional audits of performance measures or results and a requirement for six-month reviews of the performance measurements.[10] The changes proposed in this filing are complex enough that they could be characterized as a continuation of the six-month review process.

13 Staff believes the burden rests with Qwest to justify this and other changes based on changed circumstances or evidence that the existing provisions are not working as the Commission intended.

B. The AFOR Proceeding.

14 On March 6, 2007, in Docket No. UT-061625 (Qwest's request under RCW 80.36.135 for an alternative form of regulation, or AFOR) Qwest, Commission Staff, and various intervenors filed a multi-party Settlement Agreement and modified AFOR.

15 On July 24, 2007, the Commission entered Order 06 approving the modified AFOR, subject to conditions. The Commission found that the modified AFOR did not meet the requirement in RCW 80.36.135(3) for a carrier-to-carrier service quality plan, and required, among other conditions, that Qwest file an acceptable plan.

16 In response to Order 06, Qwest asserted that existing service quality requirements, including the QPAP, fulfill the statutory obligation of RCW 80.36.135(3).[11] Qwest stated that it is required under the QPAP to make payments to CLECs and the Commission for failure to provide service quality in parity to that it provides to its retail customers. Qwest asserted that the QPAP contains specific performance measures and self-executing remedies for failure to achieve those measures, thus fulfilling its purpose to serve as an anti-

[10] 30th Supp. Order, Dockets UT-003022 and UT-003044 (consolidated), ¶¶ 136-151 (April 5, 2002).
[11] Qwest's Submittal Regarding Carrier-to-Carrier Service Quality Provisions in the AFOR, pp. 1-2, Docket UT-061625 (July 31, 2007).

backsliding mechanism. Qwest argued that the QPAP ensures adequate service quality because it provides a monetary incentive to Qwest to provide good service and compensates wholesale customers who are impacted when service falls below a certain standard.[12]

17 Qwest acknowledged it had proposed modifications to the QPAP that are currently pending in this docket.

18 In its Order 08, the Commission observed that:

> Independent of any other federal or state requirements, an AFOR 'must include a proposal for ensuring carrier-to-carrier service quality, including service quality standards or performance measures for interconnection, and appropriate enforcement or remedial provisions in the event a company fails to meets those service quality standards or performance measures.' This provision of the statute is mandatory. The statutory standard is not simply a broad 'consistency with the public interest' test. Rather, an AFOR's proposed carrier-to-carrier service quality plan must include required elements (standards or performance measures and remedies) and 'ensure' wholesale service quality for the term of the AFOR.[13]

19 The Commission recognized that the current QPAP is effectively the only carrier-to-carrier service quality plan that covers the majority of products and services purchased by competitors.[14] The Commission then said it was not persuaded that the QPAP ensures adequate service quality within the meaning of the AFOR statute. The Commission found that the QPAP fails to ensure adequate service quality *while the AFOR will be in effect* because it is scheduled to expire on December 23, 2008.[15] Additionally, the Commission

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[12] *Id.* at pp. 2-3.
[13] *Order Accepting, Subject To Conditions, AFOR Carrier-To-Carrier Service Quality Plan And Granting Motion To File Reply To Comments*, Order 08, p. 5, Docket UT-061625 (Sept. 6, 2007).
[14] *Id.* at 6.
[15] *Id.*

noted "even prior to the QPAP's expiration, Qwest has proposed changes in the QPAP that would reduce the Company's carrier-to-carrier service obligations," citing this docket.[16]

20 Finally, the Commission was not persuaded that the QPAP ensures adequate service quality within the meaning of the AFOR statute because "it is only applicable to unbundled network elements, interconnection, collocation, and resale under interconnection agreements. This limitation does not ensure adequate carrier-to-carrier service quality for any other wholesale services competitors may use to compete with Qwest during the term of the AFOR."

21 Consequently, as a condition of its approval of the AFOR, the Commission required that:

- the QPAP must remain in place for the full four-year term of the AFOR, unless modified by the Commission;
- the QPAP must remain available to all wholesale carriers in its current form unless modified by the Commission;
- the QPAP terms and conditions must apply to all wholesale services provided by Qwest as a substitute for unbundled network elements during the term of the AFOR, unless the affected parties agree otherwise.

22 Of greatest relevance to this proceeding, the Commission stated in Order 08 that "[t]he statutory emphasis on the importance of these obligations as integral to any AFOR persuades us that any changes to the QPAP must be measured against the standards of RCW 80.36.135(3) before approval by the Commission."[17] On October 1, 2007, Qwest filed a letter with the Commission advising it that Qwest will proceed with the AFOR as approved

[16] *Id.* at 6-7.
[17] *Id.* at 7.

by the Commission in Orders 06, 08, and 09. Consequently, Qwest and the stipulating CLECs' proposal to amend the QPAP (and PIDs) must be considered not only under the anti-backsliding objectives that informed the Commission orders leading to its finding (and recommendation to the FCC) that Qwest had met the requirements of 47 U.S.C. § 271(c)(2)(B). The proposal also must be considered under Qwest's obligation under RCW 80.36.135(3) to have in place a plan "for ensuring adequate carrier-to-carrier service quality, including service quality standards or performance measures for interconnection, and appropriate enforcement or remedial provisions in the event a company fails to meets those service quality standards or performance measures."

III. STAFF'S ANALYSIS OF THE PROPOSED PAP CHANGES.

23 Qwest submitted a Narrative in Support of Settlement Agreement on September 12, 2007. Although Staff reviewed all the proposed changes, Staff restricts its comments to the changes with the most potential for significant impact. The following Staff analysis addresses the narrative's discussion about the potentially significant proposed changes to the Performance Assurance Plan (PAP) and Performance Indicator Definitions (PID) on a point-by-point basis.

- **Update the PID references to unbundled two-wire, non-loaded loop and unbundled ISDN capable loop disaggregations to reflect the retail analogue of "ISDN BRI (designed)."**

24 At the top of page six, Qwest's narrative explains the updating of the performance indicator definition references for certain product sub-measures (disaggregations) from the retail analogue "ISDN BRI" to "ISDN BRI (designed)." Adding "(designed)" to the product sub-measures addresses the concern raised by the Regional Oversight Committee auditor.

Staff supports this clarifying change because ISDN BRI (designed) represents [redacted] of Qwest's ISDN BRI traffic.

- **Remove the PIDs specified in the 2007 Stipulation from PAP payment mechanisms to the extent they currently are included in a specific state's PAP, subject to a Reinstatement/Removal process. Also, add a root cause analysis provision.**

25 On page seven, Qwest explains the addition of a Reinstatement/Removal Process as found in Colorado's PAP. This process would allow Qwest two consecutive months of non-conforming performance without making Tier 1 or Tier 2 payments for specific PIDs. If Qwest's performance in the third consecutive month was non-conforming, it would be required to reinstate the PID and make retroactive payments. Qwest's reporting obligations continue even when a PID has been removed under this process. Staff believes it could support the Reinstatement/Removal Process if (1) the performance indicators proposed for inclusion were those with a relative importance designation for Tier 1 of Medium or Low and (2) the PID had shown no payments in the last 12 months. However, six of the 14 performance indicators generated payments in the last year. Additionally, in its 30th supplemental order establishing the PAP, the Commission stated that the value of the services involved in one of the 14 PIDs was the basis for a High relative importance Tier 1 designation. Non-conforming service in high value products, by definition, impacts a CLEC's ability to compete. If a CLEC loses a high-value customer due to Qwest's non-conforming performance, Qwest may be aware of the non-conforming performance, the disconnection of the customer, and may be able to step in and serve that customer. Therefore, Staff opposes the inclusion of all but one of the PIDs for inclusion in the Reinstatement/Removal process because the remaining PIDs either have high importance, or have been the basis for payments over the prior 12 months, as illustrated below.

Table 1 - Staff Response to Performance Indicators Proposed for Reinstatement/Removal

PID	Description	Relative Importance	Payments – June 06-July 07	Staff Response
GA-3	Gateway Availability EB-TA	Tier 2 High Regional	Zero	OPPOSE
GA-4	System Availability EXACT	Regional	Zero	OPPOSE
GA-7	Timely Outage Resolution following Software Releases	Tier 2 High	Zero	OPPOSE
PO-2B	Electronic Flow-through	Tier 1 Low	Payments to CLECs were required in 10 of the last 12 months.	OPPOSE
PO-3	LSR Rejection Notice Interval	Tier 1 Low	Payments to CLECs were required in 6 of the last 12 months.	OPPOSE
PO-5D	Firm Order Confirmations (FOCs) On Time (ASRs for LIS Trunks)	Tier 1 Low Tier 2 Medium	Payments to CLECs were required in 3 of the last 12 months.	OPPOSE
PO-7	Billing Completion Notification Timeliness	Tier 1 Low	Payments to CLECs were required in 4 of the last 12 months.	OPPOSE
PO-8	Jeopardy Notice Interval	Tier 1 Low	Zero	SUPPORT
PO-16	Timely Release Notifications	Tier 2 High	Zero	OPPOSE
OP-17	Timeliness of Disconnects Associated with LNP Orders	Tier 1 High Tier 2 Medium	Payments to CLECs were required in 1 of the last 12 months.	OPPOSE
MR-11	LNP Trouble Reports Cleared within Specified Timeframes	Tier 1 High Tier 2 Medium	Zero	OPPOSE
BI-4	Billing Completeness	Tier 1 Low	Payments to CLECs were required in 2 of	OPPOSE

			the last 12 months.	
NI-1	Trunk Blocking	Tier 1 High Tier 2 High	Zero	OPPOSE
NP-1	NXX Code Activation	Tier 1 High Tier 2 High	Zero	OPPOSE

26 Also on page seven of its narrative, Qwest notes the addition of a root cause analysis provision. So far, Qwest has not described the root cause analysis methodology, nor has it provided an example of its use and projected outcome. In the absence of such support, Staff could not determine whether the addition of a root cause is needed. The language suggested in the proposed Exhibit K does not appear to allow the root cause analysis to be used to add performance indicators to the Performance Assurance Plan. If the Commission accepts the root cause analysis provision, it should be available for adding performance indicators as well as removing them.

- **Add exclusion to MR-6 PID that allows No Trouble Found (NTF) and Test Okay (TOK) trouble reports to be removed when the ticket's duration is one hour or less.**

27 Beginning on page seven of its narrative, Qwest describes adding an exclusion to "MR-6 Mean Time to Restore" that allows No Trouble Found (NTF) and Test Okay (TOK) trouble reports to be removed from the performance indicator and, therefore, also from the residential parity standard, when the ticket's duration is one hour or less. Modeling showed that when the same percentage of trouble reports under one hour were removed from CLEC (low volume) and ILEC (high volume) data, even though the CLEC performance indicator's absolute value increased, the residential parity value stayed about the same. Therefore, Staff does not oppose this change.

- **Change the standard for BI-3A PID to a 98 percent benchmark and add a provision to the PAP for the BI-3A PAP payment calculation, creating a tiered structure of per occurrence amounts and modifying the per measurement cap for the sub-measure.**

28 Page eight of Qwest's narrative describes a change in the standard for "BI-3A Billing Accuracy – Adjustments for Errors" from parity with retail billing to a 98 percent benchmark. It also describes a new payment calculation, creating a tiered structure of per occurrence amounts and modifying the per measurement cap for the sub-measure. As seen in the following table, aggregated Qwest performance provided to CLECs exceeds the performance Qwest provided to itself.

Table 2 – Excerpt of Aggregated Qwest Performance Results

Qwest. Spirit of Service®

EXCERT OF Performance Results
Washington
July 2006 - June 2007
Qwest's Performance Assurance Plans (PAPs)

PID Description	Month	CLEC Result	Q Result
BI-3A Billing Accuracy - Adjustments for Errors UNEs and Resale Aggregate Parity	June 2007	99.91%	99.66%
	May 2007	99.99%	99.43%
	April 2007	98.59%	99.53%
	March 2007	99.99%	99.37%
	February 2007	99.71%	99.06%
	January 2007	99.99%	99.40%
	December 2006	99.80%	99.65%
	November 2006	99.51%	99.43%
	October 2006	99.67%	99.57%
	September 2006	99.95%	99.49%
	August 2006	99.99%	99.09%
	July 2006	99.98%	99.61%

29 However, because payments are calculated based on individual CLEC results, payments to CLECs were still made. Staff analysis of the aggregated effect on individual

CLEC payments was an increase of $5000. *See Attachment 1.* Staff has requested individual CLEC performance results from Qwest to justify the change.

- **Add one allowable miss provision to the PAP for individual CLEC results when the CLEC aggregate results have met the standard.**

30 Also on page eight, Qwest describes the addition of a "one allowable miss" provision to the Performance Assurance Plan for individual CLEC results when the CLEC aggregate results have met the standard. Staff analysis of Washington data shows that this provision change would have reduced Qwest's liability to CLECs by 19 percent in the last year. *See Attachment 1.* "One allowable miss" would have reduced payments to 24 of the 27 companies affected by this change. Qwest has not provided any evidence allowing Staff to support this change. Therefore, Staff opposes the change.

- **Revise the PAP to change the flat minimum payment amounts of $300/$600 (MN) and $2000 (the remaining states, including Washington) with a tiered minimum payment approach that establishes a relationship between the monthly PAP payment and the required minimum payment amount.**

31 On page nine of its narrative, Qwest describes replacing the flat minimum payment amount of $2000 per non-conforming month with a tiered minimum payment approach that establishes a relationship between the monthly PAP payment and the required minimum payment amount. Staff analysis of Washington data shows that this change would have reduced Qwest's liability to CLECs by 23 percent last year. *See Attachment 1.* If a small company loses a customer because of Qwest's poor service, the loss of that customer represents a larger percentage of the small company's overall business. The minimum payment calculation is specifically designed to balance the higher impact of poor performance on companies with smaller operations. Staff suggests, as an alternative to reducing the minimum payment amount, that the Commission establish a different threshold

for determining which companies may be eligible for minimum payments. For example, eligibility could be restricted to companies with less than one percent of the number of access lines reported to the Commission on the annual report, or, as in Colorado, to companies in their first three years of business.

- **Remove the following list of product disaggregations from all applicable OP and MR PIDs in the 13 state PAPs: Resale Centrex, Resale Centrex 21, Resale DS0, E911/911 Trunks, Resale Frame Relay, Resale Basic ISDN, Resale Primary ISDN, Resale PBX, Sub-loop Unbundling, UNE-P POTS, UNE-P Centrex and UNE-P Centrex 21.**

32 At the top of page 10, Qwest's narrative describes the removal of certain product sub-measures from all applicable Ordering/Provisioning and Maintenance/Repair performance indicators. Qwest states that these products have minimal to non-existent demand. Staff is concerned that these product sub-measures have not been analyzed against the Low-volume, Developing Markets criteria in Section 10 of the PAP, identifying new modes of CLEC entry into developing markets. Staff has asked for supporting information from Qwest.

- **Adopt the Montana Tier 2 provision to modify Sections 7.3 and 9 of the PAP such that Tier 2 payments will be based on the number of performance measurements exceeding critical z-value for three consecutive months unless there have been two misses in any three consecutive months during the past 12 months. If there have been two misses in any three consecutive months during the last 12 months, Tier 2 payments will be triggered by either two additional consecutive months' misses (for PIDs that are classified as both Tier 1 and Tier 2) or the current month's miss (for PIDs that are Tier 2 only).**

33 It is significant that Qwest proposes a change in the way Tier 2 payments (for which Qwest is liable when it fails to meet performance standards) are triggered. Currently, if Qwest fails to meet a standard in a given month, it is liable for payments for that month. Under the proposal, Qwest would not be liable for payments unless it failed to meet a given standard for three consecutive months.

34 Specifically, payments would be based on the number of performance misses for three consecutive months unless there have been two misses in any three consecutive months during the past 12 months. If there have been two misses in any three consecutive months during the last 12 months, Tier 2 payments would be triggered by either two additional consecutive months' misses (for performance indicators that are classified as both Tier 1 and Tier 2) or the current month's miss (for those that are Tier 2 only). Staff review of the Montana Tier 2 payments confirmed that this calculation method results in very low Tier 2 payments.

35 A thorough review of the 14 performance assurance plans in effect in Qwest's region found that seven of the 14 states used some variation of the three consecutive misses to trigger payments to states. Qwest's narrative provides the following justification for changing Washington's Tier 2 payments:

> In all the other states where Qwest pays Tier 2 payments consistent with the structure it has proposed in the Settlement for Washington, Qwest states that its performance is comparable to that in Washington, indicating that the higher Tier 2 payments in Washington do not create materially better performance than in other states that already operate under the proposed Tier 2 structure...[18]

36 Staff has requested the background evidence for Qwest's statement. However, since half the states have the same monthly performance miss to trigger payments as Washington does, Staff suggests it is just as likely that the more frequent payment triggers have driven the good performance throughout the region. Staff also found that Qwest has not sought to change either the Colorado or the Minnesota performance assurance plans to include the three consecutive month trigger that it has proposed in Washington.

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[18] Qwest Narrative, p. 11.

37 Qwest would enjoy as much as a 56 percent reduction in liability for failing to meet performance standards, based on information that Qwest provided in response to Staff's data requests (even after adjusting for the removal of delisted UNEs). *See Attachment 1*. As Qwest observed in its filing under the AFOR, the self-executing remedies are intended to keep Qwest's performance at a high level. Staff is concerned that the three-consecutive-month-trigger reduces Qwest's incentive to meet the performance standards set out in the PIDs.[19] Staff finds no basis to make such a change.

- **Eliminate six-month cap on Tier 1 escalation payment amounts so that payments will continue to increase in the event the payment level indicator increases beyond payment level 6.**

38 On page 12, Qwest's narrative describes the elimination of the six-month cap on Tier 1 escalation payment amounts so that payments will continue to increase in the event the performance misses continue after month six. Unlike the three consecutive month trigger, the one allowable miss, and the minimum payment change, Staff found that eliminating the six-month cap on escalation payments would have had no effect on Qwest's liability in the last year. Staff does not oppose the change, but Staff does not believe the change has much practical effect.

IV. VALIDATION OF STAFF'S ANALYSIS FROM OTHER PERFORMANCE MEASURES.

[19] In the FCC's order approving Qwest's application to provide in-region, interLATA toll services in Washington and eight other states, the FCC stated:

> We conclude that the nine application states' respective PAPs provide incentives to foster post-entry checklist compliance. As in prior section 271 orders, our conclusions are based on a review of several key elements in the performance remedy plan: *total liability at risk in the plan*; performance measurement and standards definitions; structure of the plan; self-executing nature of remedies in the plan; data validation and audit procedures in the plan; and accounting requirements. . . . The PAPs include provisions for continuing review of the PAP by the state commission. [Emphasis added.]

17 FCC Rcd 26303, ¶ 455 (Dec. 23, 2002).

39 During its analysis of the proposed performance assurance plan changes, Staff reviewed the Federal Communications Commission's most recent service quality report. Although the report mentions several trends in improving service quality, Staff was concerned by the report's finding that there is a statistically significant increase in length of repair interval for the industry. Staff prepared the following chart and table[20] to illustrate Qwest's declining performance in this area, based on the few wholesale services found in the FCC's report. This is the very reason continued monitoring of the PAP is important in this competitive era.

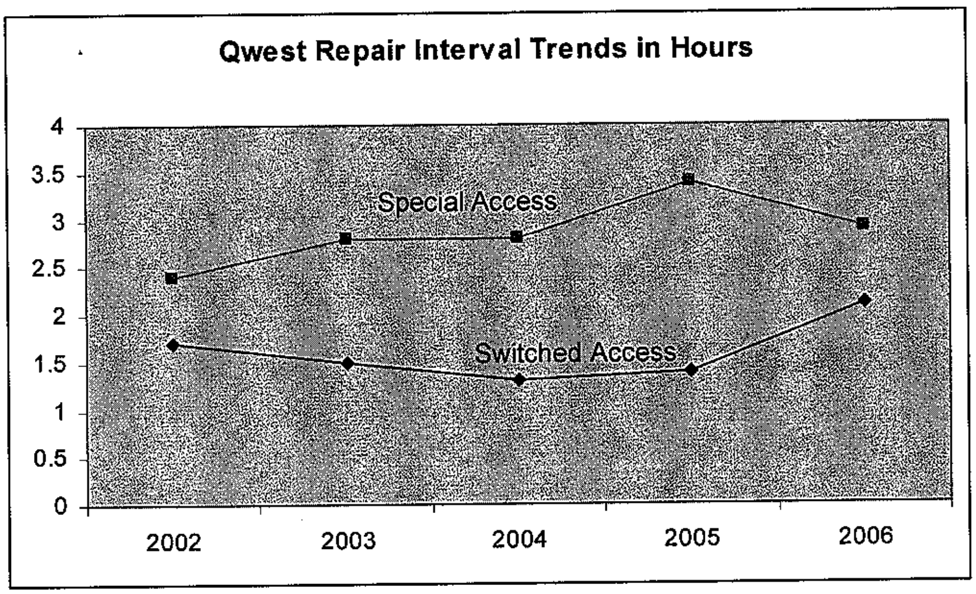

Table 3 - Repair Intervals for Qwest Switched and Special Access in Hours

Type of Access	2002	2003	2004	2005	2006
Switched	1.7	1.5	1.3	1.4	2.1
Special	2.4	2.8	2.8	3.4	2.9

V. MULTI-STATE COLLABORATIVE PROCESS.

[20] DATA Source: http://www.fcc.gov/wcb/stats Downloaded "Quality of Service of ILECs" Reports 2006 data downloaded from ARMIS and averaged for all Qwest states.

40 The Commission, in its 47th supplemental order in Docket No. UT-003040, directed Staff to participate in the Regional Oversight Committee's ad hoc multi-state collaborative concerning Qwest's performance measures. Qwest contends that this collaborative, referred to as the Long-Term PID Administration, has since transferred into Qwest's PID Management Process, or PMP. Commission Staff members were not directly involved in the PMP meetings and discussions leading to this settlement. Staff became aware of the Qwest and industry-member-only PMP meetings in May, 2007. Staff then initiated participation through the 14-state Regional Oversight Committee (ROC) collaborative process in June 2007.

41 In order to meet the Commission's requirement for a multi-state collaborative process, Commission Staff participated on bi-monthly ROC staff conference calls to review the proposed changes to the PAP, attended both the March 2007 ROC meeting in Denver and the October 2007 Regional Oversight Committee meeting in Boise. The Denver ROC in March was a staff member working meeting devoted to PAP and PID issues. Further, Washington Commission Staff members worked directly with staff from other states to get a clear picture of the effects of the proposed changes. Additionally, Washington Commission Staff members are on the ROC steering committee for the 2005 ROC QPAP audit. The auditor is Liberty Consulting.

42 In order to meet the Commission's requirement for a multi-state collaborative process, Staff has participated in bi-weekly Regional Oversight Committee conference calls to review the proposed changes to the PAP, attended the Fall 2007 Regional Oversight Committee meeting in Boise, and worked directly with staff from other states to get a clear picture of the effects of the proposed changes. Staff is prepared to participate in future

conference calls, regional meetings, and the development and issuance of regional data requests to Qwest by the Regional Oversight Committee, including a request for a short regional timeline.

VI. CONCLUSION.

43 In its narrative (submitted jointly with the stipulating CLECs), Qwest has failed to show that many of the substantive changes to its performance assurance plan would result in a plan that provides a meaningful and significant incentive to comply with its obligation to provide non-discriminatory access to its network or that adequately detects and sanctions poor performance when it occurs.[21] Qwest also has failed to reconcile many of the changes with its obligation under RCW 80.36.135(3) to have in place a plan "for ensuring adequate carrier-to-carrier service quality, including service quality standards or performance measures for interconnection, and appropriate enforcement or remedial provisions in the event a company fails to meets those service quality standards or performance measures." For these reasons, the Commission should reject those changes identified in Staff's analysis.

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Respectfully submitted,

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[21] 33rd Supp. Order, Dockets UT-003022 and UT-003044 (consolidated), ¶ 102 (May 20, 2002).