

# **Qwest's Performance Assurance Plan**

**Before the Washington Utilities and  
Transportation Commission**

**December 18, 2001**



## Introduction

- Qwest's performance assurance plan (QPAP), presented to the Commission after rigorous and thorough review, unquestionably provides the necessary assurance that Qwest will continue to meet its performance obligations after section 271 approval
- It has the key characteristics of an acceptable PAP identified by the FCC:
  - Incentive is significant and meaningful
  - Measures are clear and cover a broad range of carrier performance
  - Payment structure that can detect and sanction poor performance
  - Self-executing payment to avoid disputes and limit litigation
  - Data reported is accurate
- Based upon Qwest's willingness to offer the QPAP in Washington, the Commission can recommend to the FCC that Qwest's section 271 application is in the public's interest.

## QPAP Structure

- Initially based on the SWBT Texas *negotiated* PAP approved by the FCC
- ***Incentive significant and meaningful***
  - Two tiered self-executing payment plan - Tier 1 monthly payments to CLECs; Tier 2 monthly payments to state
  - 36% state net revenue at risk (\$81,000,000 annually)(1999 ARMIS)
  - PIDs are categorized as to “high” “medium” or “low” payment amounts
- ***Measures are clear and carry a broad range of carrier performance***
  - ROC performance standards (“PIDs” developed in ROC OSS collaborative) determine conformance
  - Conformance based on ROC PID rules which include benchmark standards or parity comparisons to retail service

## QPAP Structure

- ***Payment structure that can detect and sanction poor performance***
  - Clearly identified statistical methodology to determine conformance with standards (Initially adopted the Texas K table)
  - Payments escalate with continued non-complying performance
  - Payments also increase in relation to severity of nonconformance
  - Low volume/developing markets provision
- ***Self-executing payment to avoid disputes and limit litigation***
  - Automatic Tier 1 and Tier 2 payments; payments to CLECs via bill credits and to states via wire transfers
  - Tier 1 payments as liquidated damages
  - Limited exceptions, burden on Qwest
- ***Data reported is accurate***
  - CLEC audits and root cause

## QPAP Modified as a Result of ROC PEPP Collaborative Increasing Payment Opportunities

- Increased the number of PIDs: added most PIDs requested by CLECs
- Adopted a statistical test for parity measures that was agreed upon by most parties: eliminated the “k-table”
- Added ‘step down’ function for payment escalation
- Changed Tier 1 and 2 measurement weightings (i.e., high, medium, and low categories)
- Included a per measurement payment structure for region-wide performance measures
- Accepted CLEC proposed payment structure for collocation installation intervals

## QPAP Further Modified in Multi-state Proceeding Based upon CLEC Request to Modify

- 36% annual cap migration - up to 44% or down to 30%
- CLEC payment equalization
- Modified Tier 2 triggers to account for intermittent misses and makes
- Average calculation to eliminate rounding on low volume benchmark measurements
- Minimum payment for CLECs with small order volumes
- Substantial changes to language on legal operation of the QPAP: election, offset, exceptions based upon force majeure events, modification of dispute resolution provision
- Arbitration provision for disputes over new measures

## QPAP Further Modified in Multi-state Proceeding Based upon CLEC Request to Modify continued

- Extensive PAP audit and administration provisions
- Modified and increased payments for late reports
- Required interest at prime rate
- Added requirement for retention of CLEC data

## Objections to Cap

- CLECs oppose Facilitator's proposal and advocate no cap or 44% cap
- There is no justification for higher or unlimited exposure for Qwest:
  - Facilitator provided an opportunity for CLECs to provide evidentiary justification for a deviating from standard: none provided.
  - FCC continues to approve plans with 36% cap
  - Facilitator's opportunity to increase is fairly balanced with opportunity to decrease. Ultimately, movement of the cap is not guaranteed, but is within the Commission's discretion.



## Effective Date Prior to 271 Authority

- QPAP purpose is backsliding: CLECs currently have right to seek remedies of section 251 violation. QPAP denial of Qwest due process rights is extraordinary offering to support 271 obligation
- Calls into question Washington Commission's authority to order unique QPAP remedy provisions
- AZ, CO, in addition to Facilitator's recommendations do not support pre-271 effective date.
- Qwest's current performance in Washington demonstrates Qwest has incentive to meet its 271 obligations

## Escalation of Tier 1 Payments

- CLECs claim that payments should escalate indefinitely, notwithstanding concessions Qwest made to this provision in the ROC PEPP collaborative
- There is no basis for deviating from the provision repeatedly approved by the FCC and the Facilitator's recommendation
  - Texas plans upon which QPAP is modeled provide for six month escalation--Qwest de-escalation more onerous for Qwest
  - The Facilitator identified flaw in CLEC claim that failure to conform after six months was the result of indifference to standard
  - Qwest demonstrated that 6 months of Tier 1 payment escalation provides more than sufficient CLEC compensation and incentive to comply. No party provided any evidence that the payments should be greater to compensate for some harm or create incentive

## Escalation of Tier 1 Payments (cont.)

- Payments escalation beyond 6 months not warranted\*:

*Escalation beyond 6 months creates windfall opportunities*

| Number of<br>Months | Tier 1<br>Payment | Tier 2<br>Payment | Total Financial<br>Incentive | Years of Free Service<br>(\$20 monthly rate) |
|---------------------|-------------------|-------------------|------------------------------|--|
| 6                   | \$800             | \$500             | \$1,300                      | 7 yrs. 11 mos.                               |
| 7                   | \$900             | \$500             | \$1,400                      | 8 yrs. 10 mos.                               |
| 8                   | \$1,000           | \$500             | \$1,500                      | 9 yrs. 11 mos.                               |
| 9                   | \$1,100           | \$500             | \$1,600                      | 11 yrs. 1 mo.                                |
| 10                  | \$1,200           | \$500             | \$1,700                      | 12 yrs. 5 mos.                               |
| 11                  | \$1,300           | \$500             | \$1,800                      | 14 yrs.                                      |
| 12                  | \$1,400           | \$500             | \$1,900                      | 15 yrs. 10 mos.                              |

\* Exhibit S9-QWE-CTI-5C

## Request to Change Calculation of Interval Measures

- AT&T argues that the QPAP method of calculating payments for interval measurements should be changed so that Qwest would make payments on more orders than the CLEC actually had
- AT&T provides no justification for deviating from FCC approved plans after which the QPAP is modeled and which have the same or similar provision and Mr. Antonuk's recommendation
  - Qwest should not be required to make payment for orders that don't exist.
  - Similar caps exist in TX (100%), OK (100%) and KS (50%) plans accepted by FCC
  - Qwest's payments on interval measures are more than sufficient with the 100% cap in place as demonstrated through evidence in the ROC proceeding

## Tier 2 Triggers

- WorldCom's objection to the Facilitator's recommendation on Tier 2 triggers is without merit
- The Facilitator altered the Texas model to increase the payment opportunities to CLECs
- WorldCom and AT&T argue that Tier 2 payments should escalate
- There is no justification for such a claim.
  - Fact that AT&T asked for clarification on the issue demonstrates the lack of sincerity and candor in their claim for escalation
  - Texas plans have three-month trigger and no escalation
  - No party challenged Qwest's evidence that Tier 2 payments were more than sufficient without escalation

## Objections to QPAP Limitations

- AT&T misunderstands and/or grossly misinterprets the provisions-- nothing about the current QPAP provisions are controversial or render the QPAP inadequate:
- Three principles:
  - Section 13.5 provides that Tier 1 payments are treated as liquidated damages--CLECs should not get self-executing payments *and* the right to sue for more contractual damages
  - Section 13.6 provides CLECs are not entitled to multiple forms of contractual standards and remedies
  - Section 13.7 allows Qwest to offset against non-contractual remedies where CLEC seeks damages recoverable by CLEC under the QPAP

## Objection to use of Tier 1 Funds in the Special Fund

- Some CLECs propose the elimination of the 20% portion of escalating Tier 1 payments for use by the Special Fund
- CLECs want and will benefit from common reviews and audits
- Their contribution toward that effort is only fair as it is forum for all parties to present their performance measurement issues.

## Objection to Six Month Review

- Contrary to CLEC claims, the Facilitator's Recommendations are consistent with the Texas six month review (and the Colorado Special Master proposal)
  - AT&T claims otherwise by misinterpreting one word in the Texas plan
- The changes proposed by CLECs would unacceptably subject Qwest to unlimited liability and unknown future changes
- FCC doesn't require open-ended QPAP or blank check



## Six month review, cont.

- QPAP language:
- 16.1 Every six (6) months, beginning six months after the effective date of the first Section 271 approval by the FCC of one of the states that participated in the multi-state QPAP review proceeding, Qwest, CLECs, and the Commissions of those state shall participate in a common *review of the performance measurements to determine whether measurements should be added, deleted, or modified; whether the applicable benchmark standards should be modified or replaced by parity standards; and whether to move a classification of a measurement to High, Medium, or Low or Tier 1 to Tier 2. The criterion for reclassification of a measurement shall be whether the actual volume of data points was less or greater than anticipated. 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. The first six-month period will begin upon the FCC's approval of Qwest's 271 application for that particular state. Changes shall not be made without Qwest's agreement, except that disputes as to whether new performance measurements should be added shall be resolved by one arbitration proceeding* conducted pursuant to section 5.18.3 of the SGAT, which shall bind CLEC and Qwest and all parties to the arbitration and determine what new measures, if any, should be included in Exhibit K to the SGAT. The administration expenses of the six month reviews and that of an arbitrator shall be paid from the Special Fund.

## Six month review, cont.

- Every six months, CLEC may participate with SWBT, other CLECs, and the Commission representatives to *review the performance measures to determine whether measurements should be added, deleted, or modified; whether the applicable benchmark standards should be modified or replaced by parity standards; and whether to move a classification of a measure to High, Medium, Low, Diagnostic, Tier-1 or Tier-2. The criterion for reclassification of a measure shall be whether the actual volume of data points was lesser or greater than anticipated. Criteria for review of performance measures, other than possible reclassification shall be whether there exists an omission or failure to capture intended performance, and whether there is duplication of another measurement.* Performance measures for 911 may be examined at any six month review to determine whether they should be reclassified. The first six-month review to determine whether they should be reclassified. The first six-month period will begin when an interconnection agreement including this remedy plan is adopted by a CLEC and approved by the Commission. *Any changes to existing performance measures and this remedy plan shall be by mutual agreement of the parties and, if necessary, with respect to new measures and their appropriate classification, by arbitration.* The current measurements and benchmarks will be in effect until modified hereunder or the expiration of the interconnection agreement.

## Special Access

- WorldCom and XO propose special access measurements added to the QPAP
- There is no justification and jurisdictional and practical impediments to including special access
  - Idea of special access PIDs rejected in ROC OSS as not part of 251 obligations and never raised in ROC PEPP
  - FCC rejected WorldCom’s claim that special access is § 271 issue
    - The FCC has repeatedly made clear both that it “do[es] not consider the provision of special access services pursuant to tariffs for purposes of determining checklist compliance” and, equally, that “there is no need to consider the provision of special access in the context of the *public interest requirement*.” Verizon Massachusetts Order ¶ 156 n.489 (citing SBC Texas Order ¶ 335; Bell Atlantic New York Order ¶ 340). Bell Atlantic New York Order ¶ 340, n.1052 (emphasis added).

## Special Access

- WorldCom is wrong in representing that other states have adopted special access as a 271 concern
- FCC NPRM released on November 19, 2001 and will include investigation of standards and enforcement
- Ability to development of meaningful PIDs is not established

## Conclusion

- QPAP has been thoroughly reviewed and modified to meet CLEC and staff concerns
- QPAP meets reasonableness standard set forth by the FCC; no additional changes are appropriate
- QPAP supports a positive public interest recommendation