

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Joint Application of )  
 )  
QWEST COMMUNICATIONS )  
INTERNATIONAL INC. AND ) DOCKET NO. UT-100820  
CENTURYTEL, INC. )  
 )  
For Approval of Indirect Transfer of Control of )  
Qwest Corporation, Qwest Communications )  
Company LLC, and Qwest LD Corp. )

**RESPONSIVE TESTIMONY OF**

**DOUGLAS DENNEY**

**ON BEHALF OF**

**INTEGRA TELECOM**

**September 27, 2010**

1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Douglas Denney. I work at 1201 Lloyd Blvd, Suite 500 in Portland, Oregon.

4 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A. I am employed by Integra Telecom, Inc., as Integra's Director of Costs and Policy. My  
6 job duties include negotiating interconnection agreements, monitoring, reviewing and  
7 analyzing the wholesale costs Integra or its subsidiaries pay to carriers such as Qwest,  
8 and representing Integra and its affiliates on regulatory issues. I am also involved in  
9 Integra's review of ILEC performance assurance plans.

10 Integra Telecom, Inc. has 7 affiliated companies in Washington. These companies are:  
11 Electric Lightwave, LLC, Eschelon Telecom of Washington Inc., Advanced TelCom, Inc,  
12 OCG Telecomm Limited, Shared Communications Services, Inc., Oregon Telecom Inc.,  
13 and United Communications, Inc. For convenience, I will generally refer to Integra  
14 Telecom, Inc. and its affiliates as Integra. I will refer specifically to Eschelon when  
15 discussing events specific to Eschelon prior to Integra's purchase of Eschelon.

16 **Q. PLEASE DESCRIBE YOUR EDUCATION AND PROFESSIONAL  
17 BACKGROUND.**

18 A. I received a B.S. degree in Business Management from Phillips University in 1988. I  
19 spent three years doing graduate work at the University of Arizona in Economics, and  
20 then I transferred to Oregon State University where I have completed all the requirements

1 for a Ph.D. except my dissertation. My field of study was Industrial Organization, and I  
2 focused on cost models and the measurement of market power. I taught a variety of  
3 economics courses at the University of Arizona and Oregon State University. I was hired  
4 by AT&T in December 1996 and spent most of my time with AT&T analyzing cost  
5 models. In December 2004, I was hired by Eschelon Telecom, Inc. ("Eschelon").  
6 Eschelon was purchased by Integra in August 2007. I am presently employed by Integra.

7 I have participated in over 50 proceedings in the Integra operating territory. Much of my  
8 prior testimony involved cost models — including the HAI Model, BCPM, GTE's ICM,  
9 U S WEST's UNE cost models, and the FCC's Synthesis Model. I have also testified  
10 about issues relating to the wholesale cost of local service — including universal service  
11 funding, unbundled network element pricing, geographic de-averaging, and competitive  
12 local exchange carrier access rates. I testified on a number of issues in the Eschelon /  
13 Qwest arbitrations,<sup>1</sup> and have been involved in the Qwest and Verizon "non-impaired"  
14 wire center lists and related issues. I have also been involved in the performance  
15 assurance plans that impact Integra. This includes negotiations of changes to  
16 performance plans to assure they provide meaningful incentives for wholesale service  
17 quality.

18 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN WASHINGTON?**

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<sup>1</sup> The docket numbers for the Qwest-Eschelon ICA arbitrations are, for Arizona, T-03406A-06-0572; T-01051B-06-0572 ("Arizona arbitration"); for Colorado, 06B-497T ("Colorado arbitration"); for Minnesota, P-5340, 421/IC-06-768 ("Minnesota arbitration"); for Oregon, ARB 775 ("Oregon arbitration"); for Utah, 07-2263-03 ("Utah arbitration"); and for Washington, UT-063061 ("Washington arbitration").

1 A. Yes. I have been involved in numerous dockets in Washington over the years while  
2 working for AT&T, Eschelon, and Integra. I've participated in multiple UNE cost  
3 dockets in Washington including multiple phases of docket UT-960369 regarding shared  
4 transport and geographic deaveraging. In addition I was involved in all other aspects of  
5 this docket providing witness support and reviewing compliance filings. I filed testimony  
6 again on geographic deaveraging in docket UT-023003 and provided witness support in  
7 that docket on other issues. I filed testimony in docket UT-033044, the original Triennial  
8 Review Order ("TRO") docket, which was suspended in the middle of the hearings when  
9 the D.C. Circuit Court remanded parts of the TRO to the FCC. I've also been involved in  
10 the subsequent Triennial Review Remand Order ("TRRO") docket UT-053025 regarding  
11 the impact of the TRO/TRRO on competition. As part of that docket I was involved in  
12 the "non-impaired" wire center list workshops and following investigations for both  
13 Qwest and Verizon.<sup>2</sup> I've been involved in docket UT-100562 regarding the future of  
14 state universal service and intrastate access rates. I also filed testimony in the Frontier /  
15 Verizon acquisition in docket UT-090842. I testified in docket UT-063061 regarding the  
16 interconnection agreement arbitration between Eschelon and Qwest. In addition, I was  
17 involved in all aspects of the 2007 stipulation regarding changes to Qwest's Performance  
18 Assurance Plan which was approved by this Commission (docket UT-073024) and is the  
19 current performance assurance plan in place in Washington today. I was also involved in  
20 Qwest's AFOR docket, UT-061625, and its subsequent impact on Qwest's wholesale  
21 performance.

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<sup>2</sup> See dockets UT-073033, UT-073035, and UT-083060.

1 **Q. PLEASE DESCRIBE HOW YOUR TESTIMONY IS ORGANIZED.**

2 A. The first section of this testimony introduces this testimony, describes my background  
3 and describes Integra. The second section of my testimony supports Joint CLEC  
4 recommended condition number 4 regarding wholesale service quality. This section  
5 explains how the Commission can simply put into place a self-effectuating mechanism to  
6 help assure that wholesale performance in the legacy Qwest territory does not deteriorate  
7 after the merger. The third section of my testimony supports Joint CLEC recommended  
8 condition numbers 8 and 9. This testimony describes the interconnection agreement  
9 (“ICA”) negotiation process and the time that it takes to negotiate and resolve disputed  
10 issues. The fourth section of my testimony supports condition numbers 18 and 27. This  
11 section verifies the facts set out in Exhibit BJJ-2 and Exhibit BJJ-3. In addition, I  
12 describe why these conditions are important.

13 **Q. ARE THERE ANY EXHIBITS TO YOUR TESTIMONY?**

14 A. Yes. As part of my testimony, I have included the following exhibits:

- 15 • Exhibit DD-2: A copy of an Additional Performance Assurance Plan, calculated using  
16 the methodology in the Current PAP, for use to assure Qwest’s wholesale  
17 performance to CLECs is not impacted by the CenturyLink merger.

18 **Q. PLEASE PROVIDE AN OVERVIEW OF INTEGRAL AND ITS BUSINESS.**

19 A. Integra is a competitive local exchange carrier (“CLEC”) providing communications  
20 services across 33 metropolitan areas in 11 states of the Western United States. We own  
21 (directly or under indefeasible rights to use) and operate backbone fiber networks. These  
22 backbone networks connect to our intercity, interstate data network for a combined 4,900

1 fiber route-mile network in the Western U.S. We provide a comprehensive suite of high-  
2 quality data, broadband and voice services to over 100,000 small-to-medium-sized  
3 business customers and “enterprise” customers.

4 Our network is designed to deliver products such as Ethernet over broadband at speeds of  
5 up to 25 Mbps over a variety of delivery technologies tailored to the unique applications  
6 of our small-to-medium-sized business, enterprise and wholesale customers, including  
7 Ethernet over direct fiber access, Ethernet over copper and Ethernet over next-generation  
8 bonded digital subscriber lines, or DSL. We have 230 unique collocations, 42 in  
9 Washington, positioned across our markets. Providing services to our customers  
10 primarily over our owned switching and transport facilities allows us to control the  
11 quality and reliability of our service offerings and efficiently innovate and provide  
12 advanced products and services. At the same time, we cannot be successful without  
13 access to the last-mile, and Qwest is the only supplier of last-mile facilities within its  
14 territory.

15 While we continue to make large investments in expanding and upgrading our network,  
16 we therefore, remain almost entirely dependent upon the incumbent local exchange  
17 carrier for last mile connections to our customers.

18 **Q. HOW DOES THE SIZE OF INTEGRA COMPARE TO QWEST AND**  
19 **CENTURYLINK?**

20 **A.** Qwest is Integra’s largest competitor, but Integra is relatively small when compared to

1 Qwest and even smaller when compared to a combined Qwest/CenturyLink. A combined  
2 Qwest/CenturyLink will operate in 37 states,<sup>3</sup> compared to 11 for Integra. Further, a  
3 combined Qwest/CenturyLink will have 50,000 employees,<sup>4</sup> compared to 2,300 for  
4 Integra, and the combined Qwest/CenturyLink proforma revenue will be \$19.8 billion,<sup>5</sup>  
5 compared to Integra's 2009 revenue of \$638 million.<sup>6</sup> To put these differences into  
6 perspective, a combined Qwest/CenturyLink will have 22 employees for each Integra  
7 employee and \$31 dollars of revenue for each Integra dollar of revenue. The combined  
8 Qwest/CenturyLink will earn more revenue by the second week in January than Integra  
9 will obtain in a year.

10 **II. WHOLESALE SERVICE QUALITY (JOINT CLEC RECOMMENDED**  
11 **CONDITION NUMBER 4)**

12 **Q. WHAT IS JOINT CLEC RECOMMENDED CONDITION NUMBER 4 AND WHY**  
13 **IS IT NECESSARY?**

14 **A.** Joint CLEC recommended condition number 4 concerns wholesale service quality for the  
15 Merged Company.<sup>7</sup> The condition requires that the performance assurance plans that  
16 currently exist in the legacy Qwest ILEC territory will remain in place for five years, the  
17 time period over which the Joint Applicants have claimed the synergy savings from the

<sup>3</sup> See <http://www.centurylinkqwestmerger.com/index.php?page=about-the-transaction>

<sup>4</sup> See <http://www.centurylinkqwestmerger.com/index.php?page=about-the-transaction>

<sup>5</sup> See <http://www.centurylinkqwestmerger.com/index.php>

<sup>6</sup> See

[http://www.integratelecom.com/about/news/press\\_release\\_articles/2010%20Fastest%20Growing%20Private%20Companies\\_FINAL.pdf](http://www.integratelecom.com/about/news/press_release_articles/2010%20Fastest%20Growing%20Private%20Companies_FINAL.pdf)

<sup>7</sup> The CLEC recommended conditions are attached to the testimony of Mr. Gates as Exhibit TG-9.

1 merger will be accomplished.<sup>8</sup> The condition also establishes a mechanism to assure that  
2 the Merged Company performance in the legacy Qwest ILEC territory does not  
3 deteriorate compared with pre-merger performance. These conditions will help assure  
4 that the Merged Company maintains wholesale service quality at current levels and  
5 creates disincentives for the Merged Company to achieve synergies at the expense of its  
6 competitors through a deterioration of its wholesale market operations. Mr. Gates's  
7 testimony discusses the importance of wholesale service quality conditions in more  
8 detail.

9 Joint CLEC recommended condition number 4 is repeated below in its entirety.

10 In the legacy Qwest ILEC territory, the Merged Company shall comply with all  
11 wholesale performance requirements and associated remedy or penalty regimes for all  
12 wholesale services, including those set forth in regulations, tariffs, interconnection  
13 agreements, and Commercial agreements applicable to legacy Qwest as of the Merger  
14 Filing Date. The Merged Company shall continue to provide to CLECs at least the  
15 reports of wholesale performance metrics that legacy Qwest made available, or was  
16 required to make available, to CLECs as of the Merger Filing Date. The Merged  
17 Company shall also provide these reports to state commission staff or the FCC, when  
18 requested. The state commission and/or the FCC may determine that additional  
19 remedies are required, if the remedies described in this condition do not result in the  
20 required wholesale service quality performance or if the Merged Company violates  
21 the merger conditions.

- 22
- 23 a. No Qwest Performance Indicator Definition (PID) or Performance Assurance  
24 Plan (PAP) that is offered, or provided via contract or Commission approved plan,  
25 as of the Merger Filing Date ("Current PAP") will be reduced, eliminated, or  
26 withdrawn for at least five years after the Closing Date and will be available to all  
27 requesting CLECs until the Merged Company obtains approval from the  
28 applicable state commission, after the minimum 5-year period, to reduce,

<sup>8</sup> Direct Testimony of G. Clay Bailey, WUTC Docket 100820, May 21, 2010, p. 11, lines 14-16.



1 eliminate, or withdraw it. For at least the Defined Time Period, in the legacy  
2 Qwest ILEC territory, the Merged Company shall meet or exceed the average  
3 wholesale performance provided by Qwest to each CLEC for one year prior to the  
4 Merger Filing Date for each PID, product, and disaggregation. If the Merged  
5 Company fails to provide wholesale performance as described in the preceding  
6 sentence, the Merged Company will also make remedy payments to each affected  
7 CLEC in an amount as would be calculated using the methodology (*e.g.*, modified  
8 Z test, critical Z values, and escalation payments) in the Current PAP, for each  
9 missed occurrence when comparing performance post- and pre- Closing Date  
10 (“Additional PAP”).  
11

- 12 b. In the legacy Qwest ILEC territory, for at least the Defined Time Period, the  
13 Merged Company will meet or exceed the average monthly performance provided  
14 by Qwest to each CLEC for one year prior to the Merger Filing Date for each  
15 metric contained in the CLEC-specific monthly special access performance  
16 reports that Qwest provides, or was required to provide, to CLECs as of the  
17 Merger Filing Date. For each month that the Merged Company fails to meet  
18 Qwest’s average monthly performance for any of these metrics, the Merged  
19 Company will make remedy payments (calculated on a basis to be determined by  
20 the state commission or FCC) on a per-month, per-metric basis to each affected  
21 CLEC.

22 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY WITH RESPECT TO**  
23 **RECOMMENDED CONDITION NUMBER 4?**

24 A. The purpose of this testimony is to explain the additional performance assurance plan  
25 (“APAP”) proposal, as described in part a of Joint CLEC recommended condition  
26 number 4.

27 **Q. PLEASE DESCRIBE THE ADDITIONAL PERFORMANCE ASSURANCE PLAN**  
28 **(“APAP”) PROPOSAL.**

29 A. The APAP is a minimum five year performance assurance plan applicable to the legacy

1 Qwest ILEC territory. This plan is in addition to the existing Washington PAP and does  
2 not alter or change the existing Washington PAP. The APAP would compare the Merged  
3 Company's post-merger ("current performance") monthly performance with the  
4 performance that existed in the twelve months prior ("prior performance") to the Merger  
5 Filing Date (*i.e.*, May 2009 through April 2010). This comparison would be made using  
6 the current Washington Performance Assurance Performance Indicators ("PIDs"),  
7 products and disaggregation, thus no new measures are required to be created. Further,  
8 the data for the year prior to the Merger Filing Date already exists, and thus also would  
9 not need to be created. The APAP would compare the current and prior performance  
10 results using the same statistical methodology that exists in the Washington PAP to  
11 determine whether a statistically significant deterioration in performance exists.<sup>9</sup> If such  
12 deterioration does exist, then the APAP would calculate payments for each missed  
13 occurrence using the methodology from the Washington PAP, including one allowable  
14 miss<sup>10</sup> and escalation payments for consecutive months of below standard performance.<sup>11</sup>

15 **Q. HOW IS THE APAP DIFFERENT FROM THE CURRENT WASHINGTON PAP?**

16 A. In terms of the methodology (*e.g.*, modified Z test, critical Z values, and escalation  
17 payments), not at all. The current Washington PAP, which is a part of many carriers'

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<sup>9</sup> See section 4.0 of the Qwest Washington SGAT Eighth Revision, Twelfth Amended Exhibit K, January 5, 2009 ("WA PAP"), [http://www.qwest.com/about/policy/sgats/SGATSdocs/washington/WA\\_8th\\_revised\\_12th\\_amend\\_Exhibit\\_K\\_010509.pdf](http://www.qwest.com/about/policy/sgats/SGATSdocs/washington/WA_8th_revised_12th_amend_Exhibit_K_010509.pdf)

Note: this document is attached to the interconnection agreements of all CLECs who have opted into the Washington PAP.

<sup>10</sup> See section 3.1.2, WA PAP.

<sup>11</sup> See section 6.2.1, WA PAP.

1 interconnection agreements, compares Qwest's wholesale performance for CLECs to  
2 Qwest's retail performance.<sup>12</sup> In other words, the current Washington PAP is intended to  
3 assure that Qwest does not treat itself more favorably than it treats CLECs, who rely upon  
4 Qwest's wholesale facilities. These plans were put in place when Qwest entered the  
5 interLATA long distance market to help assure that local markets remained opened to  
6 competition. The APAP does not replace the Washington PAP, but works in addition to  
7 the existing PAP. The purpose of the proposed APAP is to compare the current level of  
8 Qwest's wholesale performance to CLECs with a past level of wholesale performance to  
9 CLECs, rather than compare wholesale and retail performance. A plan such as the APAP  
10 would help to assure that wholesale performance does not deteriorate post merger. The  
11 Washington PAP, which was not developed to identify merger-related harm, would not  
12 capture deteriorating performance, if the Merged Company's performance deteriorated  
13 for both wholesale and retail services simultaneously or if wholesale performance  
14 deteriorated, but remained above the minimum benchmarks. The APAP uses the same  
15 methodology but is tailored to the purpose of measuring merger-related performance  
16 issues.

17 **Q. DO YOU HAVE AN EXAMPLE OF A DOCUMENT DESCRIBING THE**  
18 **RECOMMENDED APAP?**

19 **A.** Yes. Exhibit DD-2 is nearly identical in function to the existing PAPs in the Qwest  
20 territory, except that it relies upon a comparison of current and prior wholesale

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<sup>12</sup> In some cases a benchmark is used rather than Qwest's retail performance.

1 performance to CLECs. While at first glance the document may appear complicated, this  
2 is not the case as it is based upon the existing, well-familiar Washington PAP in place  
3 today. The proposed APAP does not create new PIDs, statistical tests, or payment  
4 structures, but instead utilizes the existing structures from the PAPs in place across the  
5 Qwest region. The difference is simply the standard to which performance is compared.

6 **Q. PLEASE PROVIDE AN EXAMPLE OF HOW A CALCULATION FROM THE**  
7 **APAP WOULD WORK AND HOW IT COMPARES TO THE WASHINGTON**  
8 **PAP.**

9 **A.** Below are two hypothetical examples comparing APAP and Washington PAP payments.  
10 One involves the measure OP-3, Installation Commitments Met, for 2-wire analog loops.  
11 This measures how often Qwest meets its installation commitments and has a benchmark  
12 standard of 90%,<sup>13</sup> which means that as long as Qwest's actual performance is greater  
13 than 90% it does not make Washington PAP payments to CLECs. Qwest's prior  
14 wholesale performance for CLECs is approximately 96.7%.<sup>14</sup> The second example  
15 involves MR-7, Repeat Trouble Reports, for DS1 capable loops. This measures how  
16 often Qwest is called on to repair a circuit with troubles in the Qwest network that it has  
17 already been called on to repair in the past 30 days. This measure is a parity measure and  
18 is compared to how Qwest performs for its DS1 private line circuits. Qwest's prior

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<sup>13</sup> See WA PAP.

<sup>14</sup> This number is used for this hypothetical example, but represents Qwest's actual region-wide performance for this measure from May 2009 through April 2010.

1 wholesale performance for CLECs is approximately 16.7%,<sup>15</sup> meaning 16.7% of CLEC  
2 circuits with troubles in the Qwest network, require a second repair from Qwest within 30  
3 days. Qwest's average retail parity performance is 17.3%.<sup>16</sup>

4 The table below shows what happens if Qwest's wholesale performance on installation  
5 commitments falls to 93%, almost doubling the number of commitments missed, as well  
6 as what would happen if both Qwest's retail and wholesale repair repeat rates  
7 deteriorated post merger and climbed to 25%, about 50% greater than the prior rate.

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<sup>15</sup> This number is used for this hypothetical example, but represents Qwest's actual region-wide performance for this measure from May 2009 through April 2010.

<sup>16</sup> This number is used for this hypothetical example, but represents Qwest's actual region-wide performance for this measure from May 2009 through April 2010.

<b>Hypothetical APAP and QPAP Payment Comparison Examples</b>				
	OP-3 Installation Commitments Met		MR-7 Repair Repeat Rate	APAP Ref
	2-wire analog loop	90.0%	DS1 Capable Loops	
Average Prior Performance	96.7%		16.7%	
Standard	benchmark	90.0%	parity	17.3%
Prior Payment	\$0.00		\$0.00	
Post Merger Performance	93.0%		25.0%	
CLEC Observations	250		70	
QPAP Standard	benchmark	90.0%	parity	25.0%
QPAP Payment	\$0.00		\$0.00	
APAP Standard	96.7%		16.7%	
Z Stat	3.15		1.79	Sec 4.2
Z Table	2.00		1.65	Sec 5.0 Table 1
Calculated Value	94.3%		24.3%	Sec 8.2
Non Conforming Occurances	3		0.49	Sec 8.2
Payment per Occurance	\$150.00		\$150.00	Sec 6.0 Table 2
APAP Payment	\$487.00		\$74.00	Sec 8.2

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As can be seen in the example for OP-3, Installation Commitments Met, even if Qwest's wholesale performance became worse post merger, Qwest would make no payments under the current Washington PAP so long as Qwest's performance is above the 90 percent benchmark. However, under the proposed APAP mechanism, a payment would occur to CLECs as a result of the significant deterioration in performance. The "calculated value" in the table above shows how performance would have to deteriorate, for a CLEC with about 250 installations a month, in order for the deterioration to be considered statistically significant and thus require a payment. Another way of looking at

1 the “calculated value,” for this example, is that missed commitments would have to  
2 increase by more than 72.7%<sup>17</sup> before a payment would be triggered under the APAP.<sup>18</sup>

3 Likewise, in the example for repeat troubles, no payment would be made under the  
4 current Washington PAP if both retail and wholesale service deteriorates; however, a  
5 payment would be required under the APAP as a result of a significant deterioration of  
6 wholesale service quality post merger. Again the “calculated value” shows how far  
7 service would have to degrade,<sup>19</sup> for a CLEC with 70 repeat troubles a month, before a  
8 payment would be triggered under the APAP.

9 **Q. THERE APPEARS TO BE A SIGNIFICANT DEGRADATION OF WHOLESALE**  
10 **SERVICE QUALITY BEFORE A PAYMENT WOULD BE TRIGGERED UNDER**  
11 **THE ADDITIONAL PAP. ARE THE PERFORMANCE INCENTIVES LARGE**  
12 **ENOUGH TO PROTECT WHOLESALE SERVICE QUALITY POST MERGER?**

13 **A.** The question identifies an important concern, because a key factor in performance  
14 assurance plans is not to let poor performance simply become a cost of doing business.  
15 Setting performance payments too low could lead to this result. One method to care for  
16 this potential error is through the use of an escalation provision. An escalation provision  
17 ratchets up the payments that are made for each non-conforming occurrence when the  
18 company misses a performance standard in consecutive months. The current Washington

<sup>17</sup>  $72.7\% = (1 - 94.3\%) / (1 - 96.7\%) - 1$ .

<sup>18</sup> Note that the actual percent will be different for each CLEC depending on both performance and order volumes prior to and after the merger.

<sup>19</sup> Again, in this example, service would have to degrade by 45.5% ( $24.3\% / 16.7\% - 1$ ), before a payment would be triggered under the APAP.

1 PAP contains an escalation provision,<sup>20</sup> and we propose that the same type of provision  
2 be used in the APAP. An escalation provision is crucial to assure that substandard  
3 performance does not simply become a cost of doing business.

4 CenturyLink has professed a commitment to wholesale service quality,<sup>21</sup> thus hopefully  
5 no payment will ever be made under an APAP, and we will never have to find out  
6 whether the payment levels were too low. However, we do propose that the Commission  
7 use the escalation provisions from the current Washington PAP in the APAP. The  
8 escalation provisions increase the non-conforming payment amounts when substandard  
9 performance continues for consecutive months, clearly indicating a problem.  
10 CenturyLink recognizes that “*ensuring that CenturyLink continues to provide high*  
11 *quality service* and customer experience pre- and post-merger is vitally important”<sup>22</sup>  
12 (emphasis added). The APAP helps to ensure this result and the escalation provision is  
13 crucial to assure that substandard performance does not simply become a cost of doing  
14 business.

15 **III. ICA NEGOTIATION PROCESS (JOINT CLEC RECOMMENDED**  
16 **CONDITIONS 8 AND 9)**

<sup>20</sup> See section 6.2.1 and table 2 of the WA PAP.

<sup>21</sup> Direct Testimony of Mark S. Reynolds, WUTC Docket UT-100820, May 21, 2010, p. 26, lines 2-5. See also, Direct Testimony of Michael R. Hunsucker, Oregon Public Utility Commission Docket No. UM 1484, June 22, 2010, CTL/400, Hunsucker/9, lines 9-12 (“Q. Is CenturyLink committed (sic) to providing quality service to its wholesale customers? A. Certainly...”)

<sup>22</sup> Direct Testimony of John Jones, WUTC Docket UT-100820 May 21, 2010, p. 12, lines 17-18.



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For Approval of Indirect Transfer of	)	
Control of Qwest Corporation, Qwest	)	
Communications Company LLC, and	)	
Qwest LD Corp.	)	
	)	
.....	)	

EXHIBIT DD-2

TO THE

RESPONSIVE TESTIMONY

OF

DOUGLAS DENNEY

ON BEHALF OF INTEGRA TELECOM

September 27, 2010

## ADDITIONAL PERFORMANCE ASSURANCE PLAN

### 1.0 Introduction

1.1 As set forth in this Agreement, Qwest<sup>1</sup> and CLEC agree to the terms of the following Additional Performance Assurance Plan ("APAP"), initially prepared in conjunction with CenturyLink's merger with Qwest.

### 2.0 Plan Structure

2.1 The APAP is a self-executing remedy plan. CLEC shall be provided with payments if, as applicable, Qwest does not provide parity between the service it provides to CLEC and that which it provided to CLECs in the year prior to the Merger Filing Date.<sup>2</sup>

2.2 As specified in sections 6.0 and 7.0 and Attachments 1 and 2, payment is generally on a per occurrence basis, (i.e., a set dollar payment times the number of non-conforming service events). For the performance measurements which do not lend themselves to per occurrence payment, payment is on a per measurement basis, (i.e., a set dollar payment). The level of payment also depends upon the number of consecutive months of non-conforming performance, (i.e., an escalating payment the longer the duration of non-conforming performance) unless otherwise specified.

2.3 Qwest shall be in conformance with the parity standard when service Qwest provides to CLEC in the current month ("CLEC current") is at least equivalent to the service Qwest provided to CLEC in the year prior to the Merger Filing Date ("CLEC prior"). The APAP relies upon statistical scoring to determine whether any difference between CLEC current and CLEC prior performance results is significant, that is, not attributable to simple random variation. Statistical parity shall exist when performance results for CLEC current performance and CLEC prior performance result in a z-value that is no greater than the critical z-values listed in the Critical Z-Statistical Table in section 5.0.

### 3.0 Performance Measurements

3.1 The performance measurements that are in the APAP are identified in Attachment 1 and sections 6.3 and 7.4. Each performance measurement identified is

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<sup>1</sup> "Qwest," as used in this agreement, refers to the legacy Qwest ILEC territory.

<sup>2</sup> The "Merger Filing Date" refers to May 10, 2010, which is the date on which Qwest and CenturyLink made their merger filing with the FCC.

defined in the Performance Indicator Definitions ("PIDs") included in the SGAT at Exhibit B.

3.1.1 On Attachment 1 the measurements have been given a High, Medium, or Low designation.

3.1.2 Where applicable elsewhere in the APAP, this provision modifies other provisions and operates as follows: For any non-interval parity performance sub-measure, Qwest shall apply one allowable miss to a sub-measure disaggregation that otherwise would require 100% performance before the performance is considered as non-conforming to standard (1) if at the CLEC-aggregate level, the performance standard is met or (2) where the CLEC-aggregate performance must be 100% to meet the standard, the CLEC-aggregate performance is conforming after applying one allowable miss at that level.

#### 4.0 Statistical Measurement

4.1 Qwest uses a statistical test, namely the modified "z-test," for evaluating the difference between two means or two percentages, to determine whether a parity condition exists between the results for CLEC current and CLEC prior. The modified z-tests shall be applicable if the number of data points are greater than 30 for a given measurement. For testing measurements for which the number of data points are 30 or less, Qwest will use a permutation test to determine the statistical significance of the difference between CLEC current and CLEC prior performance.

4.2 Qwest shall be in conformance when the monthly performance results for parity measurements (whether in the form of means, percents, or proportions and at the equivalent level of disaggregation) are such that the calculated z-test statistics are not greater than the critical z-values as listed in Table 1, section 5.0.

The formula for determining parity using the modified z-test is:

$$z = \text{DIFF} / \sigma_{\text{DIFF}}$$

Where:

$$\text{DIFF} = M_{\text{Prior}} - M_{\text{CLEC}}$$

$$M_{\text{Prior}} = \text{CLEC prior average or proportion from May 2009 through April 2010}$$

$$M_{\text{CLEC}} = \text{CLEC current average or proportion}$$

$$\sigma_{\text{DIFF}} = \text{square root } [\sigma^2_{\text{Prior}} (1/n_{\text{CLEC}} + 1/n_{\text{Prior}})]$$

$\sigma_{\text{Prior}}$  = calculated variance for CLEC prior performance from May 2009 through April 2010

$n_{\text{Prior}}$  = number of observations or samples used in CLEC prior measurement

$n_{\text{CLEC}}$  = number of observations or samples used in CLEC current measurement

The modified z-tests will be applied to reported parity measurements that contain more than 30 data points.

In calculating the difference between CLEC prior and CLEC current performance, the above formula applies when a larger CLEC prior value indicates a better level of performance. In cases where a smaller CLEC prior value indicates a higher level of performance, the order is reversed, i.e.,  $M_{\text{CLEC}} - M_{\text{Prior}}$ .

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4.3.1 For parity measurements where the number of data points is 30 or less, Qwest will apply a permutation test to test for statistical significance. Permutation analysis will be applied to calculate the z-statistic using the following logic:

Calculate the modified z-statistic for the actual arrangement of the data

Pool and mix the CLEC prior and CLEC current data sets

Perform the following 1000 times:

Randomly subdivide the pooled data sets into two pools, one the same size as the original CLEC current data set ( $n_{\text{CLEC}}$ ) and one reflecting the remaining data points, (which is equal to the size of the original CLEC prior data set or  $n_{\text{Prior}}$ ).

Compute and store the modified z-test score ( $Z_S$ ) for this sample.

Count the number of times the z-statistic for a permutation of the data is greater than the actual modified z- statistic

Compute the fraction of permutations for which the statistic for the rearranged data is greater than the statistic for the actual samples

If the fraction is greater than  $\alpha$ , the significance level of the test, the hypothesis of no difference is not rejected, and the test is passed. The  $\alpha$  shall be .05 when the critical z value is 1.645 and .15 when the critical z value is 1.04.

### 5.0 Critical Z-Value

5.1 The following table shall be used to determine the critical z-value that is referred to in section 6.0. It is based on the monthly business volume of the CLEC for the particular performance measurements for which statistic testing is being performed.

**TABLE 1: CRITICAL Z-VALUE**

CLEC volume (Sample size)	LIS Trunks, UDITs, Resale, UBL-DS1 and DS- 3	All Other
1-10	1.04*	1.645
11-150	1.645	1.645
151-300	2.0	2.0
301-600	2.7	2.7
601-3000	3.7	3.7
3001 and above	4.3	4.3

\* The 1.04 applies for individual month testing for performance measurements involving LIS trunks and DS-1 and DS-3 that are UDITs, Resale, or Unbundled Loops. The performance measurements are OP-3d/e, OP-4d/e, OP-5a, OP-6-4/5, MR-5a/b, MR-7d/e, and MR-8.

For purposes of determining consecutive month misses, 1.645 shall be used. Where performance measurements disaggregate to zone 1 and zone 2, the zones shall be combined for purposes of statistical testing.

## **6.0 Payments to CLEC**

6.1 Payments to CLEC shall be made solely for the performance measurements designated on Attachment 1. The payment amount for non-conforming service varies depending upon the designation of performance measurements as High, Medium, and Low and the duration of the non-conforming service condition as described below. Non-conforming service is defined in section 4.0.

6.1.1 Determination of Non-Conforming Measurements: The number of performance measurements that are determined to be non-conforming and, therefore, eligible for payments, are limited according to the critical z-value shown in Table 1, section 5.0. The critical z-values are the statistical standard that determines for each CLEC performance measurement whether Qwest has met parity with CLEC prior performance. The critical z-value is selected from Table 1 according to the monthly CLEC volume for the performance measurement. For instance, if the CLEC sample size for that month is 100, the critical z-value is 1.645 for the statistical testing of that parity performance measurement.

6.2 Determination of the Amount of Payment: Payments to CLEC, except as provided for in sections 6.2.3, 6.3 and 10.0, are calculated and paid monthly based on the number of performance measurements exceeding the critical z-value. Payments will be made on either a per occurrence or per measurement basis, depending upon the performance measurement, using the dollar amounts specified in Table 2 below. The dollar amounts vary depending upon whether the performance measurement is designated High, Medium, or Low and escalate depending upon the number of consecutive months for which Qwest has not met the standard for the particular measurement.

6.2.1 The escalation of payments for consecutive months of non-conforming service will be matched month for month with de-escalation of payments for every month of conforming service. For example, if Qwest has four consecutive monthly "misses" it will make payments that escalate from month 1 to month 4 as shown in Table 2. If, in the next month, service meets the standard, Qwest makes no payment. A payment "indicator" de-escalates down from month 4 to month 3. If Qwest misses the following month, it will make payment at the month 3 level of Table 2 because that is where the payment "indicator" presently sits. If Qwest misses again the following month, it will make payments that escalate back to the month 4 level. The payment level will de-escalate back to the original month 1 level only upon conforming service sufficient to move the payment "indicator" back to the month 1 level.

6.2.2 For those performance measurements listed on Attachment 2 as "Performance Measurements Subject to Per Measurement Caps," excluding BI-3A, payment to a CLEC in a single month shall not exceed the amount listed in Table 2 below for the "Per Measurement Cap" category. For those performance measurements listed on Attachment 2 as "Performance Measurements Subject to Per Measurement Payments," if any should be added at a later time, payment to a CLEC will be the amount set forth in Table 2 below under the section labeled "Per Measurement Cap."

**TABLE 2: PAYMENTS TO CLEC**

Per Occurrence	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Each following month after Month 6 add
High	\$150	\$250	\$500	\$600	\$700	\$800	\$100
Medium	\$ 75	\$150	\$300	\$400	\$500	\$600	\$100
Low	\$ 25	\$ 50	\$100	\$200	\$300	\$400	\$100

Per Measurement Cap							
Measurement Group	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Each following month after Month 6 add
High	\$25,000	\$50,000	\$75,000	\$100,000	\$125,000	\$150,000	\$25,000
Medium	\$10,000	\$20,000	\$30,000	\$ 40,000	\$ 50,000	\$ 60,000	\$10,000
Low	\$ 5,000	\$10,000	\$15,000	\$ 20,000	\$ 25,000	\$ 30,000	\$ 5,000

6.2.3 For the BI-3A performance measurement, the dollar payment amount for non-conforming performance varies depending upon the Total Bill Adjustment Amount for the CLEC. The payment amount is calculated using Table 2A below by multiplying the per occurrence amount times the number of occurrences based on the Total Bill Adjustment Amount,<sup>3</sup> capped at the amount shown in the table for that Total Bill Adjustment Amount. The escalation of payments for consecutive months as stated in section 6.2.1 does not apply.

**TABLE 2A: PAYMENTS TO CLECS FOR BI-3A**

Total Bill Adjustment Amount	Per Occurrence Amount	Cap
\$0 - \$0.99	\$0	\$0
\$1 - \$199.99	\$1	\$200
\$200 - \$999.99	\$10	\$5,000
\$1,000 - \$9,999.99	\$10	\$10,000
\$10,000 - \$49,999.99	\$15	\$15,000
\$50,000 - \$99,999.99	\$20	\$20,000
\$100,000 and over	\$25	\$25,000

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7.4 Performance Measurements Subject to Per Measurement Payment: The following performance measurements shall have their performance results measured on a region-wide (14 state) basis. Failure to meet the performance standard, therefore, will

<sup>3</sup> Total Bill Adjustment Amount is determined by subtracting the BI-3A numerator from the BI-3A denominator as defined in the BI-3 PID formula.

result in a per measurement payment in each of the Qwest in-region 14 states adopting this APAP. The performance measurements are:

- GA-1: Gateway Availability - IMA-GUI
- GA-3: Gateway Availability – EB-TA
- GA-4: System Availability – EXACT
- GA-6: Gateway Availability – GUI-Repair
- GA-8: Gateway Availability – IMA XML
- PO-1: Pre-Order/Order Response Times
- OP-2: Call Answered within Twenty Seconds – Interconnect Provisioning Center
- MR-2: Calls Answered within Twenty Seconds – Interconnect Repair Center

GA-1 has two sub-measurements: GA-1A and GA-1D. PO-1 shall have two sub-measurements: PO-1A and PO-1X. PO-1A and PO-1X shall have their transaction types aggregated together.

For these measurements, Qwest will make a payment based upon monthly performance results according to Table 6: Per Measurement Payments will be allocated to CLECs that have opted into the APAP based on their relative level of circuits as contained in the denominator to the MR-8 measure.

**TABLE 6: PER MEASUREMENT PAYMENTS TO STATE FUNDS**

Measurement	Performance	State Payment	14 State Payment
GA-1,3,4,6,8	1% or lower	\$1,000	\$14,000
	>1% to 3%	\$10,000	\$140,000
	>3% to 5%	\$20,000	\$280,000
	>5%	\$30,000	\$420,000
PO-1	2 sec. Or less	\$1,000	\$14,000
	>2 sec. to 5 sec.	\$5,000	\$70,000
	>5 sec. to 10 sec.	\$10,000	\$140,000
	>10 sec.	\$15,000	\$210,000
OP-2/MR-2	1% or lower	\$1,000	\$14,000
	>1% to 3%	\$5,000	\$70,000
	>3% to 5%	\$10,000	\$140,000
	>5%	\$15,000	\$210,000



## **8.0 Step by Step Calculation of Monthly Payments to CLEC**

8.1 Application of the Critical Z-Values: Qwest shall identify the parity performance measurements that measure the service provided to CLEC by Qwest for the month in question and the critical z-value from Table 1 in section 5.0 that shall be used for purposes of statistical testing for each particular performance measurement. The statistical testing procedures described in section 4.0 shall be applied. For the purpose of determining the critical z-values, each disaggregated category of a performance measurement is treated as a separate sub-measurement. The critical z-value to be applied is determined by the CLEC current volume at each level of disaggregation or sub-measurement.

### **8.2 Performance Measurements for which Payment is Per Occurrence:**

#### **8.2.1 Performance Measurements that are Averages or Means:**

8.2.1.1 Step 1: For each performance measurement, the average or the mean that would yield the critical z-value shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used.

8.2.1.2 Step 2: The percentage differences between the actual averages and the calculated averages shall be calculated. The calculation is  $\% \text{ diff} = (\text{CLEC result} - \text{Calculated Value}) / \text{Calculated Value}$ . The percent difference shall be capped at a maximum of 100%. In all calculations of percent differences in sections 8.0 and 9.0, the calculated percent differences is capped at 100%.

8.2.1.3 Step 3: For each performance measurement, the total number of data points shall be multiplied by the percentage calculated in the previous step and the per occurrence dollar amounts from the Payment Table shall determine the payment to the CLEC for each non-conforming performance measurement.

#### **8.2.2 Performance Measurements that are Percentages:**

8.2.2.1 Step 1: For each performance measurement, the percentage that would yield the critical z-value shall be calculated. The same denominator as the one used in calculating the z- statistic for the measurement shall be used.

8.2.2.2 Step 2: The difference between the actual percentages for the CLEC and the calculated percentages shall be determined.

8.2.2.3 Step 3: For each performance measurement, the total number of data points shall be multiplied by the difference in percentage calculated in the previous step, and the per occurrence dollar amount taken from the Payment Table, to determine the payment to the CLEC for each non-conforming performance measurement.

**8.2.3 Performance Measurements that are Ratios or Proportions:**

8.2.3.1 Step 1: For each performance measurement the ratio that would yield the critical z-value shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used.

8.2.3.2 Step 2: The absolute difference between the actual rate for the CLEC and the calculated rate shall be determined.

8.2.3.3 Step 3: For each performance measurement, the total number of data points shall be multiplied by the difference calculated in the previous step, and the per occurrence dollar amount taken from the Payment Table, to determine the payment to the CLEC for each non-conforming performance measurement.

**8.3 Performance Measurements for which Payment is Per Measure:**

8.3.1 For each performance measurement where Qwest fails to meet the standard, the payment to the CLEC shall be the dollar amount shown on the "per measure" portion of Table 2: Payments to CLEC.

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**11.0 Payment**

11.1 Payments to CLEC or the State shall be made one month following the due date of the performance measurement report for the month for which payment is being made. Qwest will pay interest on any late payment and underpayment at the prime rate as reported in the Wall Street Journal. On any overpayment, Qwest is allowed to offset future payments by the amount of the overpayment plus interest at the prime rate.

11.2 Payment to CLEC shall be made via bill credits. To the extent that a monthly payment owed to CLEC under this APAP exceeds the amount owed to Qwest by CLEC on a monthly bill, Qwest will issue a check or wire transfer to CLEC in the amount of the overage. Payment to the State shall be made via check or wire transfer.

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## 13.0 Limitations

13.1 The APAP shall not become available in the State unless and until the CenturyLink / Qwest merger closes.

13.2 Qwest will not be liable for payments to CLEC until the Commission has approved an interconnection agreement between CLEC and Qwest which adopts the provisions of this APAP.

13.3 Qwest shall not be obligated to make payments for any measurement if and to the extent that non-conformance for that measurement was the result of any of the following: 1) a Force Majeure event, including but not limited to acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers; 2) an act or omission by a CLEC that is contrary to any of its obligations under its interconnection agreement with Qwest or under federal or state law; an act or omission by CLEC that is in bad faith. Examples of bad faith conduct include, but are not limited to: unreasonably holding service orders and/or applications, "dumping" orders or applications in unreasonably large batches, "dumping" orders or applications at or near the close of a business day, on a Friday evening or prior to a holiday, and failing to provide timely forecasts to Qwest for services or facilities when such forecasts are required to reasonably provide services or facilities; or 3) problems associated with third-party systems or equipment, which could not have been avoided by Qwest in the exercise of reasonable diligence, *provided, however*, that this third party exclusion will not be raised in the State more than three times within a calendar year.

13.3.1 Qwest will not be excused from payments for any reason except as described in Section 13.0. Qwest will have the burden of demonstrating that its non-conformance with the performance measurement was excused on one of the grounds described in this APAP.

13.4 The implementation of these enforcement terms, and specifically Qwest's payment of any "liquidated damages" hereunder, will not be considered as an admission against interest or an admission of liability in any legal, regulatory, or other proceeding relating in whole or in part to the same performance.

13.4.1 CLEC may not use: 1) the existence of this enforcement plan; or 2) Qwest's payment of Tier -1 "liquidated damages" as evidence that Qwest has discriminated in the provision of any facilities or services under Sections 251 or 252, or has violated any state or federal law or regulation. Qwest's conduct

underlying its performance measures, however are not made inadmissible by its terms.

13.4.2 By accepting this performance remedy plan, CLEC agrees that Qwest's performance with respect to this remedy plan may not be used as an admission of liability or culpability for a violation of any state or federal law or regulation. (Nothing herein is intended to preclude Qwest from introducing evidence of any "liquidated damages" under these provisions for the purpose of offsetting the payment against any other damages or payments a CLEC might recover.)

13.5 By incorporating these liquidated damages terms into the APAP, Qwest and CLEC accepting this APAP agree that proof of damages from any non-conforming performance measurement would be difficult to ascertain and, therefore, liquidated damages are a reasonable approximation of any contractual damages that may result from a non-conforming performance measurement. Qwest and CLEC further agree that payments made pursuant to this APAP are not intended to be a penalty. The application of the damages provided for herein is not intended to foreclose other noncontractual legal and non-contractual regulatory claims and remedies that may be available to a CLEC.

13.6 This APAP contains a comprehensive set of performance measurements, statistical methodologies, and payment mechanisms that are designed to function together, along with the Qwest Performance Assurance Plan ("QPAP"), as an integrated whole. To elect the APAP, CLEC must adopt the APAP and QPAP in their entirety, in its interconnection agreement with Qwest in lieu of other alternative standards or relief for the same wholesale services governed by the APAP and QPAP. Where alternative standards or remedies for Qwest wholesale services governed by the APAP and QPAP are available under rules, orders, or contracts, including interconnection agreements, CLEC will be limited to either APAP and QPAP standards and remedies or the standards and remedies available under rules, orders, or contracts and CLEC's choice of remedies shall be specified in its interconnection agreement.

13.7 Any liquidated damages payment by Qwest under these provisions is not hereby made inadmissible in any proceeding related to the same conduct where Qwest seeks to offset the payments against any other damages a CLEC may recover; whether or not the nature of the damages sought by the CLEC is such that an offset is appropriate will be determined in the relevant proceeding.

13.9 Whenever a Qwest payment to an individual CLEC exceeds \$3 million in a month, Qwest may commence a proceeding to demonstrate why it should not be required to pay any amount in excess of the \$3 million. Upon timely commencement of the proceeding, Qwest must pay the balance of payments owed in excess of \$3 million into escrow, to be held by a third-party pending the outcome of the proceeding. To invoke these escrow provisions, Qwest must file, not later than the due date of the payments, its application. Qwest will have the burden of proof to demonstrate why,

under the circumstances, it would be unjust to require it to make the payments in excess of \$3 million. If Qwest reports non-conforming performance to CLEC for three consecutive months on 20% or more of the measurements reported to CLEC and has incurred no more than \$1 million in liability to CLEC, then CLEC may commence a similar proceeding. In any such proceeding CLEC will have the burden of proof to demonstrate why, under the circumstances, justice requires Qwest to make payments in excess of the amount calculated pursuant to the terms of the APAP. The disputes identified in this section shall be resolved in a manner specified in the Dispute Resolution section of the SGAT or interconnection agreement with the CLEC.

#### **14.0 Reporting**

14.1 Upon the Closing Date<sup>4</sup>, Qwest will provide CLEC that has an approved interconnection agreement with Qwest, a monthly report of Qwest's performance for the measurements identified in the APAP by the last day of the month following the month for which performance results are being reported. However, Qwest shall have a grace period of five business days, so that Qwest shall not be deemed out of compliance with its reporting obligations before the expiration of the five business day grace period. Qwest will collect, analyze, and report performance data for the measurements listed on Attachment 1 in accordance with the most recent version of the PIDs. Upon CLEC's request, data files of the CLEC's raw data, or any subset thereof, will be transmitted, without charge, to CLEC in a mutually acceptable format, protocol, and transmission medium.

14.2 Qwest will also provide the Commission a monthly report of aggregate CLEC performance results pursuant to the APAP by the last day of the month following the month for which performance results are being reported. However, Qwest shall have a grace period of five business days, so that Qwest shall not be deemed out of compliance with its reporting obligations before the expiration of the five business day grace period. Solely upon the specific order of the Commission, data files of participating CLEC raw data, or any subset thereof, will be transmitted, without charge, to the Commission in a mutually acceptable format, protocol, and transmission form, provided that Qwest shall first initiate any procedures necessary to protect the confidentiality and to prevent the public release of the information pending any applicable Commission procedures. Qwest shall provide such notice as the Commission directs to the CLEC involved. By accepting this APAP, CLEC consents to Qwest providing CLEC's report and raw data to the Commission.

14.3 In the event Qwest does not provide CLEC and the Commission with a monthly report by the last day of the month following the month for which performance results are being reported, Qwest will pay to the State a total of \$500 for each business day for

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<sup>4</sup> The "Closing Date" refers to the closing date of the transaction for which the Applicants have sought approval from the Federal Communications Commission (FCC) and state commissions.

which performance reports are 6 to 10 business days past the due date; \$1,000 for each business day for which performance reports are 11 to 15 business days past the due date; and \$2,000 for each business day for which performance results are more than 15 business days past the due date. If reports are on time but are missing performance results, Qwest will pay to the State a total of one-fifth of the late report amount for each missing performance measurement, subject to a cap of the full late report amount. These amounts represent the total payments for omitting performance measurements or missing any report deadlines, rather than a payment per report. Prior to the date of a payment for late reports, Qwest may file a request for a waiver of the payment, which states the reasons for the waiver. The Commission may grant the waiver, deny the waiver, or provide any other relief that may be appropriate.

14.4 To the extent that Qwest recalculates payments made under this APAP, such recalculation shall be limited to the preceding three years (measured from the later of the provision of a monthly credit statement or payment due date). Qwest shall retain sufficient records to demonstrate fully the basis for its calculations for long enough to meet this potential recalculation obligation. CLEC verification or recalculation efforts should be made reasonably contemporaneously with Qwest measurements. In any event, Qwest shall maintain the records in a readily useable form for one year. For the remaining two years, the records may be retained in archived format. Any payment adjustments shall be subject to the interest rate provisions of section 11.1.

## **15.0 Integrated Audit Program/Investigations of Performance Results**

15.1 Audits of the APAP may be conducted in a two-year cycle under the auspices of the participating Commissions in accordance with a detailed audit plan developed by an independent auditor retained for a two-year period. The participating Commissions may select the independent auditor with input from Qwest and CLECs.

15.1.1 The participating Commissions may form an oversight committee of Commissioners who will choose the independent auditor and approve the audit plan. Any disputes as to the choice of auditor or the scope of the audit shall be resolved through a vote of the chairs of the participating commissions pursuant to Section 15.1.4.

15.1.2 The audit plan may be conducted over two years. The audit plan will identify the specific performance measurements to be audited, the specific tests to be conducted, and the entity to conduct them. The audit plan will give priority to auditing the higher risk areas identified in the OSS report. The two-year cycle will examine risks likely to exist across that period and the past history of testing, in order to determine what combination of high and more moderate areas of risk should be examined during the two-year cycle. The first year of a two-year cycle will concentrate on areas most likely to require follow-up in the second year.

15.1.3 The audit plan shall be coordinated with other audit plans that may be conducted by other state commissions so as to avoid duplication, shall not impede Qwest's ability to comply with the other provisions of the APAP and should be of a nature and scope that can be conducted in accordance with the reasonable course of Qwest's business operations.

15.1.4 Any dispute arising out of the audit plan, the conduct of the audit, or audit results shall be resolved by the oversight committee of Commissioners. Decisions of the oversight committee of Commissioners may be appealed to a committee of the chairs of the participating Commissions.

15.2 Qwest may make management processes more accurate or more efficient to perform without sacrificing accuracy. These changes are at Qwest's discretion but will be reported to participating CLECs, the state Commissions and the independent auditor, if any, in meetings in which any party may ask questions about changes made in the Qwest measurement regimen.

15.3 In the event of a disagreement between Qwest and CLEC as to any issue regarding the accuracy or integrity of data collected, generated, and reported pursuant to the APAP, including disagreement regarding changes as part of 15.2, Qwest and the CLEC shall first consult with one another and attempt in good faith to resolve the issue. If an issue is not resolved within 45 days after a request for consultation, CLEC and Qwest may, upon a demonstration of good cause, (e.g., evidence of material errors or discrepancies) request an independent audit to be conducted, at the initiating party's expense. The independent auditor will assess the need for an audit based upon whether there exists a material deficiency in the data or whether there exists an issue not otherwise addressed by the audit plan for the current cycle. The dispute resolution provision of section 18.0 is available to any party questioning the independent auditor's decision to conduct or not conduct a CLEC requested audit and the audit findings, should such an audit be conducted. An audit may not proceed until dispute resolution is completed. Audit findings will include: (a) general applicability of findings and conclusions (i.e., relevance to CLECs or jurisdictions other than the ones causing test initiation), (b) magnitude of any payment adjustments required and, (c) whether cost responsibility should be shifted based upon the materiality and clarity of any Qwest non-conformance with measurement requirements (no pre-determined variance is appropriate, but should be based on the auditor's professional judgment). CLEC may not request an audit of data more than three years from the later of the provision of a monthly credit statement or payment due date.

## **16.0 Reviews**

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16.1.1 Any party may submit a root cause analysis to the Commission requesting removal of a PID or sub-measure from the APAP. In the analysis and recommendations concerning the root cause analysis, the Commission is to consider, at a minimum, whether the root cause analysis provides evidence of no harm, the same harm as covered by other PID measures, non-Qwest related causes, or other factors which directly relate to the harm or circumstances specific to the PID or sub-measure being analyzed.

16.3 Qwest will make the APAP available for CLEC interconnection agreements until five years after the Closing Date. At that time, the Commission and Qwest shall review the appropriateness of the APAP and whether its continuation is necessary.

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#### **18.0 Dispute Resolution**

For the purpose of resolving disputes over the meaning of the provisions of the APAP and how they should be applied, the dispute resolution provisions of the CLEC Interconnection Agreement, shall apply.



**Attachment 1: Performance Measurements Subject to Per Occurrence Payment**

Performance Measurement		Payments					
		Low	Med	High			
<b>GATEWAY</b>							
Timely Outage Resolution	GA-7			X			
<b>PRE-ORDER/ORDERS</b>							
LSR Rejection Notice Interval	PO-3 <sup>a</sup>	X					
Firm Order Confirmations On Time	PO-5	X					
Work Completion Notification Timeliness	PO-6 <sup>b</sup>	X					
Billing Completion Notification Timeliness	PO-7 <sup>b</sup>	X					
Jeopardy Notice Interval	PO-8	X					
Timely Jeopardy Notices	PO-9	X					
Release Notifications	PO-16			X			
(Expanded) – Manual Service Order Accuracy	PO-20		X				
<b>ORDERING AND PROVISIONING</b>							
Installation Commitments Met	OP-3 <sup>g</sup>			X			
Installation Intervals	OP-4 <sup>c,g</sup>			X			
New Service Quality	OP-5a <sup>g</sup> ,b <sup>d,g</sup>			X			
Delayed Days	OP-6 <sup>a,g</sup>			X			
Number Portability Timeliness	OP-8			X			
Coordinated Cuts On Time – Unbundled Loops	OP-13a			X			
LNP Disconnect Timeliness	OP-17			X			
<b>MAINTENANCE AND REPAIR</b>							
Out of Service Cleared within 24 hours	MR-3 <sup>g</sup>			X			
All Troubles Cleared within 4 hours	MR-5 <sup>g</sup>			X			
Mean time to Restore	MR-6a <sup>g</sup> ,b <sup>g</sup> ,c <sup>g</sup> ,d <sup>f</sup> ,e <sup>f</sup>			X			
Repair Repeat Report Rate	MR-7 <sup>g</sup>			X			
Trouble Rate	MR-8 <sup>g</sup>			X			
LNP Trouble Reports Cleared within Specified Timeframes	MR-11			X			
<b>BILLING</b>							
Time to Provide Recorded Usage Records	BI-1	X					
Billing Accuracy-Adjustments for Errors	BI-3	X					
Billing Completeness	BI-4	X					
<b>NETWORK PERFORMANCE</b>							
Trunk Blocking	NI-1			X			
NXX Code Activation	NP-1			X			

- a. PO-3 is limited to PO-3a-1, PO-3b-1, and PO-3c.
- b. PO-6 is included with PO-7 as two "families:" PO-6a/PO-7a and PO-6b/PO-7b. Measurements within each family share a single payment opportunity with only the measurements with the highest payment being paid.
- c. OP-4 is included with OP-6 as five "families:" OP-4a/OP-6-1, OP-4b/OP-6-2, OP-4c/OP-6-3, OP-4d/OP-6-4, and OP-4e/OP-6-5. Measurements within each family share a single payment opportunity with only the measurement with the highest payment being paid.
- d. Section 3.1.2 applies to OP-5b only if the number of orders with trouble in OP-5a is no more than one.
- e. For purposes of the APAP, OP-6a and OP-6b will be combined and treated as one. The combined OP-6 breaks down to OP-6-1 (within MSA), OP-6-2 (outside MSA), OP-6-3 (no dispatch), OP-6-4 (zone 1), and OP-6-5 (zone 2).
- f. Applicable only to xDSL-I capable loops.
- g. Excludes the following product disaggregations as applicable to this PID: Resale Centrex, Resale Centrex 21, Resale DS0 (non-designed), Resale DS0 (designed), Resale DS0, E911/911 Trunks, Resale Frame Relay, Resale Basic ISDN (non-designed), Resale Basic ISDN (designed), Resale Basic ISDN, Resale Primary ISDN (non-designed), Resale Primary ISDN (designed), Resale Primary ISDN, Resale PBX (non-designed), Resale PBX (designed), Resale PBX, Sub-Loop Unbundling, UNE-P (POTS), UNE-P (Centrex), and UNE-P (Centrex 21).

**Attachment 2: Performance Measurements Subject to Per Measurement Caps**

Billing

Time to Provide Recorded Usage Records – BI-1  
Billing Accuracy – Adjustments for Errors – BI-3  
Billing Completeness – BI-4