

**ATTACHMENT 1
STIPULATION BETWEEN ADVOCACY STAFF AND QWEST
REGARDING PERFORMANCE ASSURANCE PLAN**

TIER 2 TRIGGERS

9.1.3 Notwithstanding the Tier 2 payment provision in section 9.1.2, if Qwest's monthly conforming measurement payment percentage (as measured by the percentage of measurement payment opportunities where the plan did not require Qwest to make a payment to CLECs to the total payment opportunities) falls below 85% for any 5 of 12 consecutive months, it will result in the removal of the Tier 2 "2 out of 3 consecutive month" provision for Tier 2 performance metrics, discussed in section 9.1.2, such that payments for Tier 2 measurements without a Tier 1 counterpart would be made with respect to the first month of nonconforming performance and payments for Tier 2 performance measurements with a Tier 1 counterpart would be made with respect to the second consecutive month of nonconforming performance. All other provisions in section 9.1.2 shall apply. This modification shall be limited to those performance measurements where the percentage of nonconforming sub-measures was below 85% during the same 5 months which invoked this provision. If Qwest's monthly conforming measurement payment percentage is above 90% for any 9 consecutive months following modifications required by this section, the plan provisions shall revert to their state prior to such modifications.

INTEREST

11.1 Payments to CLEC, the State, or the Special Fund 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 State of Utah post judgment interest rate, as found in Utah Code Ann. § 15-1-4. On any overpayment, Qwest is allowed to offset future payments by the amount of the overpayment plus interest at the Utah post judgment interest rate.

SPECIAL FUND

11.3 Upon the execution of a memorandum of understanding with the Utah Commission, a Utah Special Fund and a Utah Discretionary Fund shall be created for the purposes and in accordance with section 11.0. The Utah Commission shall appoint a person designated to administer and authorize disbursement of funds. All claims against the funds shall be presented to the Commission's designate and shall be the responsibility of the Utah Commission.

11.3.1 Qwest shall establish the Utah Special Fund and the Utah Discretionary Fund as separate interest bearing escrow accounts. Upon Qwest receiving effective section 271 authority from the FCC for the state of Utah, the Commission shall determine and direct Qwest to deposit into the Utah Special Fund either 1) one-fifth of all Tier 1 payments that exceed the month 1 payment amounts in Table 2 and one-third of all Tier 2 payments or 2) 50% of all Tier 2 payments. Qwest shall deposit any other Tier 2 payments into the Utah Discretionary Fund. The costs of the escrow accounts will be paid for from the accounts' funds.

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11.3.2 The Utah Special Fund shall be created to pay the independent auditor and audit costs for the purpose of a regional audit as specified in section 15.0-15.4 or audit costs associated with a state audit pursuant to section 15.5, and to pay expenses incurred by the Commission in participating in any regional review of the PIDs. Disbursements from the Utah Special Fund shall first be from Tier 2 funds and second from Tier 1 funds. Not less than every two years, Tier 1 funds that are not needed to meet the continuing obligations of the Special Fund shall be returned on a pro-rata basis to CLECs, including any interest not used for fund administration. Other than the transfer of funds allowed in section 11.3.2.1, disbursements from the Utah Discretionary Fund shall be limited to Utah telecommunications initiatives. Any excess funds in the Utah Special Fund may be transferred to the Utah Discretionary Fund at the Commission's discretion.

11.3.2.1 If the Utah Commission chooses not to participate in the regional audit pursuant to sections 15.0-15.4 and the account balance of the Utah Special Fund escrow account is less than \$50,000 at the time of any annual audit described in section 15.5, a transfer of funds from the Utah Discretionary Fund to the Utah Special Fund shall be allowed in the amount necessary to bring the Utah Special Fund balance to \$50,000.

11.3.3 Notwithstanding the provisions herein, Qwest shall advance sufficient funds to any consolidated Special Fund established by participating states, set up for the purpose of a regional audit as specified in sections 15.0-15.4, not to exceed \$200,000 (or \$500,000 in the event 6 or more states participate in the regional audit) in order to meet initial claims against that Fund to the extent that contributions from Tier 1 and/or Tier 2 payments are insufficient. Qwest shall be allowed to recover any such advances plus interest at the rate that such an escrow account would have earned from future Tier 2 payments.

CAP

12.1 There shall be an initial procedural annual cap ('initial cap') on the total payments made by Qwest for any consecutive 12-month period beginning with the effective date of the PAP for the State of Utah ('plan year'). The amount of this initial annual cap for the State of Utah shall be \$31,000,000 (24% of the 1999 Utah ARMIS Net Return). During any given plan year, Qwest may be required to make payments in excess of the initial annual cap, as described in section 12.2, but in no event shall the annual payments exceed maximum cap of 44% of the 1999 ARMIS Utah Net Return, or \$56,000,000. CLEC agrees that these provisions will result in a maximum annual cap that shall apply to the aggregate total of Tier 1 liquidated damages, including any such damages paid pursuant to this Agreement, any other interconnection agreement, or any other payments made for the same underlying activity or omission under any other contract, and Tier 2 assessments or payments made by Qwest for the same underlying activity or omission under any other contract, order or rule.

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12.2 If the initial procedural cap described in 12.1, or any subsequent cap established by the Commission pursuant to this section which is under the 44% maximum cap ('existing cap'), is exceeded, or is projected to be exceeded, prior to the end of any plan year, Qwest may file a petition with the Commission seeking relief from making payments in excess of the existing cap. Upon Qwest's filing, the Commission shall initiate an expedited proceeding to determine whether and to what extent Qwest should be required to make payments in excess of the existing cap (but not to exceed the 44% annual cap.) Qwest will not be required to make payments in excess of the existing cap pending the outcome of the proceeding before the Commission. The Commission shall use a public interest standard in deciding whether to raise the existing cap. Qwest will be required to make payments in excess of the existing cap only if the Commission finds, after the expedited proceeding, that the public interest requires the existing cap to be raised. In making its determination on whether the public interest requires such action, one of the Commission's primary considerations in raising or maintaining an existing cap shall be whether Qwest could have remained below the cap through reasonable and prudent efforts. In such a proceeding, Qwest shall have the burden of establishing that it could not have remained below the existing cap through the use of reasonable and prudent effort. If the Commission determines that Qwest should make payments in excess of the existing cap, Qwest shall be required to make any and all payments that were suspended with interest and continue to make payments pursuant to the new cap established by the Commission. If no petition is filed, Qwest shall be required to continue to make Tier 1 and Tier 2 payments under the plan for the remainder of the plan year up to an annual cap of 44% of 1999 ARMIS Utah Net Return.

EQUALIZATION

12.3 If the annual cap is reached, each CLEC shall, as of the end of the plan year, be entitled to receive the same percentage of its total calculated Tier 1 payments. In order to preserve the operation of the annual cap, the percentage of equalization shall take place as follows:

12.3.1 The amount by which any month's total year-to-date Tier 1 and Tier 2 payments exceeds the cumulative monthly cap (defined as $1/12^{\text{th}}$ of the annual cap times the cumulative number of months to date) shall be calculated and apportioned between Tier 1 and Tier 2 according to the percentage that each bore of total payments for the year-to-date. The Tier 1 apportionment resulting of this calculation shall be known as the "Tracking Account."

12.3.2 The Tier 1 apportionment shall be debited against the monthly payment due to each CLEC, by applying to the year-to-date payments received by each the percentage necessary to generate the required total Tier 1 amount.

12.3.3 The Tracking Amount shall be apportioned among all CLECs so as to provide each with payments equal in percentage of its total year to date Tier 1 payment calculations.

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12.3.4 This calculation shall take place in the first month that the year-to-date total Tier 1 and Tier 2 payments are expected to exceed the cumulative monthly cap and for each month of that year thereafter. Qwest shall recover any debited amounts by reducing payments due to any CLEC for that month and any succeeding months, as necessary.

OFFSET

13.6 This PAP contains a comprehensive set of performance measurements, statistical methodologies, and payment mechanisms that are designed to function together, and only together, as an integrated whole. To elect the PAP, CLEC must adopt the PAP in its entirety in its interconnection agreement with Qwest in lieu of other alternative standards or relief. Where alternative standards or remedies for Qwest's wholesale performance are available under rules, orders, or contracts, including interconnection agreements, CLEC will be limited to either PAP standards and remedies or the standards and remedies available under rules, orders or contracts and CLECs choice of remedies shall be specified in its interconnection agreement.

13.7 Qwest shall be entitled to seek an offset against any recovery by CLEC under any noncontractual theory of liability (including but not limited to tort and antitrust claims). Nothing in this PAP shall be read as permitting an offset related to Qwest payments related to CLEC or third-party physical damage to property or personal injury.

13.8 To the extent Qwest believes that some Tier 2 payments required to be made under this PAP would duplicate payments that have been assessed by or on behalf of the Commission pursuant to any service quality rules or Commission orders, Qwest may make such Tier 2 payments to a special interest bearing escrow account and then dispute the payments before the Utah Commission. If Qwest can show that the payments relate to the same underlying activity or omission, it may retain the Tier 2 payments and any interest accrued on such payments.

AUDITS

15.0 Integrated Audit Program/Investigations of Performance Results

15.1 Audits of the PAP shall 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 shall select the independent auditor with input from Qwest and CLECs.

15.1.2 The participating Commissions shall 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 15.1.5.

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15.1.3 The audit plan shall 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.

15.1.4 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 PAP and should be of a nature and scope that it can be conducted consistent with the reasonable course of Qwest's business operations.

15.1.5 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 the independent auditor in quarterly meetings in which the auditor may ask questions about changes made in the Qwest measurement regimen. The meetings, which will be limited to Qwest and the independent auditor, will permit an independent assessment of the materiality and propriety of any Qwest changes, including, where necessary, testing of the change details by the independent auditor. The information gathered by the independent auditor may be the basis for reports by the independent auditor to the participating Commissions and, where the commissions deem it appropriate, to other participants.

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 PAP, 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 request 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 audit

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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.

15.4 Expenses for the regional audit of the PAP and any other related expenses, except that which may be assigned under section 15.3, shall be paid first from the Tier 2 funds in the Special Fund. The remainder of audit expenses will be paid one half from Tier 1 funds in the Special Fund and one half by Qwest.

15.5 If the Utah Commission chooses not to participate in the regional audit described in sections 15.0-15.4 it may conduct an audit with the monies contained in the Utah Special Fund pursuant to the following:

- A. The audit shall be limited to (1) problem areas requiring further oversight as specifically identified in a previous audit; (2) any submeasurements changed or being changed from a manual to an electronic system; (3) any submeasurement responsible for at least 20% of the payments paid by Qwest over the prior year, and (4) whether Qwest is exercising due diligence in evaluating which, if any, performance data can be properly excluded from its performance measurements.
- B. The first audit pursuant to this section 15.5 shall be conducted no sooner than twelve months after Qwest receives effective 271 authority from the FCC for the state of Utah and may be conducted every twelve months thereafter. Any audits conducted pursuant to this section 15.5 shall be conducted by the same auditor retained to conduct the regional audit unless the Commission, for good cause (i.e., conflict, price, integrity, or viability of the firm), finds the regional auditor is unacceptable.
- C. No investigation or audit of any performance measurement shall be conducted within 12 months of any audit of the same performance measurement or submeasurement, including any audit conducted under the regional audit program or by another state or by a CLEC so long as the results of the other audits are made available to the Commission and the Division of Public Utilities and such audit is applicable to Utah specific data. If any audit has been conducted but does not include Utah specific data, the Commission may audit the performance measurement to the degree necessary to verify Utah specific results without duplicating relevant parts of the prior audit, unless the Commission finds the data produced by a performance measurement to be unreliable.

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- D. Any audit conducted pursuant to this section must be designed and conducted to specifically address the perceived problem or condition that triggers the audit.
- E. No audit or investigation requested pursuant to this section 15.5 shall be duplicative of any other audit. Any audit requested pursuant to this section shall be coordinated with other audits including audits planned or conducted by the regional audit program or pursuant to any other PAP, shall be planned and conducted so as to avoid duplication and interference with Qwest's ability to comply with the other provisions of the PAP, and shall be of a nature and scope that it can be conducted within the reasonable course of Qwest's business. Qwest shall not be required to audit more than three performance measurements at the same time and Qwest's resources shall be allocated first to any ongoing regional audits.

SIX MONTH REVIEW

16.1 Every six (6) months, beginning six months after the effective date of Section 271 approval by the FCC for the state of Utah, Qwest, CLECs, the Commission, and the Utah Division of Public Utilities shall participate in a 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, Tier 1 or 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. Any reclassification of performance measurements must be approved by Qwest. Any disputes regarding adding, deleting, or modifying performance measurements shall be resolved pursuant to a proceeding before the Commission and subject to judicial review. No new performance measurements shall be added to this PAP that have not been subject to observation as diagnostic measurements for a period of 6 months. Any changes made at the six-month review pursuant to this section and as a result of a final non-appealable decision shall upon finality apply to and modify this agreement between CLEC and Qwest.

Qwest shall not be liable for making any payments under the QPAP that result from changes made pursuant to the preceding paragraph and section 16.3, that exceed 10% of the monthly payments that Qwest would have made absent the effect of such changes as a whole. Such payment limitation shall be accomplished by factoring the payments resulting from the changes to ensure that such payments remain within 10% of the payments Qwest would have made absent such changes.

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ESCALATION

16.2. If at the time the Commission conducts any six-month review, Qwest is making Tier 1 sub-measurement payments that have reached the 6 month payment escalation level, as described in section 6.2 and Table 2 of this plan, the Commission may consider whether the Tier 1 payment for any such measurements should continue to escalate beyond the six month payment level identified in Table 2. The Commission shall base its decision on whether Qwest, through reasonable and prudent efforts, could have limited such payment and whether continued escalation is in the public interest. For those measures that the Commission decides payments should escalate beyond 6 months, any escalated payments beyond 12 months shall be deemed Tier 2 payments, payable to the state in accordance with section 7.5.

16.3 If the Commission determines that the payment levels for the specified performance measurements should continue to escalate, based on the criterion in section 16.2, Qwest shall add \$100 per month to the 6 month Tier 1 payment levels in Table 2 for each consecutive month of non-conforming performance. For payment levels that have escalated beyond 6 months there shall be an accelerated payment de-escalation process based on consecutive months of conforming performance, as follows. For payment levels that have escalated 9 months or more, 3 consecutive months of conforming performance will reduce the payments to the 6-month level. After 3 more consecutive months of conforming performance, the payment level will reduce to the base amount. Except as specifically provided by the accelerated payment de-escalation process in this section, payment de-escalation shall occur in accordance the 'step down' provision described in section 6.2.1. Performance measurements that have been subject to escalation beyond 6 months, in accordance with this section, but which subsequently de-escalate below the 6 month payment level, would only be subject to further escalation beyond 6 months if decided by the Commission in a subsequent 6 month review in accordance with this section 16.3 and section 16.2.

16.4 Any changes made pursuant to sections 16.2 and 16.3 shall be subject to and included in the calculation and application of the 10% payment collar identified in section 16.1.

VOLUNTARY PLAN

17.0 Voluntary Performance Assurance Plan

This PAP represents Qwest's voluntary offer to provide performance assurance. Nothing in the PAP or in any conclusion of non-conformance of Qwest's service performance with the standards defined in the PAP shall be construed to be, of itself, non-conformance with the Act. Except for those changes expressly provided in sections 12.2, 9.1.3 and 16.1, no changes shall be made to this QPAP.