

ATTACHMENT 2

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

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 for the same wholesale services governed by the QPAP. 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.

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, 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

ATTACHMENT 2

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.~~ Any changes made at the six-month review pursuant to this section shall apply to and modify this agreement between Qwest and CLEC, subject to a stay, modification or reversal upon appeal or judicial review.

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.

16.1.2 Notwithstanding section 16.1, if any agreements on adding, modifying or deleting performance measurements as permitted by section 16.1 are reached between Qwest and CLECs participating in an industry Regional Oversight Committee (ROC) PID administration forum, those agreements shall be incorporated into the QPAP and modify the agreement between CLEC and Qwest at any time those agreements are submitted to the Commission, whether before or after a six-month review. Any changes made pursuant to this section shall be subject to and included in the calculation and application of the 10% payment collar identified in Section 16.1.