

**AT&T'S GRAPH/SUMMARY OF COMMISSION/BOARD QPAP ORDERS**  
**(5/8/02)**

Key:

CO= Colorado CPAP (as referenced in Decision on Remand and Other Issues Pertaining to the Colorado Performance Assurance Plan which Qwest acquiesced to).

MT= Montana Final Order

NE= Nebraska Order entitled "QPAP Approved as Amended"

IA=Conditional Statement Regarding Qwest Performance Assurance Plan

ID= Idaho Commission's Decision on Qwest's Performance Assurance Plan

WA= Thirtieth Supplemental Order "Commission Order Addressing Qwest's Performance Assurance Plan"

WY=First Order on Group 5A Issues (Commission did not grant reconsideration of Order---see Order Denying Petition for Reconsideration and Setting Public Hearing and Procedure)

Issue:

Caps

CO No cap for Tier 1X (CLEC base penalty). 36% cap for Tier 1Y (CLEC escalation penalty and Tier II (penalties paid to states). Sets up a monthly cap for Tier 1Y and Tier II penalties. If Tier IX payments exceed the cap, amount is taken from Tier IY and Tier II penalties. See CPAP 11.0.

MT Establishes a 36% procedural cap. MT Order at p. 7-13.

NE Establishes a 24% procedural cap and a 44% hard cap. P.5-7

IA Establishes a 36% hard cap but indicates that the cap can be changed during the six month review because the Commission maintains absolute change control. P.11-12.

ID Establishes a 36% hard cap but indicates that the cap can be changed during the six month review because the Commission maintains absolute change control. p.5.

WA: Establishes a 36% hard cap but the Commission may lift the cap or change the cap at the six month review. p.14-18. p.38

WY No cap on Tier 1 or Tier II p.3

Funding the QPAP

CO Funds exclusively with payments to be made to state. CPAP at §10.4

MT Funds exclusively with Tier II payments unless audit fund is depleted. If depleted, Commission will contemplate utilizing Tier I funding. P.77.

NE Audit funding shall be paid by Qwest exclusive of Tier I and Tier II payments. P.16-18.

ID Tier I payments for CLECs should not be used for administration. P.7

IA Tier I payments for CLECs should not be used for administration. P.60

WA Cost of audit should be paid with Tier II funds. If such funding is insufficient, Commission may require that Tier I funds be used.

WY No action.

#### Commission (as Opposed to Qwest) Change Control

CO: Commission has ultimate change control on all areas of the plan. However, there are six areas: statistical methodology, payment caps, duration of the CPAP, payment regime structure, the legal operation of the CPAP, the use of an Independent Monitor, and “any proposal that does not relate directly to measuring and/or providing payments for non-discriminatory wholesale performance” where the Commission maintains change control but such changes are stayed pending full court review. P. 23.

MT: Commission maintains change control. P. 54-55.

NE: Commission maintains change control. P. 17.

IA: Commission maintains change control. P.97-101.

ID: Commission maintains change control. P. 8-9.

WA: Commission maintains change control. P. 38-39.

WY: Commission maintains change control. P. 6.

#### Exclusivity and Offset

CO: Allows CLEC to seek non-contractual legal or non-contractual regulatory remedies that may be available to the CLEC. CLEC can also see wholesale service quality standards under wholesale service quality rules that do not relate “to the same performance issues addressed by the QPAP.” CLECs can seek contract damages that flow from CPAP “if a CLEC can present a reasonable theory of damages for the non-conforming performance at issue and evidence of real world economic harm that, as applied over the preceding six months, establishes that the actual payments collected for

non-conforming performance in the relevant area do not redress the extent of competitive harm.” P. 15. Only finder of fact may offset penalties.

MT Adopts CO approach to both exclusivity and offset. P.24-26.

NE Adopts CO approach to both exclusivity and offset. P.7-12.

IA Maintains Antonuk language related to exclusivity and offset.<sup>1</sup> P.32-36; 37-41.

ID Maintains Antonuk language related to exclusivity.<sup>2</sup> As to offset, adopts the following language: “If for any reason a CLEC agreeing to this QPAP is awarded compensation for the same harm for which it received payment under the QPAP, the court or other adjudicatory body hearing such a claim may offset the damages resulting from such claim against payments made for the same harm. P.5-6.

WA Adopts CO approach to both exclusivity and offset. P.48-52.

WY Allows CLEC to claim both contractual and non contractual remedies subject to Qwest being allowed to seek offset. P.5

### Special Access Measures

CO Orders Qwest to measure performance related to pre-ordering, ordering, provisioning, and maintenance and repair functions for special access circuits. P.24.

MT Does not require special access measures. (incorporated Antonuk Report by reference).

NE Does not require special access measures. (incorporated Antonuk Report by reference).

IA Does not require special access measures. P.93.

ID Does not require special access measures. (incorporated Antonuk Report by reference).

WA Qwest to measure and “report its monthly provisioning and repair intervals for special access circuits.” (references same measures as Colorado in same time period.) p.32.

WY Does not require special access measures. (incorporated Antonuk Report by reference).

### Escalation

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<sup>1</sup> AT&T plans to submit a Motion for Reconsideration on these issues.

<sup>2</sup> AT&T Motion for Reconsideration Pending.

CO No cap on escalation of Tier I penalties. All escalations penalties over twelve months shift to Tier II. P.18-19

MT No cap on escalation of Tier I penalties. P. 42.

NE No cap on escalation for both Tier I and Tier II penalties. P.14.

IA No cap on escalation of Tier I penalties. P.64-70.

ID Commission allows escalation cap at six months. P.7

WA Commission allows escalation cap at six months. P. 20.

WY No cap on escalation of penalties after six months. P.4.

### Tier II Triggers

CO Two month Tier II Trigger §10.3.

MT Tier II paid when in a twelve-month period, there is non-compliance two out of three months. P.37-38.

NE No differentiation between Tier I and Tier II triggers. Tier II triggers every month. P.12

IA “All Tier 2 payments should be triggered on a monthly basis after the threshold of two out of three consecutive month of misses in a twelve month period. P. 63

ID Tier II paid when in a twelve month period, there is non-compliance two out of three months. P.7

WA No differentiation between Tier I and Tier II triggers. Tier II triggers every month. P. 24.

WY No differentiation between Tier I and Tier II triggers. Tier II triggers every month.. P. 2.

### 100% Cap for Interval Measures

IA: Directs Qwest to remove the 100% Cap on interval measures. P.122.

WA: Directs Qwest to remove the 100% Cap on interval measures. P. 36.