BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of Qwest Corporation For Commission Approval of Stipulation Regarding Performance Indicator Definitions and Qwest Performance Assurance Plan Provisions	Docket No. UT-073034 QWEST CORPORATION'S APRIL 25, 2008 REPLY COMMENTS REGARDING REMAINING DISPUTED ISSUES

I. INTRODUCTION

1 Qwest Corporation ("Qwest") hereby submits its comments in reply to Staff's Initial Comments on Disputed Issues. As Qwest anticipated in its initial comments, filed April 2, 2008, Staff's emphasis is on the reduction in payments that Qwest might experience under the two remaining disputed revisions. Staff's focus misses the mark – the real question should be whether the changes are consistent with incentives to good performance, and they are. The potential reduction in payments is not a reason to reject the changes – indeed, the potential reduction in payments is based on Qwest maintaining its current high level of service. In the event Qwest's service diminishes, the projected savings reduce and in fact the payment amounts could increase.[1] Therefore, Qwest has incentive to maintain or improve service under the Stipulating Parties' proposed changes.

[1] Despite Staff's protestations to the contrary, even with the multiple-month trigger for Tier 2, the fact is the vast majority of these measures are also Tier 1 measures which continue to trigger individual payments based on individual CLEC performance. For the aggregate CLEC performance to miss the standard, where it's meeting it today, means that one or more individual CLEC's service level went down thereby causing Tier 1 payments to increase.

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2 The 2007 Stipulation includes compromises from all parties, including collective agreements that warrant evaluating the 2007 Stipulation as a whole, rather than addressing issues in isolation as the Staff has done. Staff ignores the areas where Qwest compromised and accepted increased potential payment obligations, and Staff's result would produce a QPAP that unduly creates or continues payment obligations. Further, Staff does not address the fact that the CLECs – the very parties who stand to gain or lose from modified PAP provisions – do not oppose the changes, and in fact that some of the CLECs affirmatively support the very changes that Staff opposes. This is relevant even to the reduction in Tier 2 payments – though it might be argued that the CLECs do not care about these changes because they do not receive the payments, in fact if the CLECs thought these payments created important incentives, those parties might not have been willing to agree to these changes. Thus, the only party opposing the changes is a party who stands to neither gain nor lose as a result of the outcome.

3 Consistent with the state's and the Commission's stated preference for negotiated results, Qwest believes that the 2007 Stipulation, as modified by the 2008 Partial Settlement, is a fair result of the negotiation process and benefits all parties, as well as the Commission, by having produced an improved QPAP and should be approved in its entirety.[2]

II. BACKGROUND

4 Staff's Initial Comments, at paragraphs 13-25, discuss the issue of the burden of proof. Qwest disagrees that RCW 80.04.200 applies. This is not a request for rehearing or to change an order, any more than a new rate filing by a utility is a request to reopen the prior rate proceeding. This is simply a case where the parties are following a process, already adopted

[2] To update the Commission regarding the status of the 2007 Stipulation in other states, Arizona has now accepted/ approved the settlement in an ALJ's initial order. *See*, *In the Matter of Qwest Corporation's Performance Assurance Plan*, Docket No. T-01051B-03-0859, dated April 17, 2008.

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and approved by the Commission, for making changes to the PAP. Qwest disagrees that there is a higher burden of proof in connection with these proposed changes. Qwest does not, however, dispute that the proponents of the change to the PAP bear the burden of establishing that the changes should be made.

5 Staff selectively quotes from the AFOR orders to suggest that the AFOR predetermined that changes such as those addressed by the disputed issues cannot be made during the term of the AFOR. That is incorrect. The AFOR orders specifically contemplate that changes to the PAP can be proposed and made under the terms of the plan. There is nothing in the AFOR orders that predetermines the outcome of these issues or that suggests that the standards for making changes to the PAP are more stringent than they previously were.

6 Qwest continues to believe that the Staff's focus on the two disputed issues inappropriately and selectively picks and chooses from the 2007 Stipulation, and denies the parties to that agreement the benefit of the agreement that was reached, with compromises on all sides.

III. ONE ALLOWABLE MISS

7 The sole basis for Staff's continued objection to this provision is that Qwest's payment liability could go down. Staff Initial Comments at ¶ 30. It is true that Qwest's payment liability could go down under this change, but the change could also provide an incentive for better service by giving Qwest a reason to hold to a high, but attainable standard, as opposed to requiring adherence to an impossible standard, which creates no incentive at all, especially once the standard is missed. Staff does not discuss how maintaining the standard promotes better performance.

8 Staff argues that Section 2.4 of the PAP is in place to address the concerns about requiring perfect performance as the standard. Staff Initial Comments ¶ 31. Section 2.4 of the PAP

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does address some of the perfect performance situations but not all of them. Further, section 2.4 still requires a higher standard for low volume CLECs, and perpetuates the problem that the "one allowable miss" provision is intended to cure. Section 2.4 addresses low-volume, perfect performance instances by requiring Qwest to aggregate up to 12 months' performance data in order to have sufficient volume to eliminate the perfect performance requirement. That requirement distorts results in multiple ways.

9 First, for CLECs with consistently low volumes, it requires Qwest's past performance to be perfect, sometimes for an extended period of time, when there is a single miss in the current month. This is because Section 2.4 only calls for the multiple month evaluation when perfection is not achieved in the current month. So aggregating performance over multiple months occurs when there is a miss in the current month, which means the prior month or months' performance (if a single month's volume is still insufficient) must still be perfect to offset the current month's single miss. This aggregation is simply another form of substituting perfection for the agreed upon standard. In this case it operates to not require perfection in the current month only when the prior month or months' performance has been perfect.

10 Second, for those CLECs that normally have sufficient volumes to meet the threshold, with an occasional low volume month, the existing Section 2.4 term does not necessarily eliminate the perfect performance requirement. Section 2.4 can cause Qwest to miss the benchmark in the current month when the prior month's results met the benchmark. For example, for a measure with a 95% benchmark, if the current month's volume was ten and Qwest missed one, the current month's performance would be 90%. In this case, because of the low volume, the current requirements demand perfection. Where the prior month's volume was 100 and the performance was at the benchmark (95%), the combined result of the two months'

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performance would be 94.55%[3], resulting in a payment for the single miss in the current month.

11 Finally, aggregating multiple months' performance together introduces distorting factors from one month on another month's performance. For example, where installations were delayed due to workload issues in a given month, Qwest performance may fall short that month. If it does, there would most likely be PAP payments. But for a low volume CLEC, that same month's performance could also be included in an evaluation of performance months later. The negotiated one allowable miss provision proposed by the stipulating parties retains the monthly performance evaluation structure of the PAP and provides a solution to the perfect performance problem while continuing to provide an incentive for good performance through the requirement that Qwest meet its performance standards at the CLEC aggregate before being allowed to avoid an individual CLEC payment based on one allowable miss.

12 The Commission has previously recognized the reasonableness of modifying standards that require perfection. In 2004, Qwest filed a proposal to change the requirements under its retail Service Quality Performance Plan ("SQPP") so that the plan would not require perfection as the standard that triggered customer credits for the out-of-service repair interval. Qwest proposed a modification that would still require a high level of service, but allowed less than perfect performance without automatically triggering payments. Both Staff and Public Counsel opposed this modification. However, the Commission recognized that circumstances made the "perfection" trigger unreasonable, and granted Qwest's proposal to modify the requirement.[4] That reasoning applies with equal force in this case.

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[3] Current month's result would be 9/10 and prior month's result would be 95/100, so the combined result would be 104/110 = 94.55%.

[4] 16th Supplemental Order, Docket No. UT-991358. "The Commission upheld the SQPP measure earlier in this docket against Qwest's challenge, ruling that Qwest had not met its burden to demonstrate that the change should be made. Now, with the additional experience under the SQPP, the opening of the window for Qwest to make its proposal, and our review of and changes to the Commission rules, we believe that retaining the prior payment trigger would be unreasonable.

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13 The one allowable miss proposal in the 2007 Stipulation better addresses the low volume scenarios that Section 2.4 attempts to correct in the existing PAP. The parties' resolution is reasonable and achieves the objective of reducing unnecessary PAP payments while ensuring adequate incentive for Qwest to continue its high level of performance. Staff's objection ignores the unfairness of a standard of perfection, Qwest's current high level of performance, the safety valve of requiring aggregate CLEC performance to meet standards before being allowed to apply the one allowable miss and instead offers the status quo based on an estimated savings of less than $300 per CLEC per month. The Commission should find in favor of the parties to the 2007 Stipulation and approve this change.

IV. TIER 2 TRIGGER CHANGE

14 Staff opposes the change to the Tier 2 triggers that would modify the measure to a multiple month trigger. This change would put the Washington PAP in line with most of the other state PAPs, and it is consistent with providing incentives to good performance without having punitive measures. Once again the Staff's opposition appears to be rooted in the financial impact of the proposal rather than its merits. Staff is also concerned that the three-consecutive-month trigger reduces Qwest's incentive to meet the performance standards set out in the PIDs.

15 Staff argues that the Commission has already rejected a similar proposal to modify the Tier 2 triggers. Staff Initial Comments, ¶33. Qwest anticipated that Staff would make this argument and responded to it in paragraphs 18-19 of its April 2 comments.

16 Staff argues that the Tier 2 changes should be evaluated in light of performance in Colorado

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Qwest's proposal is reasonable, considering its size and the volume of service restorations that are necessary. It allows for a small number of difficult situations but provides a sufficiently small window that avoidance of the incentive credit still requires exemplary service."

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and Minnesota. Staff Initial Comments at ¶ 37. A comparison between Washington and Colorado or Minnesota performance is inappropriate based on significant differences between those states' PAPs. Staff is aware that the Colorado and Minnesota PAPs contain a fundamental difference in the measures subject to Tier 2 that make such a comparison inappropriate. In Colorado and Minnesota, the *only* measures subject to Tier 2 are the Tier 2-only regional measures contained in Section 7.4 of the Washington PAP. As explained in Qwest's initial comments, these measures in all states are subject to payment on a monthly basis and the 2007 Stipulation does not apply to these measures. None of the measures included in the Tier 2 trigger change are subject to Tier 2 payment in either Colorado or Minnesota, which is why this component of the stipulation was not applicable to those states. Stated another way, Colorado and Minnesota already recognize the incentive for good performance that exists from subjecting the relevant measures to Tier 1 payments, and they *do not even require* Tier 2 payments on these measures. Thus, there is no basis to look at Colorado or Minnesota performance on those measures, because Tier 2 does not apply in those states. If Staff believes that Colorado and Minnesota are relevant, or applicable, then in order to put Washington in line with those states, Tier 2 payments would be eliminated completely for some measures.

17 However, to Staff's point, a direct comparison between comparable states is enlightening. Arizona's volumes are comparable to Washington's. Arizona's QPAP has a three-consecutive-month trigger without any reduction to two consecutive months (for Tier 1 and 2 measures) or a single month trigger (for GA-7 and PO-16). Thus, it is less stringent than the trigger being proposed for Washington. Yet, for the three 12-month periods where both the Arizona and Washington PAPs were in effect, Arizona performance has been ***better*** than Washington performance. The following table reflects the total number of items and the percent met for both states for each of the three 12-month periods as well as

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the overall total[5]:

Time Period	AZ	WA
July04-June05		
Total Items	80,328,677	73,752,724
Percent Met	99.80%	94.54%
July05-June06		
Total Items	147,634,342	142,859,384
Percent Met	99.98%	99.97%
July06-June07		
Total Items	207,349,414	288,125,255
Percent Met	99.99%	99.97%
July04-June07		
Total Items	435,312,433	504,737,363
Percent Met	99.95%	99.18%

18 As the table depicts, Arizona's less stringent Tier 2 payment trigger has not proven to be an inadequate incentive for good performance. Further, while Staff opposes the financial savings that the change is estimated to generate, those payment reductions are based on Qwest's actual performance from July 2006 through June 2007 where Qwest met **99.97%** of nearly three million items assessed on a Tier 2 basis .

19 Staff's comments suggest that Staff believes that any reduction in payments weakens the PAP and should be rejected. In footnote 25, Staff cites an FCC order, arguing that the "total liability at risk in the plan" was an important component in the FCC's approval of the PAPs. However, Staff's citation to the FCC's order misinterprets what that order meant. The FCC was approving PAP plans that both did and did not have the single month trigger. There is nothing in that order to suggest that the single month trigger was viewed by the FCC as superior to a three-consecutive-month trigger. The phrase that Staff emphasizes, "total

[5] *See* Qwest response to WUTC Staff Data Request 04-006.

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liability at risk in the plan", is not referencing Tier 2 triggers or any particular type of trigger at all, rather, it is referencing total liability in the plan – in Washington, this amount is 36% of ARMIS Net Return, as set forth in Section 12.1. Thus, there is no support in the FCC order for Staff's argument.

20 In sum, Qwest believes that the 2007 Stipulation should be approved in its entirety, and asks the Commission to enter an order resolving both of the remaining disputed issues in a manner consistent with Qwest's comments.

DATED this 25th day of April, 2008.

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