

## Exhibit K

# PERFORMANCE ASSURANCE PLAN

### 16.0 Reviews

16.1 Every six (6) months, beginning six months after the effective date of the first Section 271 approval by the FCC of one of the states that participated in the multi-state QPAP ~~section 271~~ review proceeding, Qwest, CLECs, and the ~~Commissions of those state~~ Commission shall ~~participate in a common~~ review of the performance measurements in the QPAP 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 or Tier 1 to 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. ~~The first six-month period will begin upon the FCC's approval of Qwest's 271 application for that particular state. Changes shall not be made without Qwest's agreement, except that~~ Any disputes ~~as to whether new~~ regarding adding, deleting, or modifying performance measurements ~~should be added~~ shall be resolved by ~~one arbitration proceeding conducted pursuant to~~ the Commission. The NDPSC retains the right to add topics and criteria to the six-month review, retains the ability to order changes if the QPAP is not in the public interest, and retains the ability to hear any disputes regarding the six-month review. The Commission may conduct joint reviews with other states. Any changes to the six-month review pursuant to this section ~~5.18.3 of the SGAT, which shall bind~~ apply to and modify this agreement between Qwest and CLEC ~~and Qwest and all parties to the arbitration and determine what new measures, if any, should be included in Exhibit K to the SGAT. The administration expenses of the six-month reviews and of an arbitrator shall be paid from the Special Fund.~~<sup>1</sup>

16.1.1 To limit the potential for increased liability due to changes in the PAP, Qwest shall be allowed to limit its liability for changes made pursuant to the six-month review. Accordingly, Qwest shall calculate, separately, payments owed under the PAP that do not include changes made at the six month review (baseline PAP), as well as payments owed under a PAP revised to reflect changes made at the six month review (revised PAP). If payments calculated under the revised PAP are more than 110% of payments calculated under the baseline PAP, Qwest shall limit payments for the changed measurements to the affected LECs and to the Special Fund to a 10% increase (10% collar) above the total baseline PAP payment liability. At any six-month review, if the total payment liability for the revised PAP is below 110% of the total payment liability for the baseline PAP for the preceding six-month period, the revised PAP shall become the baseline PAP for the next six-month period, otherwise, the same baseline PAP shall remain in effect for the next six month period.<sup>2</sup>

<sup>1</sup> Revised in accordance with Interim Report at 36.

<sup>2</sup> Revised in accordance with Interim Report at 36.

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16.2 Two years after the effective date of the first ~~FCC~~Section 271 approval ~~of the PAP by the FCC of one of the states that participated in the multi-state QPAP review proceeding~~, the ~~participating Commissions~~Commission may conduct a ~~joint~~ review by ~~an~~ independent third party to examine the continuing effectiveness of the PAP as a means of inducing compliant performance. This review shall not be used to open the PAP generally to amendment, but would serve to assist ~~Commissions~~the Commission in determining existing conditions and reporting to the FCC on the continuing adequacy of the PAP to serve its intended functions. The ~~expense of the reviews shall be paid from the Special Fund~~Commission may conduct a joint review with other states.<sup>3</sup>

16.3 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 and approved by 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.<sup>4</sup>

~~16.3~~16.4 Qwest will make the PAP available for CLEC interconnection agreements until such time as Qwest eliminates its Section 272 affiliate. At that time, the Commission and Qwest shall review the appropriateness of the PAP and whether its continuation is necessary. However, in the event Qwest exits the interLATA market, that State PAP shall be rescinded immediately.

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<sup>3</sup> Revised in accordance with Interim Report at 36-37.

<sup>4</sup> Revised in accordance with Interim Report at 37.