BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Six Month Review of Qwest Corporation's Performance Assurance Plan	DOCKET NO. UT-033020 COMMISSION STAFF'S RESPONSIVE COMMENTS

1 On December 8, 2003, Qwest, Covad, Eschelon and MCI filed comments regarding the three issues to be addressed in this first six-month review of Qwest's Performance Assurance Plan (QPAP). Staff discusses the December 8, 2003 comments in this response and makes recommendations for modification of the QPAP as appropriate.

A. Line Sharing and Line Splitting

2 In comments filed earlier by the parties identifying issues that should be considered in this six-month review, CLECs identified line splitting as a crucial issue given the FCC's then recently released Triennial Review Order (TRO). The TRO removed the requirement for ILECs to provide line sharing and directed ILECs to modify OSS to facilitate line splitting processes.

3 MCI's comments ask the Commission to incorporate the Colorado line splitting stipulation into the Washington PAP. MCI states that the Colorado PUC requires Qwest to report performance on the Line Splitting product for the OP-3, OP-4, OP-5, OP-6, MR-3, MR-6, MR-7 and MR-8 performance measures. MCI also asks the Commission to require Qwest to separately report the Line Splitting product from Line Sharing product because of problems in Qwest reporting in Colorado. Finally, MCI asks the Commission to add Line Splitting standards of parity for the OP-5A and OP-6 performance measures.

4 COVAD's comments ask the Commission to add line splitting reporting and penalty payments for the performance measures PO-5, OP-3, OP-4, OP-5, OP-6, OP-15, MR-3, MR-4, MR-6, MR-7 and MR-8. In addition, COVAD asks that parity standards be established for OP-6 and OP-15 performance measures and that separate reporting categories be established for the line splitting and loop splitting.

5 Qwest believes that establishing line-splitting standards may not be all that crucial depending on the outcome of the TRO. The reason for this is that if Qwest no longer has to provide switching, CLECs will have to do their own line splitting because line splitting takes place at the switch serving the end customer loop. Qwest also notes that there is very little activity historically in terms of orders for line splitting. Finally, Qwest states that it already reports for line sharing under the QPAP and does not have a proposal for a line splitting PID standard.

6 Staff notes that the FCC's Triennial Review Order (TRO) requires ILECs such as Qwest to modify their Operation Support System (OSS) so it will facilitate line splitting. (¶ 252) This directive supports the proposition that line splitting is expected to become increasingly important to CLECs in the future.

7 The Commission should require Qwest to begin reporting performance for line splitting on the same basis that Qwest currently reports for Colorado, and add line splitting as a product separate from line sharing in Exhibit B to the SGAT. Attachments 1 and 2 to the Staff Comments contain the Colorado Orders from their first six-month review. In Colorado Decisions C03-0733 (¶ 17) and C03-0961 (¶¶ 9, 12), the Colorado Public Utility Commission ordered Qwest to report line splitting performance as a separate product category for performance purposes, but did not require standards to be set at that time. The Decisions also order that any payments for missed measures should be made combining line sharing and line splitting. The list of PIDs for reporting purposes include OP-3, OP-4, OP-5, OP-6, MR-3, MR-6, MR-7, and MR-8.

8 Staff has concerns with the CLEC proposals to the extent they propose requirements beyond the Colorado requirements. Qwest needs to modify its OSS to facilitate line splitting. It is not clear how long that will take, however, and ordering payments to begin now would be unfair to Qwest. Line splitting standards are scheduled to be addressed in the regional collaborative within the next three to five

months. Attachment 3 to the Staff comments is the regional collaborative Master Issues Matrix. The matrix shows that line splitting standards (*see* proposals 25-30) and a number of other issues will be addressed by the collaborative. Staff does not have a recommendation as to whether separate categories of line splitting and loop splitting should be established as COVAD asks because we do not know whether it is feasible or whether separate categories would be meaningful. Staff recommends that issues not resolved by the collaborative be brought to the Commission in the next six month review and the question of payment levels, additional PID reporting and other requests made by the CLECs also be addressed at that time. What is necessary to do at this time is for Qwest to begin reporting, as of January 2004, line splitting performance for Washington in the same manner it is reported for Colorado as previously described.

B. Whether PO-2b should be removed from the QPAP

9 In comments filed earlier in this proceeding, Qwest requested that the Commission consider removing the PO-2b from the QPAP or to at least modify the payment trigger. In support of its request, Qwest asserts that virtually no harm to CLECs results from failures to meet PO-2b performance standards, that CLEC behavior can affect PO-2b results, and that the PO-20 performance measure will act as a safety net for orders dropped out of the flow through process. If not eliminated, Qwest proposes that payments be imposed only if payments are also made under

PIDs that more directly measure harm caused by Qwest's performance failures. Qwest claims that it has created the ability to manage the process so that if an order drops out from flow through, the provisioning interval perceived by the CLEC does not change. MCI and Eschelon are generally opposed to removing PO-2 from the QPAP.

10 In comments filed earlier in this proceeding, Staff asked the Commission to include this issue in the first six-month review. Staff was concerned in particular with the possibility that the CLECs were affecting PO-2b performance results, a concern Qwest raised in the QPAP proceeding. Qwest has not presented any evidence, or made any assertion in its comments, that CLECs actually are improperly affecting PO-2b performance results.

11 The foundation of Qwest's request seems to be that little or no harm results to the CLEC from orders that drop out of the flow through process, and that the level of payment for misses is not commensurate with the level of harm caused by the order not flowing through. Staff does not believe this argument has merit because the QPAP does not require compensation be made to CLECs on the basis of a showing of actual harm. Rather the QPAP is a self-executing set of remedies for failures to perform for those measures selected for inclusion in the QPAP.

12 Of particular interest is footnote 7 to Qwest's comments, in which the FCC discusses flow through. There the FCC says:

> Flow-through rates, therefore, are not so much an end in themselves, but a tool used to indicate a wide range of possible deficiencies in a BOCs OSS that may deny an efficient competitor a meaningful opportunity to compete in the local market.

Memorandum Opinion and Order, *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts,* 16 FCC Rcd 8988 ¶ 77 (2001) (part); Qwest Comments at page 9.

13 To Staff, this language confirms the importance of PO-2b to the CLECs' ability to compete, and justifies its inclusion in the QPAP as a high payment Tier II performance measure. In addition, the monthly QPAP payment reports for Washington show that very high PO-2b payments were made in the early months of 2003 and have dropped significantly since. The incentive for Qwest to improve flow-through processes seems to be working. Finally, Staff notes that the Qwest OSS was developed for CLECs at a high cost, and CLECs are paying Qwest for the recovery of those costs in an explicit charge every time they place an order. When the CLEC submits an order on which it has completely and accurately provided all the information that is needed for the order to flow through, and the order drops out for manual processing, it means there is deficiency in the Qwest OSS that Qwest needs to fix whether or not the dropped order results in other performance measures being missed.

14 If the Commission is of the mind that there should be a more direct tie between PO-2b misses and "harm" as defined by Qwest, Staff suggests that the Commission direct Qwest to provide data showing what the effects of such a proposal would have on QPAP payments and take up the issue in the next six-month review. If further consideration is given to establishing a payment scheme based on linking of failures of PO-2b with subsequent failures in other measures downstream in the process, Staff believes significant increases in payment levels would be warranted because PO-2b failures would then be directly linked to subsequent failures that directly harmed the CLEC.

15 In summary, if Qwest has no incentive to deal with deficiencies in its OSS, an efficient competitor may be denied a meaningful opportunity to compete in the local market, as the FCC noted. *Application of Verizon*, 16 FCC Rcd 8988 ¶ 77. Staff recommends that the Commission neither eliminate nor modify the PO-2b performance measure at this time.

C. Including EEL Payments in the QPAP

16 In the Thirtieth Supplemental Order in Docket Nos. UT-003022/UT-003044 (*In the Matter of the Investigation into US West Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996*), at ¶ 124, the Commission directed Qwest to provide payment opportunities for EELs as standards are determined. The CLECs comment that Qwest has agreed to standards and payments in Colorado,

and ask the Commission to order Qwest to incorporate the same standards and payment opportunities into the Washington QPAP.

17 Qwest comments that it assumed the Commission language regarding standards and payments applied to regional standards developed by the ROC-TAG. Qwest also notes that payment opportunity exists for DS-1 EELs for the OP-3 and OP-5A performance measures, and that the measurements that were the subject of the Colorado agreement are not regional standards.

18 Staff notes first that while EEL standards are contained in the list of issues that will be dealt with by the regional collaborative in which Staff participates (*see* Attachment 3, the Master Issue Matrix, proposal 31), the importance of EELs to CLECs was made clear to the Commission during the QPAP proceeding, which is why the Commission directed Qwest not to wait until a six-month review to begin providing payment opportunities. Staff recommends that the Commission require Qwest to incorporate the Colorado standards into the Washington QPAP, and provide payment opportunities for those performance measures included in the Washington QPAP. The Colorado Stipulation on EELs is included as Attachment 4 to these comments and shows the performance measures and standards for which Qwest provides payment opportunities. If the regional collaborative later develops regional standards that are different from the Colorado standards, Exhibit B to the SGAT can then be modified to reflect the regional standards.

DATED this 29th day of December, 2003.

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