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August 14, 2009

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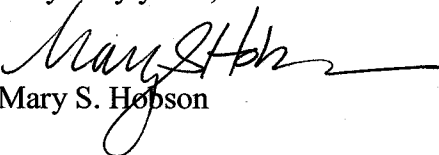
Jean D. Jewell, Secretary
Idaho Public Utilities Commission
472 West Washington
Boise, ID 83702-5983

RE: Docket No. QWE-T-08-04

Dear Ms. Jewell:

Enclosed for filing with this Commission are an original and seven (7) copies of the **Comments of Qwest Corporation**. If you have any questions, please contact me. Thank you for your cooperation in this matter.

Very truly yours,


Mary S. Hobson

Enclosures
cc Service List

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

<p>In Re WITHDRAWAL of QWEST CORPORATION'S STATEMENT OF GENERALLY AVAILABLE TERMS AND CONDITIONS</p>	<p>Case No. QWE-T-08-04 COMMENTS of QWEST CORPORATION</p>
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Qwest Corporation ("Qwest"), by and through its undersigned attorneys, files the following Comments in support of its Petition and, pursuant to the Stipulation and Jointly Submitted Procedural Schedule filed herein on July 29, 2009, in opposition to the use of the Liberty Report in this docket.

I. BACKGROUND

Pursuant the federal Telecommunications Act of 1996 ("1996 Act" or "the Act"), Bell Operating Companies such as Qwest ("BOCs") are required to enter into interconnection

agreements with other providers of telecommunications services who request access to their networks, facilities or services. *See* 47 U.S.C. §§ 251-252.

The 1996 Act also provided a means by which BOCs could gain entry into certain telecommunications markets, known as the in-region interLATA services markets, from which they had been legally precluded. 47 U.S.C. § 271. Proceedings by which BOCs sought regulatory approval for this market entry (“interLATA freedoms”) were termed “271 proceedings” and the path of these proceedings took through state and federal regulatory tribunals is often referred to as “the 271 process.” As part of the 271 process, state regulatory bodies such as this Commission were to consult with the Federal Communications Commission (“FCC”) as to whether a particular BOC had met the standards set out in section 271. 47 U.S.C. § 271 (d) (2) (B).

Among the BOCs, Bell Atlantic (now Verizon) was the first to receive 271 approval from the FCC. In 271 proceedings throughout the country competitive local exchange companies (CLECs) had actively participated, seeking assurance that service quality would be maintained once the BOCs received 271 approval and entered the interLATA markets. In response to the CLECs and to the FCC’s guidance, Bell Atlantic offered a voluntary plan to assure service quality.

Because of Bell Atlantic’s initial success, its application (including its performance assurance plan) became instructive for other BOCs who were seeking the FCC’s approval under section 271. Therefore, like Bell Atlantic, Qwest submitted to extensive third-party testing of its systems and worked with interested parties to develop performance measures known as Performance Indicator Definitions (“PIDs”) that would be used to provide specific data about Qwest’s performance. Finally, Qwest voluntarily put into place a Performance Assurance Plan (“PAP” or “Plan”). The PAP addressed the public interest aspects of the section 271 requirements by applying specific standards to performance data, along with self-executing payments where the standards were not met. The original goal of the PAP was to help assure that wholesale markets would remain open following section 271 approval.

Qwest’s PAP was based on a snapshot of the industry as it stood when Qwest submitted its 271 application to the FCC in 2002. At that time, BOCs experienced little or no competition from wireless, cable or Internet Protocol providers. The concern was, then, that by gaining 271 freedoms the BOCs would be able to add interLATA long distance services to their arsenal of

services making them even more powerful competitors of the CLECs. Therefore, PAPs, while not required under the Act, were considered anti-backsliding mechanisms to assure that the pro-competitive measures required of BOCs prior to gaining access to the interLATA markets were not compromised once 271 freedoms were attained. Because of when and how they were developed, Qwest's PAPs went far beyond what had been considered commercially reasonable in ordinary business-to-business agreements and required Qwest to make automatic payments for failure to meet PIDs even where CLECs suffered no actual harm.

Even during the workshops and negotiations in the 271 process, it was anticipated that the PAP would not remain indefinitely. Terms were included in the Idaho PAP that required its immediate elimination should Qwest exit the interLATA long distance market¹ and required review of the PAP's continuance once Qwest successfully eliminated its separate affiliate for the provision of interLATA service under section 272 of the Act.² Review under this provision of the Idaho PAP is the subject of the current docket.

The selection of the elimination of the section 272 affiliate as a triggering point for review and possible discontinuation of the PAP was not random. Section 272 allowed BOCs to provide in-region, interLATA telecommunications services only through separate corporate affiliates, and only when certain safeguards were in place that assured the BOC would not discriminate against other entities in its provision of interLATA service. 47 U.S.C. § 272(a)(2). However, Congress in enacting section 272 recognized that such safeguards were not needed to continue indefinitely.³ Therefore, by its own terms, many of the requirements in section 272 expired three years after the BOC was authorized (through the 271 process) to provide in-region, interLATA services. 47 U.S.C. § 272(f)(1). It would be surpassing strange that a statutory provision, designed to ensure the market-opening intent of section 271, was explicitly contemplated to be in effect for three years, at most, while the PAP, which is not mandated by the Act is required to continue well-beyond those three years.⁴ In the present docket there is no

¹ Idaho PAP § 16.3

² *Id.*

³ The Act clearly states that, after three years, the safeguards of section 272 "shall cease to apply" "unless the [FCC] extends" the protections by rule or order. 47 U.S.C. §272(f)(1); *AT&T Corp. v. FCC*, 369 F.3d 554, 560 (D.C. Cir. 2004).

⁴ The Senate bill did not contain a sunset provision; instead it delegated discretion to the FCC to grant exceptions to the separate affiliate requirements by applying the "public interest" standard. The House

dispute that Qwest successfully met all of the requirements of section 272 and eliminated its separate affiliate on February 20, 2007, thereby triggering PAP review as provided in section 16.3 of the Idaho PAP.

II. ARGUMENT

A. The Language and Structure of the Idaho PAP Direct the Nature of the Review Required Here.

1. The language of the PAP itself demonstrates it was voluntary and never intended to be permanent.

The first paragraph of the Commission-sanctioned Idaho PAP states that “Qwest and CLEC *voluntarily* agree to the terms of the following Performance Assurance Plan (“PAP”).”⁵ Section 17 of the Idaho PAP underscores the fact that the PAP was approved containing clear language demonstrating its voluntary nature:

This PAP represents Qwest’s voluntary offer to provide performance assurance. Nothing in the PAP or in any conclusion of non-conformance of Qwest’s service performance with the standards defined in the PAP shall be construed to be, of itself, non-conformance with the Act.⁶

Given the detailed review that the Idaho PAP received by this Commission, and the numerous changes and refinements that its language underwent in that process,⁷ it must be assumed that this Commission understood and, at some level, approved the Plan as a voluntary offering. Although Qwest concedes that its PAP was an expedient that advanced its 271 application with the FCC, it is also clear that the FCC agreed that offering a PAP was by no means the only way

bill included an 18-month sunset provision for the separate subsidiary requirements, and did not include a provision permitting the FCC to extend the requirements at the end of 18 months. *AT&T Corp. v. FCC*, 369 F.3d at 561, *citing*, H.R. REP. NO. 104-223, at 7 (1995). The bill that was ultimately adopted reflected a compromise between the Senate and House versions. Thus, three years was at the extreme end of the time period for sunset.

⁵ *Id.* at §1 (emphasis added).

⁶ *Id.* at §17.

⁷ See Commission Decision on Qwest’s Performance Assurance Plan, *In the Matter of US WEST Communications, Inc.’s Motion for an Alternative Procedure to Manage Its Section 271 Application*, Case No. USW-T-003, at 5-9 (IPUC March 7, 2002); See also Commission Final Decision on Qwest Corporation’s Compliance with Section 271, *id.* at 3-4 (IPUC June 10, 2002).

of ensuring nondiscriminatory service and receiving section 271 approval.⁸ While adopting another alternative in 2002 may have slowed Qwest's entry into the interLATA market, in addressing the policy issues of today, the Commission should consider less punitive and burdensome alternatives to preserving nondiscriminatory service.

2. The PAP requires the Commission and Qwest to review whether the continuation of the PAP is necessary; the Liberty Report has no place in that review process.

The language of the Idaho PAP, which was reviewed by both the Commission and the FCC prior to section 271 authorization, specifically provides for the sunset of the PAP:

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. . . ."⁹

Qwest stopped providing in-region, interstate, interLATA interexchange service through section 272-compliant affiliates as of February 20, 2007¹⁰ and filed its Petition for review in May 2008.

The inclusion of the quoted language in the Idaho PAP demonstrates the understanding of the parties that the PAP was not intended to be permanent. Qwest and the Commission agreed to revisit the issue once sufficient time had passed to determine whether the PAP was necessary and appropriate in the current climate. Unfortunately, this necessary review has been side-tracked by the ROC review process that has produced the "Liberty Report."¹¹ The contents of the Liberty Report are addressed below in these Comments, however, in analyzing what kind of review is required here, it is necessary to understand how the Liberty Report fits (or does not fit) under the framework of the PAP.

⁸ *In the Matter of Application by Qwest Corporation International, Inc. for Authorization To Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming*, Memorandum Opinion and Order, FCC 02-332, 17 FCC red 26303, 26548 ¶ 456 (FCC 2002) ("Nine States' Order"); *See also* discussion in Section II.B.1 of these Comments.

⁹ Idaho PAP §16.3 (emphasis added).

¹⁰ *See* Qwest Petition at ¶¶33-35.

¹¹ *See* "Analysis of Qwest's Performance Assurance Plans" (Final Report) prepared by The Liberty Consulting Group (June 30, 2009) (hereinafter "the Liberty Report" or "Report").

The Idaho PAP in section 16 authorizes three types of review. Paragraph 16.1 provides that six-month reviews of the performance measurements “may” be initiated to determine whether measurements should be added, deleted, or modified, whether benchmark standards should be modified or replaced by parity standards, and whether to move a classification from High, Medium, or Low or from one Tier to another. Thus, the scope of six-month reviews was specifically intended to focus on the PIDS and not on broader PAP issues.¹²

The second form of review contained in the Idaho PAP is found in paragraph 16.2 and provides for a “joint review by an independent third party to examine the continuing effectiveness of the PAP as a means of inducing compliant performance,” which “may” be conducted two years after the PAP is approved by the FCC. This two-year review, which would have taken place in 2005, was not conducted. No party sought such a review. Finally paragraph 16.3, the provision expressly invoked by Qwest in this docket,¹³ provides that “the Commission and Qwest shall review the appropriateness of the PAP and whether its continuation is necessary.” The triggering event for a paragraph 16.3 review is the elimination of Qwest’s section 272 affiliate.

The Liberty Report states it is “most appropriate” to fit its “current analysis” in either the six-month review (under section 16.1) or the 16.3 context.¹⁴ While Qwest will concede that much of what Liberty produced in its final report (including some of its suggestions for changes in the PAP) is more akin to a six-month review,¹⁵ such a review is not relevant to this docket and should be taken up, if at all, only if the Commission finds it has authority to order the continuance of the PAP over Qwest’s objection. The Report should not be considered in the context of the present section 16.3 review.

¹² In addition, section 15.0 of the Idaho PAP provides for “integrated audits” of PAP data. Liberty Consulting did conduct such an audit using 2005 data, which was completed in 2007. However, such audits of the data produced by the PAP are not “reviews” of the overall PAP and were not, therefore, included in section 16, which addresses “Review” of the PAP.

¹³ Qwest Petition ¶ 33.

¹⁴ Report at 18.

¹⁵ This is where the first and third of the five “investigations” in which Liberty Consulting claims to have engaged (Report, p. 20) belong. These investigations, i.e., analyses of PAP payments and PID results, and analyses of the structure of the PID measures are all geared to the kind of fine-tuning anticipated under the six-month reviews. PAP structure and continued existence were not included among matters for review in six-month reviews or in the two-year review that was not conducted.

On its face it is obvious that the Liberty's effort is not the review contemplated in section 16.3 of the Idaho PAP. In contrast with the requirements of 16.3, the "review" that produced the Liberty Report involved neither the Commission nor Qwest in any significant, substantive manner.¹⁶ Furthermore, the use of "an independent third party," i.e., Liberty Consulting, for conduct of the review, while specifically authorized in paragraph 16.2 for the two-year review that was not conducted, is not authorized in section 16.3.¹⁷ Obviously had Qwest or the Commission intended that the section 16.3 review proceed with multiple commissions and "an independent third party," they were more than capable of crafting language that authorized that approach as they did in the preceding paragraph or as they did in the audit provisions in section 15 of the Idaho PAP.

The mismatch between a section 16.3 review and the process followed by Liberty is clear in other respects as well. As will be discussed in more detail below, Liberty states it was charged with analyzing "the current *effectiveness, value, and usefulness*" of the PAP.¹⁸ Section 16.3 requires that Qwest and Commission review "the appropriateness of the PAP and *whether its continuance is necessary.*"¹⁹ These are meaningfully different standards. For example, the current PAP may be deemed "effective, valuable and useful" to compiling detailed data and requiring self-executing penalties, and yet is entirely unnecessary for the original purpose of assuring the wholesale market remains open, which can be accomplished through a variety of less burdensome means.

Furthermore, section 16.3 makes no mention of a comprehensive analysis of PAP payments or an analysis of the structure of the PAP or of the PIDs. Even more obviously section 16.3 does not contemplate that this Commission will receive the views of other state staffs, or of CLECs who did not choose to intervene in Idaho. Nevertheless, the Liberty Report focuses on those analyses and relies on exactly that kind of input.²⁰ The language of section 16.3 that limits involvement to "the Commission and Qwest" indicates that when the PAP was

¹⁶ Qwest provided data as requested by Liberty, but did not participate in a substantive or collaborative manner.

¹⁷ Nor is the participation of CLECs; although Qwest has not objected to the participation of the Intervenor in this docket.

¹⁸ See e.g., Report at 2 (emphasis added).

¹⁹ Idaho PAP §16.3 (emphasis added).

²⁰ Report at 22.

created it was understood as a voluntary offering and that the ultimate question of the PAP's continuation in Idaho turns on Qwest's willingness to volunteer and on the legal questions surrounding the Commission's authority to order the PAP to continue should the Commission and Qwest reach different conclusions. Unlike the audits and the six-month reviews, these questions do not require or benefit from the participation of independent third parties, particularly when the input of such third parties is based on a meaningfully different standard.

In its report Liberty concedes that its work does not constitute the review contemplated by Qwest's Petition that invokes PAP section 16.3. Liberty states, "the analysis was not intended to be part of any specific on-going reviews or dockets in any of the participating states, but was intended as input to such proceedings."²¹ The illogic of a report being both "input" and yet not a "part of any specific on-going reviews" is not explained. Qwest submits the quoted statement is an acknowledgement that Liberty was not charged with addressing the questions that are raised in reviews such as the present one and that its Report should not be taken as authoritative in this and similar dockets.

Qwest will address the short-comings of the Liberty report's "input" in these Comments in Sections II.D and II.E below. Nevertheless, it is clear from both the language of the PAP and from the Liberty Report itself, that the Commission and Qwest are to conduct this review and that this function simply cannot be delegated to a third party.

3. The Commission should conduct a legal and policy review of the PAP under section 16.3

The language of section 16.3 demands that this Commission engage in an Idaho-specific review of the Idaho PAP. In requiring that Qwest and the Commission participate in a review of the "appropriateness" of the PAP and whether "its continuation is necessary," this section clearly indicates a state-specific focus. Key to these issues is whether this Commission can legally require the PAP since Qwest is no longer willing to voluntarily do so. The Liberty Report does not discuss that threshold legal question. But, for Liberty's analysis to be even marginally relevant to this case it must be *assumed* that the PAP is legally required--an assumption that is contrary to law and to the terms of the PAP itself.

²¹ *Id.* at 19.

The discussion below will demonstrate there is no basis under section 271 of the federal Act for a state commission to continue to exercise regulatory authority over whether the PAP continues.²² Nor does Idaho law empower the Commission to order the continuation of the PAP.²³ Qwest does not suggest, however, that the Commission has no role to play in fashioning a new voluntary approach that will help serve the interests of ensuring Qwest's continued performance under the federal Act's standards. That is where the Commission's policy-making role could be called into play. For example, to the extent that the comments of the other parties in this docket raise issues about the CLECs' remedies in the event that Qwest fails to continue to provide the level of wholesale service required by law, the Commission could review legislative policy and manage the competing policy objectives to help fashion a reasonable solution. To advance that discussion, Qwest offers its QPAP-2 plan²⁴ as a new voluntary mechanism that puts CLECs on the same footing as businesses operating under commercial agreements and invites the Commission and the parties to make suggestions and participate in the process of transitioning away from the PAP, which has fulfilled its purpose.

Qwest submits that this review offers the Commission the opportunity to review and consider the changes in the industry since 2002 to determine what is needed in today's environment, to analyze the scope of the state commissions' abilities to mandate performance assurance mechanisms, and evaluate the QPAP-2 with the objective of encouraging a new voluntary approach that will implement state and federal policy.

B. There Is No Legal Basis for Continuing the PAP Absent Qwest's Consent

In embarking on a review of the Idaho PAP that addresses whether it should continue, it is critical that the Commission look at the legal basis for the Plan. It is that foundation that determines the Plan's purpose and the Commission's authority in ordering Qwest to take action with regard to the Plan where Qwest does not consent.

²² See discussion of *Qwest v. Ariz. Corp. Comm'n* in Section II.C.2 of these Comments.

²³ See Section II.B.2 of these Comments.

²⁴ See *id.* Section II.F.

1. Federal law does not require a PAP

There is no dispute that the federal Act does not require a BOC (or any entity) to offer a PAP. In fact, the concept of a “performance assurance plan” is never mentioned in the federal Act. As the Background section of these Comments indicates, Qwest followed the lead of other BOCs in voluntarily putting its PAP into place to provide assurance (in as expeditious a manner as possible) for its post-approval compliance with section 271 and thereby meeting the FCC’s evolving “public interest” test. In approving Qwest’s 271 application for Idaho and eight other states, the FCC made a number of comments that require careful consideration here.

First, the FCC made clear that having a PAP was not required:

In prior orders, the Commission has explained that one factor it may consider as part of its public interest analysis is whether a BOC would have adequate incentives to continue to satisfy the requirements of section 271 after entering the long distance market. Although *it is not a requirement for section 271 authority that a BOC be subject to such performance assurance mechanisms*, the Commission previously has stated that the existence of a satisfactory performance monitoring and enforcement mechanism would be probative evidence that the BOC will continue to meet its section 271 obligations after a grant of such authority.²⁵

Furthermore, the federal Commission explained that having a PAP was not the only method available to BOCs to provide assurance of non-discriminatory service.

As the Commission has stated in prior orders, the PAP is not the only means of ensuring that a BOC continues to provide nondiscriminatory service to competing carriers. In addition to the monetary payments at stake under each plan, we believe Qwest faces other consequences if it fails to sustain an acceptable level of service to competing carriers, including enforcement provisions in interconnection agreements, federal enforcement action pursuant to section 271(d)(6), and remedies associated with antitrust and other legal actions.²⁶

The fact that the FCC believed “Qwest faces other consequences” if it failed to provide nondiscriminatory service should be remembered as this Commission considers whether the Idaho PAP should continue. Clearly, the primary implementer of Congress’ intent understood that the PAP did not provide the only, or even the primary, protection that CLECs enjoy under federal law.

²⁵ Nine States’ Order at 26544-26545, ¶ 453 (emphasis added).

²⁶ *Id.* at 26548, ¶ 456.

Finally the FCC addressed the Idaho PAP in particular as it considered how PAP remedies interrelate to other remedies that may be available to competitors:

With regard to the Idaho PAP, the Idaho Commission asserts that Qwest has conceded that competitive LECs are not precluded by the PAP from the recovery of non-contractual remedies. *Only those remedies that would duplicate those available under a contractual claim are precluded.* As we have noted above, states have latitude to create plans that ultimately vary in their strengths and weaknesses as tools for post-section 271 authority monitoring and enforcement.²⁷

Once again, as the Commission undertakes its review of whether the Idaho PAP must continue, it is useful to consider that the FCC understood that the PAP precluded CLEC from receiving remedies that are ordinarily available under commercial agreements, i.e., contractual remedies. As is detailed in Section II.F below, Qwest stands ready to replace the PAP with contractual remedies that have proved highly satisfactory to those entities that are not covered by the PAP but that are purchasing services from Qwest.

2. A PAP cannot be ordered on the basis of the state law of Idaho.

Just as the federal Act and the FCC's orders provide no basis for ordering Qwest to provide a PAP, Idaho law is also silent on this topic. The Idaho Legislature in 1997 enacted Idaho Code § 62-615 (1), which is the only Idaho statute that addresses the subject of the Commission's regulatory authority in this context. That statute grants authority to the Commission to "implement the federal telecommunications act of 1996" and to "promulgate rules and /or procedures necessary to carry out the duties authorized or required by the federal telecommunications act of 1996." The Idaho statute does not purport to grant any powers in addition to those outlined for the commission in the federal Act itself. Since the Act makes no mention of requiring BOCs to provide PAPs, relying on Idaho law as a basis for requiring a PAP would misconstrue the statute.

Review of Idaho law with regard to the regulation of public utilities is consistent with this conclusion. The Commission has no authority under state law to order the payment of liquidated damages²⁸ or to directly impose a fine on a regulated entity for violation of a legal requirement. *Cf.* Idaho Code 61 §§ 701-713 (outlining procedure whereby the attorney of the

²⁷ *Id.* at 26551, ¶ 460 (emphasis added).

²⁸ *See e.g., Capitol Water Corporation v. Cole Road Company LLC*, Case No. CAP-W-97-7, Order No. 27179 (1997).

Commission must initiate an action in state district court seeking relief in the form of mandamus or injunction and creating a cause of action for persons or corporations to recover damages from the utility).

Qwest submits, therefore, that it has no duty under state or federal law to maintain a PAP. The Idaho PAP is a voluntary offering as explicitly stated in section 17.0. The terms of that offer provide in section 16.3 that Qwest and the Commission are to engage in a review of the Plan after Qwest has met the requirements of section 272 and eliminated its separate affiliate for in region, interLATA service. In the context of that review the Commission must determine the scope of its authority to order Qwest to provide a PAP and, absent that authority, to work with Qwest to find alternatives that are commercially reasonable.

C. The Idaho PAP Was Created to Address the Public Interest Requirement of Section 271 of the Federal Act and as such Is Not Under the Idaho Commission's Continuing Regulatory Authority.

There is no support in state or federal law for requiring Qwest to provide a PAP. Nonetheless, there is no dispute that the PAP was offered in Idaho as a means of satisfying the FCC's public interest requirement under section 271 of the Act. Because of this history some may believe that the state commission can order that such Plan, once in place, be continued as part of the state's role in assuring that the requirements of section 271 are met at the state level. Such a position, however, is contrary to federal law as elucidated by the Ninth Circuit Court of Appeals.

1. The history of the Idaho PAP demonstrates it was provided by Qwest to meet the FCC's public interest test under section 271.

Section 271 (d)(3)(C) of the federal Act provides that the FCC must determine that a requested application of authority to receive interLATA freedoms "is consistent with the public interest, convenience, and necessity." It is clear from the orders entered by this Commission as it was fulfilling its consultative role under section 271 that the Commission believed the purpose of the PAP was to satisfy the FCC's requirements under section 271 of the Act:

Part of the FCC's review of a Section 271 application is to determine that granting interLATA authority to the BOC "is consistent with the public interest, convenience and necessity." 47 U. S.C. §271 (d)(3)(C). To insure the applicant will continue to meet the access and interconnection requirements after approval

is granted, the FCC has determined the public interest standard may require a BOC to have a performance assurance plan (Plan or QPAP) in place.²⁹

Indeed, the Idaho Commission had actively managed Qwest's voluntary PAP filing as part of the section 271 process, as it recounted in one of its earlier PAP orders:

Rather than let the Plan stand as filed, however, the Commission determined, "along with the other states in the Section 271 proceeding, to include evaluation of the QPAP in the Section 271 process." Order No. 28788, issued July 23, 2001. The Commission asked the Facilitator coordinating the multi-state Section 271 case to receive evidence and conduct hearings on the Plan, and provide a written report to the state commissions. In this way, evaluating the QPAP "as part of the Section 271 requirement will provide a record for the FCC to determine whether Qwest has satisfied the public interest requirements for Section 271 approval." Order No. 28788³⁰

That the Idaho PAP was "part of the Section 271 requirement" is undisputed. The language of the PAP that was ultimately recommended by this Commission and accepted by the FCC also states that the PAP was "prepared in conjunction with Qwest's application for approval under Section 271 of the Telecommunications Act of 1996."³¹ And, as recently as September 2008 when the Staff sought the Commission's approval to participate in the Regional Oversight Committee's review of Qwest's PAP, Staff characterized the PAP as "an essential component of Qwest's successful application to the Federal Communications Commission for authority to provide interLATA toll services in Idaho pursuant to Section 271. . ."³²

Qwest agrees with the Commission and Staff on the point that the PAP was developed in conjunction with the 271 process. Specifically, the Idaho PAP was created to satisfy the FCC's requirement that it provide "probative evidence" that its section 271 application was "in the public interest." A clear understanding of the origin and purpose of the Idaho PAP helps to put into perspective the legal and policy questions that are now before this Commission as it considers Qwest's Petition.

²⁹ Commission Final Decision on Qwest Corporation's Compliance with Section 271, *In the Matter of US WEST Communications, Inc.'s Motion for an Alternative Procedure to Manage Its Section 271 Application*, Case No.USW-T-003 at 3(June 10, 2002).

³⁰ Commission Decision on Qwest's Performance Assurance Plan, *id.* at 2 (IPUC March 7, 2002).

³¹ Idaho PAP §1.1

³² See Staff Decision Memorandum dated September 22, 2008, at 1. (no docket number available).

2. The Ninth Circuit Court of Appeals has ruled state commissions have no continuing regulatory authority to act under section 271.

Numerous federal district courts have decided that state commissions do not possess power to determine or enforce section 271 requirements. *See Verizon New England, Inc. v. Maine Public Utils. Comm'n*, 509 F.3d 1, 7(1st Cir. 2007); (concluding the authority to determine which elements BOCs are required to provide under Section 271 and the rates for those elements “is granted exclusively to the FCC”); *Illinois Bell Tel. Co., Inc. v. Box*, 548 F.3d 607, 613(7th Cir. 2008) (“[T]he state commission’s power over [an interconnection] agreement is limited to the terms in the agreement relating to access under section 251.”); *Southwestern Bell Tel., L.P. v. Missouri Public Serv. Comm’n*, 530 F.3d 676, 682-83 (8th Cir. 2008) (rejecting the claim that “states have implied authority to ensure ILECs comply with § 271” in interconnection agreement arbitration proceedings); *Bell-South Telecomms., Inc. v. Georgia Public Serv. Comm’n*, ___ F.3d ___, 2009 WL 368527 (11th Cir. Jan. 26, 2009) (per curiam) (deciding state commissions are not authorized to implement section 271).

Recently in *Qwest v. Ariz. Corp. Comm’n*, 567 F. 3d 1109 (9th cir. 2009), the federal court of appeals for the Ninth Circuit concurred with the four federal circuit courts cited above in concluding the Act does not confer authority on state commissions to regulate under section 271. The court stated:

Once an interLATA application is approved, enforcement responsibilities rest exclusively with the FCC. It is the FCC that determines whether a BOC “has ceased to meet any of the conditions required for [interLATA service] approval,” and it “may” issue orders, impose penalties, or retract its approval in response. 47 U.S.C. § 271(d)(6)(A). The FCC also “establish[es] procedures for the review of complaints” of BOC noncompliance with Section 271(c)’s approval conditions. 47 U.S.C. § 271(d)(6)(B). And the FCC is the one obligated to “act on such complaint within 90 days.”³³

So long as Qwest remained willing to provide its PAP, the issue of the Commission’s enforcement authority under section 271 was not raised. However, as the Ninth Circuit makes clear in the above-cited paragraph, it is the FCC, and not the state commissions, that is empowered to decide if the BOC has “ceased to meet” any of the requirements for section 271 approval. The court also notes that the FCC is well equipped to manage any such allegation of

³³ *Qwest v. Ariz. Corp. Comm’n*, 567 F. 3d at 1117.

noncompliance with procedures for review of complaints, and the ability to impose penalties for retract approval under section 271.

Idaho law does not grant the Idaho Commission powers greater than those necessary to “implement” the federal Act³⁴. However, even if state law were seen as providing a basis for regulation under section 271, the Ninth Circuit opinion determines that such state law would be subject to federal preemption:

While Arizona law grants the ACC broad powers to make unbundling and pricing determinations, federal preemption restricts that power here. We conclude that, due to conflict preemption, state law cannot empower state commissions to prescribe or fix rates for Section 271 terms or institute unbundling requirements previously abolished by the FCC. *See AT&T Corp.*, 525 U.S. at 378 n.6 (“[I]f the federal courts believe a state commission is not regulating in accordance with federal policy they may bring it to heel.”).³⁵

Finally, the court clarifies that, “Congress ‘unquestionably’ took ‘regulation of local telecommunications competition away from States . . . [w]ith regard to the matters addressed by the 1996 Act.’”³⁶

The procedural history of the Idaho PAP demonstrates it was a voluntary offering of limited duration made in connection with Qwest’s 271 application to the FCC. The legal authorities including but not limited to the above-cited case, make clear the Commission lacks regulatory authority to require Qwest to continue to offer the PAP.

D. The Liberty Report Should Be Accorded Little Weight by This Commission.

In addition to the fact the Liberty Report does not meet the requirements of section 16.3, other issues plague the Report.

1. The procedural history of the Liberty Report demonstrates it was ill-conceived.

The idea of retaining Liberty Consulting to perform a review of Qwest’s PAPs on a multi-state basis appears to have been initiated by state commission staff members of the

³⁴ See Idaho Code § 62-615.

³⁵ *Qwest v. Ariz. Corp. Comm’n.* at 1118.

³⁶ *Id.* at 1118-1119 citing *MCI Telecomm. Corp. v. Bell Atlantic-Pennsylvania*, 271 F.3d 4919,510 (3d Circuit 2001)(“Regulating local telecommunication competition under the 1996 Act . . . is an activity in which states and state commissions are not entitled to engage except by the express leave of Congress.”).

informal Regional Oversight Committee (ROC).³⁷ The ROC review was originally envisioned as a “multi-state collaborative review”³⁸ that would “afford those CLECs that have limited resources the opportunity to participate in all of Qwest’s 14 state regions.”³⁹ A single page “Scoping Document” prepared by ROC Staff members and containing six bulleted paragraphs recommended that Liberty Consulting “also provide draft recommendations as to the current effectiveness, value and usefulness of the performance plan and PIDs in relation to their intended purpose and function as well as the usefulness of some or the entire plan and PIDs continuing including possible modifications to such.”⁴⁰ The Scoping Document went on to suggest that the consultant’s “baseline document” could be used by various commissions in appropriate dockets or “for collaborative discussions between the various Commission Staffs, Qwest and the CLECs”⁴¹

The ROC review, however, could not proceed as planned since Qwest declined to participate in a multi-state review process for its PAP.⁴² This meant the possibility of collaboratively negotiated PAP changes to be offered up to state commissions for approval would not materialize. Nevertheless, the ROC members proceeded to hire Liberty Consulting to conduct a “review” of the PAP on a multi-state basis.

Despite Qwest’s protests of the unsuitability of the review contemplated by the ROC,⁴³ the issue of whether the review should be conducted for Idaho was never directly addressed by this Commission in this docket. Instead, while Qwest protested the inherent delay in waiting for Liberty to conduct the review, the actual authorization for Staff’s participation in the ROC review was placed on the Commission’s decision agenda for September 29, 2008 under the

³⁷ The ROC is an informal group of regulators that has no independent regulatory authority and no jurisdiction to compel Qwest or any other party to take action. Since the ROC was originally created its focus has changed from issues exclusive to Qwest to an industry focus.

³⁸ See Staff Comments filed herein on July 7, 2008, Attachment 1.

³⁹ *Id.* at 3.

⁴⁰ *Id.*, Staff’s Attachment 1.

⁴¹ *Id.*

⁴² See *Qwest Corporation’s Response to Staff Motion to Extend Comment Period* filed herein on August 4, 2008, at 4-5; See also Qwest Attachment B to these Comments.

⁴³ *Id.*

“Matters in Progress” and without the assignment of a docket number to the item.⁴⁴ In addition, Staff’s Decision Memorandum that accompanied that item recommended that the Commission, *inter alia*, “open a docket to review Qwest’s PAP/PIDs,”⁴⁵ even though the present docket seeking review of the PAP under section 16.3 had been open for four and a half months.

Once again the disconnect between section 16.3 requirements for review and the ROC process that would ultimately yield the Liberty Report is obvious. Worse yet is that there was no opportunity in this record⁴⁶ for Qwest to provide input as to what issues should be included in the proposed review. And, there is no indication that the Idaho Commission itself provided any instruction or guidance to Liberty. This lack of direction from the Commission and lack of input into the structure of the review conducted underscores the difficulty of using the Liberty Report in a docket in which “the *Commission and Qwest* shall review the appropriateness of the PAP and whether its continuation is necessary.”⁴⁷

The Liberty Report has now been placed in this docket for purposes of comment by the parties by stipulation.⁴⁸ Although Qwest agreed to the Report’s limited use, the Company has not waived its procedural and due process objections to the Report should its use be expanded in this docket.⁴⁹

⁴⁴ *See id.* Qwest Attachment A.

⁴⁵ *See* Staff Decision Memorandum dated September 22, 2008, at 4. (no docket number available).

⁴⁶ *See* Attachment B to these Comments. By letter dated August 15, 2008, Qwest Senior Vice President, Steve Davis, informed the ROC that Qwest would not agree to participate in a QPAP Analysis Collaborative and listed among the Company’s concerns that the question before the state commissions was “whether the QPAP’s continuation is necessary” and that the PAPs called for the reviews to be undertaken by “the Commission and Qwest” and not in a multi-state collaborative review. These comments were unheeded by the ROC, and Liberty makes no mention of the standard of review required by the PAPs in its Report.

⁴⁷ Idaho PAP §16.3.

⁴⁸ *See Stipulation and Jointly Submitted Procedural Schedule*, filed herein on July 29, 2009.

⁴⁹ These objections include, but are not limited to, the following. There is no formal hearing process in which the Report will be introduced into evidence. There is no foundational witness. There is no opportunity to raise foundational objections to its introduction. There is no opportunity for discovery. There is no opportunity for cross-examination of any witness on the substance of the Report. There is no opportunity for rebuttal testimony and/or evidence in regard to the allegations made in the Report.

2. Liberty Consulting Was Not Provided with Proper Guidance as to the Purpose of the PAP

The Liberty Report repeatedly states that the consultants were charged with creating draft recommendations concerning “the current effectiveness, value, and usefulness of the PAPs and PID measures *in relation to their intended purpose and function.*”⁵⁰ However, nowhere in the Report does Liberty articulate what it understands as the “intended purpose” or “function” of the PAP. Nor does the Liberty Report or any document shared with Qwest indicate that any commission provided any guidance to the consultant on this critical point. Moreover, the phrase Liberty uses to describe its charge (“the current effectiveness, value and usefulness”) is not the standard that this Commission is required to use under section 16.3 of the Idaho PAP, i.e., “the appropriateness of the PAP and whether its continuance is necessary.”

There is an important distinction between intended purpose of the overall *PAP* and the purpose of the “*PID measures.*” Qwest does not dispute that Liberty performed a detailed analysis of certain PID measures to determine whether they were capturing the data they were devised to capture and whether they were functioning as intended. The larger question of the purpose of the PAP and its continued necessity, however, required a level of analysis, including an examination of the legal precedents, which is nowhere contained in the Report.

The Idaho PAP is itself silent as to its purpose, save for the words “performance assurance” in its title. In paragraph 1.1, the PAP states that it was “prepared in conjunction with Qwest’s application for approval under Section 271 of the Telecommunications Act of 1996 (the “Act”) to offer in-region, long distance service.” The Liberty Report, however, does not evaluate the PAP in the context of section 271, nor does it discuss the impact of Qwest’s entry into the “in-region long distance market.” And, apart from statements that the PAP continues to provide “incentive” to Qwest to perform⁵¹ (a topic that is addressed in these Comments below), there is no analysis of the effectiveness, much less the necessity, of the PAP as a performance assurance tool.

Review of the Report itself reveals some of the mistaken views of the PAPs’ purpose that pervade the Liberty analysis. For example, on page 3 Liberty states that it reviewed “the burden on Qwest of maintaining the PAPs and whether this burden outweighs the advantage of

⁵⁰ See e.g., Report at 2, 8, and 20 (emphasis added).

⁵¹ See *id.* at 56.

protecting competitors” (emphasis added). Nowhere, in the federal Act, the orders of the FCC, or state law is “protecting competitors” articulated as a purpose of the PAP or a responsibility of Qwest. Qwest is responsible under federal law to provide non-discriminatory service to its CLEC customers.⁵² This specific legal requirement does protect competitors; however that requirement cannot be expanded into a general obligation to “protect” competitors.

Elsewhere, the Liberty Report describes its analysis as evaluating whether the PAP is helpful in “*maintaining a competitive market*”⁵³ or important to “*continuing to maintain competition.*”⁵⁴ Such analysis, while perhaps consistent with the broad charge given Liberty by the ROC, is irrelevant to the question before this Commission. The purpose of the PAP was simply to help assure that the wholesale market remained open after Qwest was granted 271 freedoms. Seven years later there is no dispute that the required openness has been achieved and maintained. The PAP, therefore, has achieved its purpose. While any number of other measures could be “helpful” or even “important” to competitors, there is no evidence that such measures are required or necessary.

The lack of a proper foundational standard by which the PAP was to be evaluated constitutes a fatal flaw in the Liberty Report analysis, at least in so far as it pertains to the issues in this docket. Liberty’s comments, conclusions, and recommendations are compromised, because they are based upon unstated, unsubstantiated, unauthorized opinions of what constituted the “intended purpose and function” of the Idaho PAP.

3. The Liberty Report draws conclusions about the PAP that are based on standards not provided in law or the history of the PAP and that are irrelevant to a review under section 16.3.

On page 4 the Liberty Report states:

Based on analysis presented in this report, Liberty concludes that the PAPs are still serving a *useful purpose* in all the participating states. Although Qwest’s largest competitors are the wireless and cable companies, which are less dependent on Qwest’s wholesale services, there continues to be a *significant group of CLECs that rely heavily* on Qwest’s wholesale services to conduct their business, and there are *limited readily available alternatives* to Qwest’s wholesale service for these CLECs. (emphases added)

⁵² 47 U.S.C. § 251.

⁵³ Report at 23.

⁵⁴ *Id.* at 56.

This paragraph contains a number of misconceptions that are key to the analysis that should be conducted by this Commission. First, as mentioned above, although Liberty was charged by the ROC to review the “usefulness” of the PAP, section 16.3 requires that the Commission review its “necessity”—a far different standard. The paragraph also summarizes the various reasons Liberty believes the PAPs should continue – all of which reasons are irrelevant or without basis.

Liberty cites CLEC reliance on Qwest’s services as the chief reason the PAPs should continue. Nevertheless, Liberty does not explain how it determined the extent of CLEC reliance or its relationship to the continuance of the PAP.⁵⁵

Whether CLECs “rely heavily” (or at all) on Qwest’s wholesale services has never been articulated by any legal or regulatory authority as a purpose of or criterion for evaluating the PAPs. Instead, the FCC described the their purpose as ensuring that markets remain open⁵⁶ after Qwest entered the interLATA long distance market. The question of whether the market will remain open has been affirmatively answered by actual market experience over the past seven years.

Furthermore, substituting “CLEC reliance,” for the correct formulation of “market openness” as the appropriate standard for evaluating the Idaho PAP results in the absurd conclusion that the PAP could be discontinued only when the market disappeared entirely i.e., when there were no longer any CLECs purchasing (i.e., “relying on”) any Qwest services. But, of course, it was never the intent of the FCC, or this Commission that Qwest would be burdened with the PAP regardless of the openness of its network or the quality of its performance until the last CLEC disconnected its service. Had it been otherwise, the FCC would have so stated in its

⁵⁵ In an apparent effort to bolster its reliance argument, on page 4 Liberty cites examples from Hawaii and northern New England that it says “demonstrate the severe impact on competitors when an incumbent local company fails to provide adequate wholesale performance.” Incongruously, however, Liberty continues on page 4 to admit, “The circumstances of those cases are very different from what the CLECs face in Qwest’s operating territory.” Then, on page 55 Liberty elaborates that point with the statement, “the causes of this poor wholesale performance was related to a change of ownership and operation of the local exchange businesses in these cases, and thus they are unrelated to the current situation in the Qwest territory.” Despite their inapplicability, Liberty cites the Hawaii and New England examples for its conclusion the PAPs “help assure that the correct incentives are in place to help prevent such conditions occurring.” Liberty offers no support for this conclusion, nor does it state whether PAPs were in place in the examples, or how PAP provisions could have in any way prevented the problems that actually arose.

⁵⁶ Nine States’ Order at ¶ 453.

orders, and the PAPs themselves would not have been approved by state commissions with language that called for their review and discontinuance while the CLEC wholesale market continued to exist.⁵⁷

Likewise, whether there are “readily available alternatives” to Qwest facilities has never been articulated as a criterion for the existence of the PAPs by any valid authority. Again, the legal standard to which Qwest must adhere is the provision of non-discriminatory service while maintaining an open wholesale market. It is an entirely different matter to suggest that Qwest must continue to be subjected to the punitive and burdensome provisions of the PAP simply because third parties have not provided “readily available alternatives” to Qwest’s high quality services in all areas.

4. The Liberty Report overlooks the significance of the FCC’s decisions deregulating broadband services.

Several times the Liberty Report cites the fact that CLECs provide significant competition to Qwest “in such important markets as broadband” as a reason the PAPs should continue.⁵⁸ In making this statement, Liberty appears to have overlooked that fact that the FCC has taken a number of important steps aimed at easing, if not in many cases eliminating, the regulatory requirements for broadband facilities and services.⁵⁹

In the *Triennial Review Order*, the FCC determined, that incumbent LECs do not have to unbundle certain broadband elements, including fiber-to-the-home (FTTH) loops in greenfield situations, broadband capabilities of FTTH loops in overbuild situations, the packet-switched capabilities of hybrid loops, and packet switching.⁶⁰ In subsequent reconsideration orders, the

⁵⁷ For example, the position that CLEC reliance on Qwest facilities precludes discontinuance of the PAP is patently inconsistent with the provision in section 16.3 of the Idaho PAP, which states the PAP may be immediately withdrawn in the event Qwest exits the interLATA market.

⁵⁸ See e.g., Report at 86.

⁵⁹ *Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Broadband Services*, Memorandum Opinion and Order, FCC 08-168 (released August 5, 2008) at ¶ 8 (“Qwest Broadband Forbearance Order”).

⁶⁰ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17141-53, ¶¶ 272-95, 17323, ¶ 541 (2003) (*Triennial Review Order*), corrected by *Triennial Review Order Errata*, 18 FCC Rcd at 19022, ¶ 26, *aff’d in part, remanded in*

FCC extended the same unbundling relief to encompass fiber loops serving predominantly residential multiple dwelling units (MDUs) and fiber-to-the-curb (FTTC) loops.⁶¹ Moreover, in the *Section 271 Broadband Forbearance Order*, the Commission granted the BOCs forbearance relief from the requirements of section 271 specifically for the broadband elements for which it had granted unbundling relief under section 251.⁶² Where Qwest is no longer required to provide a service as an unbundled element, it is no longer subject to the PAP.

In the *Wireline Broadband Internet Access Services Order*,⁶³ the FCC generally eliminated the Title II and *Computer Inquiry* requirements applicable to wireline broadband Internet access services offered by facilities-based providers.⁶⁴ The FCC granted this relief for wireline broadband Internet access service and its underlying broadband transmission component, whether that component is provided over all copper loops, hybrid copper-fiber loops, an FTTC or fiber-to-the-premises (FTTP) network, or any other type of wireline facilities.⁶⁵ As a result of this deregulation, the federal Commission removed DSL (a broadband service) from nondiscrimination requirements and, therefore, removed the service from coverage under the PIDs and PAPs.

part, vacated in part, United States Telecom Ass'n v. FCC, 359 F.3d 554, 564-93 (D.C. Cir. 2004) (*USTA II*), cert. denied, 543 U.S. 925 (2004), on remand, *Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, 20 FCC Rcd 2533, 2541, ¶ 12 (2004) (*Triennial Review Remand Order*), aff'd, *Covad Communications Co. v. FCC*, 450 F.3d 528 (D.C. Cir. 2006).

⁶¹ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Order on Reconsideration, 19 FCC Rcd 20293, 20297-20303, paras. 9-19 (2004) (*Triennial Review FTTC Reconsideration Order*).

⁶² *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c); SBC Communications Inc.'s Petition for Forbearance Under 47 U.S.C. § 160(c); Qwest Communications International Inc. Petition for Forbearance Under 47 U.S.C. § 160(c); BellSouth Telecommunications, Inc. Petition for Forbearance Under 47 U.S.C. § 160(c)*, WC Docket Nos. 01-338, 03-235, 03-260, 04-48, Memorandum Opinion and Order, 19 FCC Rcd 21496 (2004) (*Section 271 Broadband Forbearance Order*), aff'd, *EarthLink, Inc. v. FCC*, 462 F.3d 1 (D.C. Cir. 2006) (*EarthLink v. FCC*).

⁶³ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005) (*Wireline Broadband Internet Access Services Order*), aff'd, *Time Warner Telecom Inc. v. FCC*, 507 F.3d 205 (3rd Cir. 2007) (*Time Warner Telecom v. FCC*).

⁶⁴ *Id.* at 14872-915, ¶¶ 32-111. The FCC found these services to be information services. *See id.* at 14909, ¶ 102.

⁶⁵ *See id.*

Although, the *Wireline Broadband Internet Access Services Order* did not encompass other wireline broadband services, such as stand-alone Asynchronous Transfer Mode service (ATM), Frame Relay service, Gigabit Ethernet service, and other high-capacity special access services⁶⁶ these services were addressed in the *Qwest Broadband Forbearance Order*, where the FCC granted in part Qwest's requests for forbearance from dominant carrier regulation of Qwest's existing packet-switched broadband telecommunications services and its existing optical transmission services.⁶⁷ The Commission also granted Qwest relief from its obligations under the *Computer Inquiry* rules in connection with these services, conditioned on its compliance with the *Computer Inquiry* obligations that apply to all non-incumbent LEC, facilities-based wireline carriers.⁶⁸

These numerous decisions of the FCC entirely undercut Liberty's conclusion that CLEC provision of broadband services in competition with Qwest requires continuation of the PAP. Instead, these decisions demonstrate that the federal Commission has chipped away at the applicability of the PAP to broadband services until there is nothing left. The application of parity measures (such as those contained in the PAPs) to broadband services is anathema to the deregulatory approach the FCC has taken to spur the deployment of broadband. While Liberty is correct that CLECs do provide competition to Qwest in the important broadband market, Liberty ignores the increasing extent to which that competition is based on services that are not subject to the PAP.

E. Continuation of the PAP as an Incentive for Qwest to Provide Good Service Is Neither Appropriate Nor Necessary.

1. Qwest has continued to satisfy the requirements of section 271 since entering the long distance market.

The FCC in its order granting 271 freedoms to Qwest in Idaho stated, "one factor

⁶⁶ *See id.*

⁶⁷ *Qwest Broadband Forbearance Order*, 2008 FCC LEXIS 8123, ¶¶ 20-25.

⁶⁸ *Id.* at ¶¶ 54-60.

[the FCC] may consider as part of its public interest analysis is whether a BOC would have *adequate incentives to continue to satisfy the requirements of section 271 after entering the long distance market.*"⁶⁹ Seven years ago, how the markets would develop and what incentives would drive the industry were open questions. Today the answers are well known.

Over the past seven years Qwest has consistently provided excellent service to CLECs. Average Idaho performance since 2003 has been over 99%.⁷⁰ Furthermore, there is no dispute that the long distance market is more competitive today than it was before Qwest was granted entry. Today Qwest faces significant competition, not just from CLECs who were covered by the PAP, but from wireless, cable and VoIP providers. Even voice service itself is subject to competitive forces unimagined just seven years ago in the form of text messaging, Twitter and social networking.

Although Qwest has multiple concerns about the foundation of the Liberty Report and the direction of its analysis, there is no dispute that it looked at Qwest's performance under the standards provided by the PAPs. In doing so Liberty did not find that Qwest had failed to maintain an open market or that it has discriminated in the provision of its services. Nor did Liberty find any defect of any kind in Qwest's service quality with regard to Idaho. In fact, of the eleven states that participated in the ROC review, Tier 1 and Tier 2 payments under the PAP were lowest in Idaho.⁷¹

Furthermore, Liberty concedes that from a statistical perspective, the rate at which Qwest misses measurements is within acceptable bounds of statistical error (5%).⁷² This means Qwest is likely making substantial payments on what are essentially errors in statistical testing due to natural, random variation. As Liberty acknowledges on page 40 of its report:

[F]ailure rates of below five percent can be considered to be artifacts of the statistical framework and not a true indication that Qwest is providing substandard service.

⁶⁹ Nine States' Order, ¶ 453.

⁷⁰ See Qwest Petition ¶ 36

⁷¹ Report at 25, Figure III-A-2.

⁷² Report at 39-40.

The Report's analyses support this statement and show that for the last four years in all but one⁷³ PID category, the failure rate *throughout Qwest territory* is less than five percent (and all would be less than five percent when accounting for PID design problems). Nevertheless, Liberty inconsistently recommends continuation of the PAPs in all states and retention of metrics in those categories.

2. The assumption that PAP incentives have worked and therefore need to remain is unverified and illogical.

The Liberty Report acknowledges that Qwest's service to wholesale customers has improved over the time the PAPs have been in place,⁷⁴ yet it ignores this service quality in recommending that the PAPs be maintained. Typical of its analysis is this passage, from page 4 of its Report,⁷⁵ in which Liberty asserts:

Despite the improvement in Qwest's performance and reduction in PAP payments, the PAP incentives continue to be important in helping to ensure that Qwest's performance level does not deteriorate, because Qwest's wholesale services remain critical for the CLECs still relying on them.

Exactly how PAP incentives have actually worked or how they will in the future "help ensure that Qwest's performance does not deteriorate" is not explained or demonstrated by facts presented in Liberty's Report. In fact, in the same paragraph in which it offers this unsubstantiated conclusion about PAP incentives, Liberty admits the connection between the PAP incentives and performance is difficult to establish:

Although *it is difficult to verify* from historical data, the incentive provided by the PAPs has likely contributed to this performance improvement.⁷⁶

The fact is there is absolutely no basis provided in the Report that "the incentive provided by the PAPs has likely contributed to this performance improvement." Not only was this key point apparently "difficult to verify" as Liberty stated, but nowhere does the Report

⁷³ The one PID category that appears to exceed the 5% level is Billing. In the most recent year, it was less than 5% (reflecting the resolution of problems with the design and parity standard of the BI-3 PID.) Taking into account the PID flaws, the other three years would also have been less than 5% failure rate, resulting in all PID categories being less than 5% failure rate.

⁷⁴ Report at 4.

⁷⁵ See also Report at 56.

⁷⁶ Report at 4 (emphasis added).

indicate any attempt to verify it. Nevertheless, even though the link between PAP incentives and performance improvements *in the past* is unsubstantiated, Liberty tries to stretch that link to support the even more tenuous conclusion that PAP incentives remain important for the future.

Liberty's readiness to attribute Qwest's performance improvements to the PAP incentives leads to the stunningly illogical conclusion that Qwest's actual performance is irrelevant to whether the PAP must continue. The argument stated in its most simple terms defies logic: If Qwest's service improves the PAP incentives are working and should stay in place. On the other hand, had Qwest's service deteriorated, it is unthinkable that Liberty would have concluded that Qwest should be allowed to discontinue the PAP. Therefore, regardless of how well Qwest performs, the PAP must continue. There appears to be nothing Qwest could do to demonstrate its commitment to good service, so long as CLECs "rely" on Qwest services.

3. The incentives in operation in today's market are unlike anything that was imagined when the PAPs were created.

Liberty's attempt to extrapolate from past positive experience under the PAP would not be so troubling had Liberty analyzed the incentives at play in today's industry. It did not. While Liberty notes that Qwest faces competition from other competitors today,⁷⁷ Liberty failed to discuss how such a change would impact Qwest and the incentives it may or may not need to comply with legal requirements. In fact the Report did not offer any detailed analysis of the supposed incentive value of the PAP. And, while citing industry changes, Liberty apparently overlooked how the hugely altered business and regulatory environments that have developed over the years have changed how the incentives operate.

At the time that Qwest was poised to enter the interLATA market strong financial incentives to "assure performance" were thought necessary to overcome what was seen as the BOC's business incentives to delay, or even thwart, CLEC competition. Today the business incentives themselves assure performance. There is no evidence that if Qwest were to provide low-quality service to CLECs, Qwest would benefit. Instead, Qwest and the CLECs are aligned in their competitive battle with cable and wireless competitors in attempting to retain customers through excellent service, innovative products and reasonable prices.

⁷⁷ See e.g., Report at 55.

For example, whereas seven years ago a CLEC order could fairly be viewed as a competitive loss for Qwest, today, given line losses to wireless and cable competitors, a CLEC order presents an opportunity for Qwest to generate revenue from its existing network. Even if a given CLEC end user is a former Qwest customer, so long as that customer stays on the network as a CLEC customer, Qwest manages to gain some revenue. If the customer abandons the network for a wireless or cable competitor, Qwest loses all the revenue that customer generated.

The degree to which the market has changed in the years since the PAP was adopted is sometimes easy to overlook. Seven years ago CLECs and competitors could be forgiven for thinking Qwest might choose to provide poor service to gain competitive advantage. After all, at that point there was relatively little experience with BOCs serving CLECs as wholesale customers and no experience with what BOC entry into the long distance market would yield. Certainly the BOCs and regulators alike believed that interLATA long distance presented a significant business opportunity for the BOCs.

It was that BOC opportunity that drove the notion that large economic incentives were desirable, or even necessary, to force Qwest to into compliance with the law. In fact, when the PAP was adopted, there was concern that the financial “incentives” (penalties) might not be large enough, and that the cap of 36% of ARMIS Net Return—an amount totaling \$ 28 million for Idaho for the year 2003 —might give Qwest the opportunity to simply pay (and continue to reap lucrative long distance revenues) rather than perform.^{78 79} Seven years later, however, Qwest has paid \$583,000 *in total over all the years* under the Idaho PAP. While this amount is minute compared with the expectation of what would constitute an adequate incentive as represented by the annual cap, it constitutes a substantial burden to Qwest given its excellent performance over that period.

⁷⁸ Idaho PAP §12.1.

⁷⁹ See e.g., *Commission Decision on Qwest’s Performance Assurance Plan, In the Matter of US WEST Communications Inc.’s Motion for an Alternative Procedure to Manage Its Section 271 Application*, Case No. USW-T-00-3 at 5 in which CLECs are quoted as arguing that a cap of 36% of Qwest’s annual net income (estimated at that time to be \$24 million) would “result in under compensation of CLECs.”; *See also Comments of the Commission Staff* in the same docket dated November 2, 2001 at 5-6 (“the 36 percent cap must be an incentive for Qwest to meet performance standards and avoid penalties and not simply become a cost of doing business for the Company, which would not deter substandard performance.”)

There is no indication in the Liberty Report or anywhere else that Qwest has attempted to avoid performance by paying PAP penalties, much less that it has attempted to thwart competition by discriminating against CLECs. Instead, Qwest asserts that the evidence shows that Qwest already has sufficient incentives without the PAPs to comply with the Act, that Qwest has complied with the Act and that it is committed to continuing to do so not only because it is the law, but because providing good service to its CLEC customers aligns with Qwest's financial incentives.

F. Qwest Offers QPAP-2 as a New Voluntary Mechanism for Performance Assurance and Invites the Commission and the Parties to Comment and Participate in the Process of Transitioning Away From the Original PAP.

In light of the competitive realities discussed above Qwest values CLECs as customers and important partners on its network. Therefore, Qwest offers a new transitional approach for performance assurance in the form of QPAP-2,⁸⁰ and proposes that the Commission and parties recognize this as a replacement for the current Idaho PAP and as an appropriate method for transitioning away from that plan. The approach reflected in QPAP-2 represents a shift from self-executing penalties to a focus on compliance and proactive resolutions of problems in the form of a specific, responsive resolution plan. QPAP-2 also represents a shift from a complex multitude of detailed measurements and standards to a streamlined approach that looks at the most important metrics and standards. Finally, the QPAP-2 offers a resolution to the issues in this docket. Qwest believes that in accepting this approach, the Commission may find it unnecessary to rule on the legal basis or framework for continuing the self-executing penalties in the Idaho PAP.

1. Qwest's proposed QPAP-2 focuses on assuring Qwest's compliance with key service quality measures and on committing to explicit, responsive resolution steps to assure problems are solved.

Qwest's QPAP-2 consists of measurements, standards, and customer remedies that focus on the most important dimensions of service quality in a manner that is consistent with service quality regulation in most states, large and small. In so doing, QPAP-2 provides an efficient, streamlined approach to service quality that, while relatively simple, complements market forces

⁸⁰ See Attachment C to these Comments, which contains the Qwest Performance Assurance Plan-2 ("QPAP-2").

in helping assure quality service and provides timely responses to service quality problems. Most importantly, QPAP-2 shifts the focus from the penalties of the current Idaho PAP to sensible processes to help assure Qwest complies with the performance requirements of the Act.

2. In addition to QPAP-2, there are other factors that help assure customers of quality service.

Market forces represent immense incentives to provide quality service; indeed they represent the most significant incentives in Qwest's business. Available evidence, including the Liberty Report, shows a general and improving pattern of Qwest performing above regulatory standards. The competitive market demands that Qwest maintain and improve its service quality and responsiveness in expanded and more customer-specific ways. Qwest's steady loss of access lines gives it powerful incentive to provide high quality service to help reduce or avert such losses – including serving CLECs well to help keep customers on Qwest's network.

3. Measurements: QPAP-2 focuses on the most important service quality dimensions of ordering process timeliness, installation of services, maintenance, and response to trouble reports (repair).

Qwest is offering measures that focus on the most important service quality dimensions. For ordering process timeliness, Qwest proposes to report "Firm Order Confirmation Timeliness" (FOC). For installation of services, QPAP-2 calls for reporting "Installation Commitments Met" (ICOM) and "Order Installation Interval" (INST). For maintenance, the Plan calls for reporting "Trouble Rate" (TR). For repair of troubles, the measurement reported will be "Troubles Restored within Estimated Intervals" (TREI). Each of these will produce monthly measurements that are reported quarterly.

a) Firm Order Confirmation Timeliness (FOC)

FOC is a monthly measurement that reports state-specific activity. This measurement applies a benchmark standard of 90% within targeted FOC intervals (as specified in the measurement definitions). FOC Timeliness is defined as percentage of Local Service Requests (LSRs) that are provided to CLECs within specified intervals. The measurement calculates FOC Timeliness by dividing the count of LSRs provided within the specified intervals by the count of all LSRs processed in a reporting period. FOC includes all LSRs submitted through

specified electronic interfaces in the reporting month, subject to specified exclusions similar to those in the FOC PID (PO-5) of the current QPAP.

b) Installation Commitments Met (ICOM) and Order Installation Interval (INST)

ICOM is a monthly measurement that reflects state-specific, statewide results. An installation order is defined as a customer request for the installation of a new, transferred, or changed service. An installation commitment is defined as the due date communicated to the customer that the requested service will become available for the customer's use. This measurement applies an 80% benchmark to the statewide result. ICOM calculates the percentage of orders installed on or before the due date communicated to the customer by dividing the total number of installation orders, for which the due date was met, by the total number of installation orders completed/closed in the reporting month. ICOM focuses on orders for specified products – namely, four types of unbundled loops: Analog, 2-Wire Non-Loaded, DS1-capable Loops, and Enhanced Extended Loops-DS1 (EEL-DS1). Installation orders included in this measurement are those requesting new, transferred, or changed loops, subject to specified exclusions typical of the OP-3 PID.

INST is a monthly measurement that reflects state-specific, statewide results. Installation orders and products covered are defined as for ICOM. This measurement applies a benchmark standard of 6 business days to the Analog Loop and a parity standard to the other loop products. The installation interval for each order begins with the date/time an order is received by Qwest to the date/time it is completed. INST calculates the average installation interval, summing the individual installation intervals for all the orders and dividing it by the total number of installation orders completed/closed in the reporting month. INST focuses on orders for the same products specified in ICOM – Analog, 2 Wire Non-Loaded, and DS1-capable Loops, and Enhanced Extended Loops-DS1 (EEL-DS1). Installation orders included in this measurement are those requesting new, transferred, or changed loops, subject to specified exclusions typical of the OP-4 PID.

c) Trouble Rate (TR)

The TR measurement is a state-specific, monthly measurement that evaluates the extent to which the installed base of specified products experiences troubles in the reporting month. It

applies a benchmark standard of 5%, which is similar to retail trouble report rate benchmarks seen in various state rules. TR focuses on all troubles reported on specified products (the same four as in the Installation measurements, ICOM and INST) closed within the reporting month. TR is calculated by dividing the count of trouble reports by the number of products in service in the reporting period, subject to exclusions typical of the latest versions of the MR 8 measurement

d) Troubles Restored within Estimated Intervals (TREI)

As with the ICOM measurement, TREI is a state-specific, monthly measurement. The TREI measurement evaluates the extent to which Qwest clears specified types of trouble reports within specified intervals by specified product (i.e., 24 hours for Analog and 2-Wire Non-Loaded Loops; 8 hours for dispatched troubles on DS1-capable Loops and EEL-DS1; and 4 hours for non-dispatched troubles on the latter two products). TREI focuses on specified trouble report types that are closed in the reporting month. TREI is calculated by dividing the number of trouble reports cleared within the specified timeframes by the total number of such trouble reports, subject to specified exclusions that are typical of repair timeliness measurements. This measurement applies an 80% benchmark standard to statewide results.

4. Reporting: QPAP-2 calls for reporting the monthly measurement results on quarterly basis.

Within five business days after the end of the month following each calendar quarter, Qwest will report the monthly measurement results for that quarter for each of the measurements. This approach aligns with the operational process, discussed below, in which measurement results from the first month in a quarter can be reviewed during the second month and acted upon if necessary in the third month.

5. Responsive Resolution Process: Under QPAP-2, the Responsive Resolution Process provides a focus on solving problems in a timely, good-faith manner, using specific responsiveness commitments.

Based on the measurements and standards described above, this aspect of QPAP-2 is very much like commercial agreements that have been successful in offering and managing

products like QLSP (Qwest Local Services Platform)⁸¹ to CLECs. The Responsive Resolution Process establishes four levels of responsive actions to assure service quality and resolve problems. Under the first or “day-to-day” response level, Qwest commits good-faith effort to monitor and maintain service quality levels that satisfy or better the standards specified in the QPAP-2. Beyond the day-to day level, there are three tiers of responses, designated as Response Levels 1, 2, and 3, which provide for increasing escalation of action and executive attention.

a) Response Level 1

This level represents the most basic reaction to missed standards. It requires Qwest to identify the contributing factors and alternative solutions and then take corrective action accordingly, as soon as practicable. Where corrective action is called for, Qwest will develop, document, and implement an Action Plan, as soon as practicable, in a good-faith effort to mitigate or resolve the issue. Such an Action Plan identifies corrective steps selected to remedy the problem, the resources and process required to implement the step, the timelines involved in the implementation, and the manner in which the Plan will be monitored to determine whether it succeeded.

b) Response Level 2

If standards continue to be missed after reaching Level 1, or in the case of a single yet significant performance shortfall, Level 2 is invoked. This response level applies a higher level of attention and targeted resolution than under Level 1. Specifically, Response Level 2 calls for Qwest to evaluate shortfalls, if any, in the prior resolution steps and to implement necessary changes, which includes documenting the changes in the Action Plan described in Level 1 above. The matter will also be escalated internally to vice president level for additional attention, priority, and support.

Further, Qwest will inform affected CLECs (via password-protected web postings or, alternatively, via email to pre-designated representatives) about the Action Plan, its elements, and timeframes, along with expected outcomes, and will take into consideration applicable

⁸¹ QSLP is a wholesale offering that Qwest made available as a replacement for its UNE-P unbundled service element after it was removed from the operation of the PAP by the FCC’s TRO and TRRO decisions. *See* Report at 33. QSLP is now offered under commercial agreements instead of the PAP.

observations and comments received from CLECs through their communications with assigned Qwest account teams.

c) Response Level 3.

Level 3 is invoked when, after Level 2 has been reached, one or more standards continue to be missed in subsequent quarters. Under Level 3, within the first month after the related measurement results are initially posted, Qwest will conduct a further, internal vice president-level review of the Action Plan to identify additional steps that can be expected to have effect in resolving the problem, as well as additional resources, if any, that can be applied to resolve the matter. Qwest will then offer to have a vice president meet or participate in a conference call with representatives of affected/interested CLECs to review the Action Plan, additional steps being taken, and the expected timeframes. Finally, this process calls for Qwest to establish a status-sharing process with CLECs, including regular web postings, emails, or conference calls, as best suited to the situation at hand. This status-sharing process will continue throughout the period in which the performance issue remains at Level 3, as determined on a monthly basis with successive results reports.

d) Outcome

As a result of pursuing the approach represented by QPAP-2, Qwest and other parties will be more focused on assuring that service quality meets standards and resolving real world problems, rather than straining over the details of what even Liberty characterizes as “the extreme complexity of the PAP payment mechanisms.”⁸² This improved focus has been the experience of Qwest and its customers who used commercial agreements, rather than the PAP, to govern their business relationships. Qwest’s history outside the PAP has shown that where problems arise, Qwest labors to resolve them and engages in productive interactions with CLECs to coordinate joint efforts to succeed. The QPAP-2 offers a suitable alternative to the PAP which has met its purpose.

⁸² Report at 47.

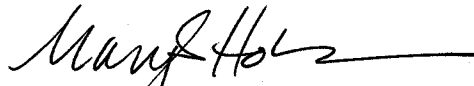
III. CONCLUSION

The Idaho PAP in section 16.3 provides for a review by the Commission and Qwest to determine whether its continuation is necessary once Qwest eliminates its separate affiliate under section 272. Qwest's obligations under section 272 have sunset and there is simply no need or legal basis to continue the burdensome and punitive PAP. Designed originally to assure that the market-opening provisions of section 271 would be sustained once Qwest entered the interLATA market, the PAP's detailed measures have proven Qwest's performance over the last seven years to be excellent. There is no evidence that Qwest has faltered in keeping its wholesale markets open or in providing nondiscriminatory service to its CLEC customers.

The telecommunications markets are markedly different than they were seven years ago. Wireline services providers, including Qwest and its CLEC customers, face their most serious competition from cable and wireless competitors. Today Qwest's business interests urgently drive the need to provide excellent service to its customers—including its CLEC customers—as a matter of business survival.

The voluntary PAP offering has served its purpose and is no longer appropriate or necessary. Simpler and less burdensome alternatives can provide assurance to CLECs while preserving their legal remedies under the federal Act. Qwest respectfully requests that the Commission give serious consideration to the QPAP-2, which is offered here as a means to transition away from the PAP.

Respectfully submitted this 14th day of August, 2009.



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THE FOLLOWING IS THE IDAHO PUBLIC UTILITIES COMMISSION'S AGENDA FOR A DECISION MEETING to be held on **Monday, September 29, 2008 at 1:30pm**. The agenda is published forty-eight (48) hours in advance of each meeting. Meetings are held in the Commission's Hearing Room at the IPUC, 472 West Washington Street, Boise, Idaho. The time and the agenda are subject to change. Please check with Jean Jewell, Commission Secretary, at 334-0338 if you have any questions.

APPROVAL OF MINUTES FROM PREVIOUS MEETINGS

1. Minutes of Decision Meeting on September 15, 2008. Minutes have been circulated to the commissioners for review and are ready for consideration.

CONSENT AGENDA

2. Carolee Hall's September 25, 2008 Decision Memorandum re: Application for Approval of Amendment to the Interconnection Agreement Between Qwest and MCImetro Access Transmission Services LLC, Case No. QWE-T-06-24.
3. Carolee Hall's September 25, 2008 Decision Memorandum re: Fremont Telcom dba Fairpoint Communications Seeking Commission Authority to Offer Seasonal Service to Customers Who Temporarily Leave the Service Area for an Extended Period of Time, Advice No. ID-08-04.
4. Carolee Hall's September 26, 2008 Decision Memorandum re: Matrix Telecom, Inc., Requesting that Its Certificate No. 468 be Revised to Reflect Its New Company Name With Its Affiliates, Case No. MAT-T-07-01.
5. Carolee Hall's September 22, 2008 Decision Memorandum re: Potlatch Telephone Company (Potlatch) Revising Its Tariff to Implement the New Universal Service Fund Rates per Commission Order No. 30635, Case No. GNR-T-08-03.
6. Gerry Galinato's September 26, 2008 Decision Memorandum re: Eagle Water Tariff Advice No. 08-01, Rate Schedule 1.
7. Scott Woodbury's September 24, 2008 Decision Memorandum re: General Rate Case, Case No. PAC-E-08-07 (Rocky Mountain Power).

MATTERS IN PROGRESS

8. Carolee Hall's September 22, 2008 Decision Memorandum re: Commission Approval for Staff to Join the Regional Oversight Committee (ROC) Multi-State Review Process for Qwest's Performance Assurance Plan (QPAP) and Its Performance Indicator Definitions (PIDS).

RULEMAKING

9. Don Howell's September 26, 2008 Decision Memorandum re: Updating the Commission's Rules Regarding the Transportation of Hazardous Materials by Rail, IDAPA 31-7103-0801 (Case No. RUL-R-08-01).

FULLY SUBMITTED MATTERS

10. Deliberation re: Mr. Corvino's Petition for Reconsideration from the Final Order in Mayfield Springs, the Company's Answer to His Petition, and the Company's Petition to Alter or Amend the Commission's Final Order, Case No. MSW-W-08-01. [No Memo. Don Howell, Attorney.]
11. Neil Price's September 11, 2008 Decision Memorandum re: Application of BLC Management LLC dba Angles Communication Solutions for a Certificate of Public Convenience and Necessity, Case No. BLC-T-08-01.
12. Neil Price's September 24, 2008 Decision Memorandum re: Application of PacifiCorp for a Certificate of

Public Convenience and Necessity Authorizing Construction of the Populus-to-Terminal 345 kV Transmission Line Project, Case No. PAC-E-08-03.

13. Deliberation re: 2008 Purchase Gas Cost Adjustment (PGA), Case No. AVU-G-08-03 (Avista). [No Memo. Scott Woodbury, Attorney]

14. Deliberation re: Complaint -- McKay Construction, Order No. 30624 -- Petition for Reconsideration, Case No. UWI-W-08-01 (United Water). [No Memo. Scott Woodbury, Attorney.]

15. Deliberation re: Request for Approval of 0.610¢/kWh PCA Surcharge, Case No. AVU-E-08-05 (Avista). [No Memo. Scott Woodbury, Attorney]

16. Deliberation re: Sale of Coventry Place, M&M Mountain View Acres and Belmont Heights Non-Contiguous Water Systems to City of Nampa, Case No. UWI-W-08-02 (United Water). [No Memo. Scott Woodbury, Attorney.]

17. Deliberation re: In the Matter of Intermountain Gas Company's 2008 PGA, Case No. INT-G-08-03. [No Memo. Kris Sasser, Attorney.]

EXECUTIVE SESSION MATTERS

None.



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R. Steven Davis
Senior Vice President
Public Policy

August 15, 2008

Commissioner Philip B. Jones
Washington Utilities and Transportation Commission
Regional Oversight Committee Chair
1300 S. Evergreen Park Dr., S.W.
P.O. Box 47250
Olympia, Washington 98504-7250

Re: Letter of July 31, 2008 regarding the Qwest Performance Assurance Plan (QPAP) and Request for Response by August 15, 2008

Dear Commissioner Jones:

Thank you for your letter sent on behalf of the Regional Oversight Committee (ROC) Executive Committee requesting Qwest's participation in a QPAP Analysis Collaborative. Qwest respectfully declines to participate in this process, as currently structured.

Qwest participated in a prior "collaborative effort" upon establishment of the QPAPs. That effort was not successful in reducing time, resources or in reaching consensus on critical issues. Because some interested parties did not participate in that process and because neither commissions nor their staffs were in any way bound by the findings and conclusions reached, those findings and conclusions were of little or no value in the subsequent legal proceedings brought in all 14 participating states.

We believe that the currently proposed collaborative process is destined to follow the same path. We have major concerns about the process, the scope of the collaborative, and what can realistically be achieved by use of a collaborative.

The purpose of the QPAP sunset review is to examine "whether the QPAP's continuation is necessary?" This type of sunset review is separate and distinct from six-month or annual reviews and from audits that are also set forth in the QPAP. This is not a review of measurement or payment definitions or accuracy, as is done in six-month reviews or audits. Rather, it is a consideration from a policy and legal perspective as to what extent, if at all, Qwest is or should be required to continue to volunteer the QPAP as part of interconnection agreements. Moreover, this issue must be examined in light of the FCC's determination that Qwest is no longer required to manage its business through the use of a separate 272 affiliate.

The QPAPs do not call for a multi-state collaborative review to determine their continued usefulness. To the contrary, the QPAPs in effect in eight Qwest states explicitly call for this review to be undertaken by "the Commission and Qwest." Therefore, Qwest does not see benefits in its participation in a collaborative review that is not likely to add value to the fundamental question identified above, and which is not likely to reduce the time and cost of necessary state-by-state proceedings on this matter.

Commissioner Philip B. Jones
Washington Utilities and Transportation Commission
Regional Oversight Committee Chair
August 15, 2008
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As noted above, past experience has shown that a collaborative review is neither cost effective nor efficient. Specifically, toward the end of the 271 OSS Test, the parties (including commission staffs) attempted to collaborate in developing the QPAP (in an effort called the Post-entry Enforcement Plan, or "PEPP"). That process was unsuccessful. Later, a similar review was attempted for "long-term PID administration." After many months without meaningful results, Qwest opted for a business-to-business approach to PID administration. This approach yielded a successful stipulation, containing agreement on numerous changes to PIDs and PAP payments, all within the existing foundational structure of the QPAP.

We respectfully encourage the ROC Executive Committee to consider the points outlined herein and support completion of the required sunset reviews of the QPAP in each state. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to be 'SD', with a long horizontal flourish extending to the right.

Steve Davis
Senior Vice President
Public Policy

Cc: Regional Oversight Committee Executive Committee
Commissioner Ray Baum, Oregon Public Utilities Commission
Chairman Ted Boyer, Utah Public Service Commission
Commissioner Anne Boyle, Nebraska Public Service Commission
Chairman Greg Jergeson, Montana Public Service Commission

QWEST WHOLESALE PERFORMANCE ASSURANCE PLAN – IDAHO ("QPAP-2")

1.0 Introduction

1.1 As set forth in this Agreement, Qwest and CLEC voluntarily agree to the terms of the following Qwest Performance Assurance Plan ("QPAP-2" or "Plan") as a means for providing service performance in conformance with Qwest's interconnection agreement with the CLEC, by focusing on identifying, prioritizing, and resolving service problems within Qwest's control.

2.0 QPAP-2 Structure

2.1 This Plan consists of the following primary components:

2.1.1 Performance Measurements, including specified minimum standards and products covered;

2.1.2 Triggers to facilitate identifying, prioritizing, and resolving confirmed service problems;

2.1.3 A Response Process that uses the measurement results, minimum standards, and triggers to identify and implement certain priority levels of resolution steps.

3.0 Performance Measurements and Reporting

3.1 Performance measurements are as defined in Attachment 1 – "Performance Measurement Definitions" and address the four service performance categories of Ordering, Installation, Maintenance, and Repair.

3.2 Qwest will post performance measurement results for the following measurements, in accordance with Attachment 1 definitions, on a calendar-quarterly basis, by the first business day of the second calendar month in the next calendar quarter:

Table 1

Performance Category	Performance Measurement
Ordering	– Firm Order Confirmation Timeliness
Installation	– Installation Commitments Met – Installation Intervals
Maintenance	– Trouble Rate
Repair	– Troubles Restored within Estimated Intervals – Mean Time to Restore

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Comments of Qwest Corporation
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3.2.1 Combined-CLEC, statewide performance measurement results will be posted on a public Qwest website.

3.2.2 Individual, CLEC-specific, statewide performance measurement results will be posted on a password-protected, Qwest website through which each CLEC will have access to its own results.

3.3 Minimum Standards – Attachment 1 defines minimum standards for each measurement by product.

3.3.1 Where the defined minimum standards are benchmarks (i.e., specific percentage levels or intervals), performance results will be evaluated for meeting or missing the standards on a “stare and compare” basis.

3.3.1.1 Qwest shall be in conformance with benchmark measurements when the monthly performance result equals or exceeds the benchmark, if a higher value means better performance; or when the monthly performance result equals or is less than the benchmark, if a lower value means better performance.

3.3.1.2 For example, if the benchmark is for a particular performance measurement is 85%, where the nature of the measurement is such that a higher percentage result is better, Qwest performance results must be at least 85% to meet the benchmark.

3.3.1.3 Percentage benchmarks will be adjusted to round the allowable number of misses up or down to the closest integer percentage, except when a benchmark standard and low CLEC volumes are such that a 100% performance result would be required to meet the standard and has not been attained, in which case, the measurement results affected by the single ticket or order that would otherwise cause such a miss will not be considered to have missed the benchmark.

3.3.2 Where defined minimum standards are “parity,” performance results will be evaluated for meeting or missing the standards based on the following:

3.3.2.1 Qwest will use statistical scoring, based on standard z-test statistical methodology or the equivalent, to determine whether any difference between combined-CLEC and Qwest statewide performance results is statistically significant – that is, not attributable to random variation. Given the combined-CLEC statewide volume for a given measurement, where perfect performance would be required to meet the parity standard, the standard shall be deemed to have been met if there is only one missed order or ticket, as applicable.

3.3.2.2 Where both the combined-CLEC and Retail Analogue statewide volumes are greater than or equal to 50, statistical parity shall be considered to exist when, based on a standard, one-tailed z-test, the comparison of the combined-CLEC performance result and specified Qwest retail analogue result yields a Z-score that is no greater than the critical-z value from the following table:

TABLE 2: CRITICAL Z-VALUE

CLEC volume (Sample size)	Critical Z-Value
50-150	1.645
151-300	2.0
301-600	2.7
601-3000	3.7
3001 and above	4.3

3.3.2.2.1 If a z-test can not be mathematically calculated, due to a lack of variance or other factors, the standard shall be deemed to have been met for the affected performance measurement result.

3.3.2.3 Where the combined-CLEC or Retail Analogue statewide volumes are less than 50, statistical parity shall be considered to exist when, based on a permutation test, the comparison of combined-CLEC statewide result and the specified Qwest retail analogue statewide result yields a Z-score that is no greater than 1.645.

3.3.2.3.1 Permutation test analysis will be applied to calculate the Z-Score using the following method or its equivalent:

Calculate the Z-Score for the actual arrangement of the data

Pool and mix the CLEC and Qwest data sets

Perform the following 1000 times:

Randomly subdivide the pooled data sets into two pools, one the same size as the original CLEC data set (n_{CLEC}) and one reflecting the remaining data points, and one reflecting the remaining data points, (which is equal to the size of the original Qwest data set or n_{QWEST}).

Compute and store the Z-test score (Z_S) for this sample.

Count the number of times the Z_S for a permutation of the data is greater than the actual Z-Score

Compute the fraction of permutations for which the statistic for the rearranged data is greater than the statistic for the actual samples

3.3.2.3.2 If the fraction computed via the foregoing methodology is greater than 0.05 (which is the significance level of the test corresponding to a Z-Score of 1.645), the hypothesis of no difference is not rejected, the test is passed, and the compared results are considered to be in statistical parity.

4.0 Triggers

4.1 Triggers constitute pre-defined thresholds to facilitate identifying, confirming, prioritizing, and resolving service problems.

4.2 Triggers apply the minimum standards defined in Attachment 1 to Combined-CLEC, statewide performance results to identify the Response Process levels, by product, that will apply to Qwest's and CLECs' efforts to work together to resolve confirmed service problems.

4.3 Triggers and the Response Process Levels (defined in Section 5.0 below) which they activate are as follows:

Table 3

<u>Category</u> Measurements	Triggers	Response Levels
<u>Ordering</u>		
Firm Order Confirmation Timeliness	Misses the standard for 3 consecutive months	Level 1
	Misses the standard for more than 5 consecutive months, OR misses the standard by more than 10 percentage points for more than 3 months	Level 2
<u>Installation</u>		
Installation Commitments Met <u>and</u> Installation Interval	<i>Either</i> measurement individually misses the standard for 3 consecutive months	Level 1
	<i>Either</i> measurement individually misses the standard for more than 5 consecutive months, OR <i>both</i> measurements each miss the standard for 3 consecutive months	Level 2
<u>Maintenance</u>		
Trouble Rate (TR)	Misses the standard for 3 consecutive months	Level 1
	Misses the standard for more than 5 consecutive months, OR the TR measurement result is greater than 7% for 3 consecutive months	Level 2
<u>Repair</u>		
Troubles Restored within Estimated Interval <u>and</u> Mean Time to Restore	<i>Either</i> measurement individually misses the standard for 3 consecutive months	Level 1
	<i>Either</i> measurement individually misses the standard for more than 5 consecutive months, OR <i>Both</i> measurements each miss the standard for 3 consecutive months	Level 2
<u>All Above Categories/Metrics</u>	Any of the above categories that continue in Level 1 or 2 beyond 7 consecutive months.	Level 3

5.0 Response Process

5.1 Day-to-Day Response Level – Qwest agrees to monitor service quality and to act in good faith to maintain service quality levels that satisfy or better the standards defined in Attachment 1 to the extent reasonably feasible and within its control.

5.2 CLEC agrees to work cooperatively with Qwest in efforts to isolate causes contributing to service quality levels that do not satisfy standards defined in Attachment 1, including providing requested data or other information, to the extent such data or information is reasonably available and relevant to such analysis.

5.3 Escalated Response Process Levels – Service quality response levels and steps will be activated as set forth in Table 2, section 4.3, above. Qwest agrees to implement escalated Response Levels thus triggered in the manner defined below:

5.3.1 Response Level 1 – Applies a level of attention and targeted resolution that is higher than day-to-day levels. In response to Level 1 triggers, within the first month after the related results are first posted:

5.3.1.1 Qwest will evaluate the data to confirm existence of a valid performance issue (in contrast to issues associated with exogenous factors, low volumes, or metric calculation problems).

5.3.1.1.1 Where force majeure is factor, or where other exogenous, non-Qwest factors account for the performance result missing the standard, Qwest will document the facts, along with explanatory analyses, and make these available to CLEC upon request or via a password-protected website. Such situations shall not be considered a “miss” in any month in which, absent such factor(s), the performance result would have met the standard.

5.3.1.1.2 Where the issue involves a measurement calculation problem and not a service performance problem, Qwest will undertake steps to resolve the matter in its systems, to the extent possible and feasible. Unless or until such resolution is possible or feasible, Qwest will document the instances of measurement results affected by the issue as they arise. Such situations shall not be considered a “miss” in any month in which, absence this factor, the performance result would have met the standard.

5.3.1.2 If a valid performance issue is confirmed, the performance result is considered to be qualified for Level 1 response, and:

5.3.1.2.1 Qwest will determine, to the extent possible, the contributing factors and alternative solutions, as applicable.

5.3.1.2.2 Where corrective action is called for, Qwest will develop, document, and implement an Action Plan, as soon as practicable, in a good-faith effort to mitigate or resolve the issue

5.3.2 Response Level 2 – Initiates re-evaluation of the prior Action Plan(s) (established under Level 1, as applicable) and identifies improvements and necessary escalations to enhance the probability of success in resolving the issue. In response to Level 2 triggers, within the first month after the related results are first posted:

5.3.2.1 Qwest will evaluate the data to confirm whether a valid performance issue is continuing (per 5.3.1.1, 5.3.1.1.1, and 5.3.1.1.2 above). If so, the performance result is considered to be qualified for Level 2 response, and:

5.3.2.1.1 Qwest will evaluate shortfalls, if any, in the Action Plan and implement necessary changes.

5.3.2.1.2 Qwest will escalate the matter internally to vice president (VP) level for additional attention, priority, and support.

5.3.2.1.3 Qwest will inform affected CLECs (via password-protected web postings or, alternatively, via email to representatives who have been pre-designated

by participating CLECs) about the Action Plan, its elements, and timeframes, along with expected outcomes, and will take into consideration applicable observations and comments received from CLECs (as communicated through assigned Qwest account teams).

5.3.3 Response Level 3 – Applies the highest level of attention and expedited response, short of emergency/disaster response levels. In response to Level 3 triggers, within the first month after the related results are first posted:

5.3.3.1 Qwest will evaluate the data to confirm whether a valid performance issue is continuing (per 5.3.1.1, 5.3.1.1.1, and 5.3.1.1.2 above). If so, the performance result is considered to be qualified for Level 3 response, and:

5.3.3.1.1 Qwest will conduct an internal Vice President-level review of the augmented Action Plan and identify additional steps that can be expected to be effective or resources than can be applied to resolve the issue.

5.3.3.1.2 Qwest will offer to have a Qwest Vice President (one who is responsible for Wholesale Account Teams serving some or all of the affected CLECs) hold a conference call with representatives of affected/interested CLECs to review the Action Plan, additional steps being taken, and the expected timeframes.

5.3.3.1.3 Qwest will establish a status-sharing process, including regular, frequent (up to bi-weekly) web postings (password-protected), emails, or conference calls, reporting the progress being made to resolve the problem. This status-sharing process will continue throughout the period the performance issue remains at Level 3, as determined on a monthly basis with successive results reports.

6.0 Modified Dispute Resolution for Service Quality Matters

6.1 Qwest agrees to implement the foregoing service quality reporting and response process and to act in good faith to maintain service quality at or better than the standards defined in Attachment 1 or to resolve exceptions in an expedient manner.

6.2 CLEC agrees to cooperate in good faith with Qwest's efforts in relation to the Plan's service quality response provisions and to allow the Plan process to work before invoking other provisions of the Agreement governing dispute resolution involving the same products and performance issues as dealt with under QPAP-2.

6.3 For the purpose of resolving disputes over the meaning of the provisions of QPAP-2 and how they should be applied, the dispute resolution provisions of Qwest's Template Interconnection Agreement (TIA), Section 5.18, shall apply, whether the CLEC uses the TIA in its entirety or elects to make QPAP-2 part of its interconnection agreements (i.e., unique dispute resolution provisions, if any, of individual interconnection agreements do not apply to this Plan, unless both CLEC and Qwest mutually agree at the outset of a given dispute related to this Plan).

7.0 Limitations

7.1 Qwest's agreement to implement this Plan – including without limitation its performance measurement reporting, minimum standard, and response level provisions – shall not be considered as an admission against interest or an admission of liability in any legal, regulatory, or other proceeding relating in whole or in part to the same performance.

7.2 CLEC may not use: a) the existence of this Plan; or b) Qwest's data shared in good faith under provisions of this Plan as evidence that Qwest has discriminated in the provision of any facilities or services under Sections 251 or 252, or has violated any state or federal law or regulation. Qwest's conduct underlying its performance measures, however, is not rendered inadmissible solely by application of these terms.

7.3 By accepting this performance remedy plan, CLEC agrees that Qwest's performance with respect to this Plan may not be used as an admission of liability or culpability for violation(s) of any state or federal law or regulation.

7.4 This Plan contains a set of performance measurements, statistical methodologies, and response mechanisms that are designed to function together, and only together, as an integrated whole, applying the same Plan provisions for all CLECs that adopt QPAP-2 in the state.

7.5 To elect QPAP-2, CLEC must adopt the Plan in its entirety, in its interconnection agreement with Qwest, recognizing QPAP-2 as constituting the sole agreement between Qwest and CLEC governing service performance assurance for the products and service dimensions addressed by the Plan.

8.0 Voluntary Service Quality Plan

This Plan represents Qwest's voluntary offer to provide service performance assurance. Nothing in QPAP-2 or in any conclusion of non-conformance of Qwest's service performance with the standards defined in the Plan shall be construed to be, of itself, non-conformance with the Act.

Attachment 1: Performance Measurement Definitions

ORDERING PROCESS

FOC – Firm Order Confirmation (FOC) Timeliness

<p>Purpose: Monitors the timeliness with which Qwest returns electronically-received, manually-processed Firm Order Confirmations (FOCs) to CLECs in response to LSRs received from those CLECs, focusing on the degree to which FOCs are provided within specified intervals.</p>	
<p>Description: Measures the percentage of electronically-received, manually processed Firm Order Confirmations (FOCs) that are provided to CLECs within the intervals specified under “Targets” below for FOC notifications.</p> <ul style="list-style-type: none"> • Includes all LSRs that are submitted through IMA-GUI and IMA-XML interfaces that receive a manually-processed FOC during the reporting period, subject to exclusions specified below. (Acknowledgments sent separately from an FOC are not included.) • Also includes all LSRs for Unbundled Loops requiring facility check that are electronically received and for which the FOC is electronically processed. • LSRs are evaluated according to the FOC interval categories shown in the “Targets” section below, based on the number of lines/services requested on the LSR or, where multiple LSRs from the same CLEC are related, based on the combined number of lines/services requested on the related LSRs. 	
<p>Reporting Period: One month</p>	<p>Unit of Measure: Percent</p>
<p>Reporting Levels: Combined CLECs, Individual CLECs</p>	<p>Disaggregation Reporting: Statewide (per multi-state system serving the state)</p>
<p>Formula: $\left\{ \left[\text{Count of LSRs for which the original FOC's " (FOC Notification Date \& Time) - (Application Date \& Time)" is within the intervals specified for the service category involved} \right] \div \left(\text{Total Number of original electronically-received, manually-processed FOC Notifications transmitted for the service category in the reporting period} \right) \right\} \times 100$</p>	
<p>Exclusions:</p> <ul style="list-style-type: none"> • LSRs involving individual case basis (ICB) handling based on quantities of lines, as specified in the “Targets” and “Notes” sections below, and service/request types that are deemed to be projects. • Hours on weekends and holidays. • LSRs requesting service in areas involving high cost or requiring new facility construction, or where customer buildings or infrastructure are not ready, thus preventing or delaying firm order confirmation – to the extent Qwest can identify and record such fact(s) in its measurement system in time to include in the timely reporting of this measurement. ^{NOTE 1} • LSRs with CLEC-requested FOC arrangements different from standard FOC arrangements. • Records with invalid product codes. • Records missing data essential to the calculation of the measurement per the measure definition. • Duplicate LSR numbers. • Invalid start/stop dates/times. 	

FOC Timeliness (continued)

Product Reporting: Combined Unbundled Loop-Analog, -2-Wire Non-Loaded, -DS1-capable, and Enhanced Extended Loop-DS1 (EEL-DS1)	Minimum Standard (higher is better) 90% within Target FOC intervals (specified below)		
	<u>Target FOC Intervals</u>		
	Products <small>NOTE 2</small>	Quantity	FOC Interval
Unbundled Loops	1-24 loops	72 hours	
EEL-DS1	1-24 circuits	72 hours	
Availability: TBD	Notes: <ol style="list-style-type: none"> 1. Where Qwest cannot “identify and record such fact(s) in time to include in the timely reporting of this measurement,” Qwest may include this among “non-Qwest” factors considered when confirming whether this measurement has met or missed the standard. 2. LSRs with quantities above the highest number specified for each product type category are considered ICB. 		

INSTALLATION

ICOM – Installation Commitments Met

Purpose: Evaluates the extent to which Qwest installs services for Customers by the scheduled due date.	
Description: Measures the percentage of orders for which the installation is completed on scheduled due date. <ul style="list-style-type: none"> • All inward orders (Change, New, and Transfer order types) assigned a due date by Qwest and completed/closed during the reporting period are measured, subject to exclusions specified below. Change order types included in this measurement consist of all C orders representing inward activity (with "I" and "T" action-coded line USOCs). Also included are orders with customer-requested due dates longer than the standard interval. • Completion date on or before the Applicable Due Date (ADD) recorded by Qwest is counted as a met due date. The ADD is the Original Due Date (ODD) or, if changed or delayed by the customer, the most recently revised due date, subject to the following: If Qwest changes a due date for Qwest reasons, the ADD is the customer-initiated due date, if any, that is (a) subsequent to the ODD and (b) prior to a Qwest-initiated, changed due date, if any. 	
Reporting Period: One month, reported on a quarterly basis.	Unit of Measure: Percent
Reporting Levels: Combined CLECs, Individual CLECs	Disaggregation Reporting: Statewide
Formula: $\frac{[(\text{Total Orders completed in the reporting period on or before the ADD}) + (\text{Total Orders Completed in the Reporting Period})] \times 100}{\text{Total Orders Completed in the Reporting Period}}$	
Exclusions: <ul style="list-style-type: none"> • Disconnect, From (another form of disconnect) and Record order types. • Due dates missed for standard categories of customer and non-Qwest reasons, that Qwest is capable of recording in its ordering/provisioning tracking systems as such, in time for inclusion in measured results. • Records involving official company services. • Records with invalid due dates or application dates. • Records with invalid completion dates. • Records with invalid product codes. • Records missing data essential to the calculation of the measurement per the measure definition. 	
Product Reporting 1. Unbundled Loop-Analog 2. Unbundled Loop-2-Wire Non-Loaded 3. Unbundled Loop-DS1-capable 4. EEL-DS1	Minimum Standard (higher is better) 80 percent
Availability: TBD	Notes:

INST – Order Installation Interval

Purpose: Evaluates the timeliness of Qwest's installation of services for CLECs, focusing on the average number of business days to install service, from application dates to completion dates.	
Description: Measures the average interval (in business days) between application dates and the completion dates for service orders accepted and implemented by Qwest. <ul style="list-style-type: none"> • Includes all inward orders (Change, New, and Transfer order types) assigned a due date by Qwest and completed/closed during the reporting period, subject to exclusions specified below. Change order types for additional lines consist of all C orders representing inward activity. • Intervals for each measured event are counted in whole days: i.e., the application date is day zero (0); the day following the application date is day one (1), and so forth. • The Applicable Due Date (ADD) is the Original Due Date (ODD) or, if changed or delayed by the CLEC, the most recently revised due date, subject to the following: If Qwest changes a due date for Qwest reasons, the ADD is the CLEC-initiated due date, if any, that is (a) subsequent to the ODD and (b) prior to a Qwest-initiated, changed due date, if any. ^{NOTE 1} • Time intervals associated with CLEC-initiated due date changes or delays occurring after the ADD, as applied in the formula below, are calculated by subtracting the latest Qwest-initiated due date, if any, following the ADD, from the subsequent CLEC-initiated due date, if any. ^{NOTE 1} 	
Reporting Period: One month, reported on a quarterly basis.	Unit of Measure: Business Days
Reporting Levels: Combined CLECs, Individual CLECs	Disaggregation Reporting: Statewide
Formula: $\frac{\sum[(\text{Order Completion Date}) - (\text{Order Application Date}) - (\text{Time interval between ODD \& ADD}) - (\text{Time intervals from CLEC-initiated due date changes or delays after ADD})] + \text{Total Orders Completed in reporting period}}{\text{Total Orders Completed in reporting period}}$	
Exclusions: <ul style="list-style-type: none"> • Orders with CLEC-requested due dates greater than the current standard interval. • Disconnect, From (another form of disconnect), and Record order types. • Records involving official company services. • Records with invalid due dates or application dates. • Records with invalid completion dates. • Records with invalid product codes. • Records missing data essential to the calculation of the measurement per the measure definition. • Orders involving individual case basis (ICB) handling based on quantities of lines, circuits or loops, and orders deemed to be projects. 	
Product Reporting:	Minimum Standards (lower is better)
1. Unbundled Loop-Analog	6 business days
2. Unbundled Loop-2-Wire Non-Loaded	Parity with Retail ISDN-BRI (designed)
3. Unbundled Loop-DS1-capable	Parity with Retail Private Line DS1
4. EEL-DS1	Parity with Retail Private Line DS1
Availability: TBD	Notes: <ol style="list-style-type: none"> 1. According to this definition, the ADD can change, per successive CLEC-initiated due date changes or delays, up to the point when a Qwest-initiated due date change occurs. At that point, the ADD becomes fixed (i.e., with no further changes) as the date on which it was set prior to the first Qwest-initiated due date change, if any. Following the first Qwest-initiated due date change, further CLEC-initiated due date changes or delays are measured as time intervals subtracted, as indicated in the formula. These delay time intervals are calculated as stated in the description. (Though infrequent, in cases where multiple Qwest-initiated due date changes occur, the stated method for calculating delay intervals is applied to each pair of Qwest-initiated due date changes and subsequent CLEC-initiated due date changes or delays. The intervals thus calculated from each pairing of Qwest and CLEC-initiated due dates are summed and then subtracted as indicated in the formula.) The result of this approach is that Qwest-initiated impacts on intervals are counted in the reported interval, and CLEC-initiated impacts on intervals are not counted in the reported interval.

MAINTENANCE

TR – Trouble Rate

Purpose: Evaluates the “health” of the Qwest network serving specified products, indicating the overall rate of trouble reports as a percentage of the total installed base of each product.	
Description: Measures trouble reports by product and compares them to the number of lines in service. <ul style="list-style-type: none"> • Includes all trouble reports closed during the reporting period, subject to exclusions specified below. • Includes applicable trouble reports that are out of service and those that are only service-affecting, which can be attributed to Qwest causes or failures of Qwest’s network. 	
Reporting Period: One month, reported on a quarterly basis.	Unit of Measure: Percent
Reporting Levels: Combined CLECs, Individual CLECs	Disaggregation Reporting: Statewide
Formula: $\left[\frac{\text{[(Total number of trouble reports closed in the reporting period involving the specified service grouping) + (Total number of the specified services that are in service in the reporting period)]}{\text{Total number of the specified services that are in service in the reporting period}} \right] \times 100$	
Exclusions: <ul style="list-style-type: none"> • Trouble reports coded as No Trouble Found (NTF), Test OK (TOK), Carrier Action (IEC) and Customer Provided Equipment (CPE) or other non-Qwest causes, to the extent Qwest is able to identify and code the conditions in its repair and maintenance systems. • Trouble reports received within 30 calendar days of the date the involved product was installed. • Repeat trouble reports (i.e., trouble reports received within 30 calendar days of the date a preceding trouble report for the same product was close). • Subsequent trouble reports of any trouble before the original trouble report is closed. • Information tickets generated for internal Qwest system/network monitoring purposes. • Trouble reports received on the day of installation before the installation work is reported by the technician/installer as complete. • Records involving official company services. • Records with invalid trouble receipt dates. • Records with invalid restored or closed dates. • Records with invalid product codes. • Records missing data essential to the calculation of the measurement per the measure definition. 	
Product Reporting:	Minimum Standards (lower is better) 5%
1. Unbundled Loop-Analog	
2. Unbundled Loop-2-Wire Non-Loaded	
3. Unbundled Loop-DS1-capable	
4. EEL-DS1	
Availability: TBD	Notes:

REPAIR

TREI – Troubles Restored within Estimated Intervals

Purpose: Evaluates timeliness of repair for specified services, focusing on the percentage of specified trouble report types that were restored within specified interval estimates.			
Description: Measures the percentage of specific types of trouble reports (i.e., “out of service” or “all”) that are received during normal business hours and restored within product-specific estimated time intervals following Qwest’s receipt of trouble reports from CLECs. <ul style="list-style-type: none"> • Includes all trouble reports, of the specified type, which are closed in the reporting period, subject to exclusions specified below. • Time measured is from the date and time of receipt to the date and time trouble is restored, as recorded in Qwest’s maintenance and repair tracking systems. • Where applicable, the “out-of-service” (“OOS”) trouble type refers to service troubles that prevent the product from being used in any way (as distinguished from a product that is only degraded or affected by a given trouble). • Normal business hours are defined as 8:00 a.m. to 5:00 p.m. on business days. 			
Reporting Period: One month, reported on a quarterly basis.		Unit of Measure: Percent	
Reporting Levels: Combined CLECs, Individual CLEC		Disaggregation Reporting: Statewide A. Troubles with technician dispatched B. Troubles not dispatched	
Formula: $\left[\frac{\text{Number of Trouble Reports closed in the reporting period that are restored within specified estimated time interval after Qwest receipt}}{\text{Total Number of Trouble Reports closed in the reporting period}} \right] \times 100$			
Exclusions: <ul style="list-style-type: none"> • Trouble reports coded as No Trouble Found (NTF), Test OK (TOK), Carrier Action (IEC) and Customer Provided Equipment (CPE) or other non-Qwest causes, to the extent Qwest is able to identify and code the conditions in its repair and maintenance systems. • Subsequent trouble reports of any trouble before the original trouble report is closed. • Information tickets generated for internal Qwest system/network monitoring purposes. • Time delays due to “no access,” to the extent Qwest is able to capture and record the delays in Qwest’s maintenance and repair tracking systems. • Trouble reports received by Qwest, on the day of installation, before the installation work is reported in Qwest’s systems by the technician as being restored. • Records involving official company services. • Records with invalid trouble receipt dates. • Records with invalid restored or closed dates. • Records with invalid product codes. • Records missing data essential to the calculation of the measurement per the measure definition. 			
Product Reporting		Trouble Types Measured	Estimated Intervals
1. Unbundled Loop-Analog		OOS	24 hours
2. Unbundled Loop-2-Wire Non-Loaded		OOS	24 hours
3A. Unbundled Loop-DS1-capable		All – Dispatched	8 hours
3B. Unbundled Loop-DS1-capable		All – Non-Dispatched	4 hours
4A. EEL-DS1		All – Dispatched	8 hours
4B. EEL-DS1		All – Non-Dispatched	4 hours
Availability: TBD		Notes:	

MTTR – Mean Time to Restore

Purpose: Evaluates timeliness of repair, focusing on the average interval for restoring reported troubles.		
Description: Measures the average time taken to restore trouble reports, as recorded in Qwest’s maintenance and repair tracking systems. <ul style="list-style-type: none"> • Includes all trouble reports received during business hours and closed during the reporting period, subject to exclusions specified below. • Includes customer-direct reports, customer-relayed reports, and test-assist reports that result in a trouble report. • Time measured is from date and time of receipt to date and time trouble is restored. 		
Reporting Period: One month, reported on a quarterly basis.	Unit of Measure: Hours and Minutes	
Reporting Levels: Combined CLECs, Individual CLECs	Disaggregation Reporting: Statewide A. Troubles involving dispatch B. Troubles not involving dispatch	
Formula: $\frac{\sum[(\text{Date \& Time Trouble Report Restored}) - (\text{Date \& Time Trouble Report Received})]}{(\text{Total number of Trouble Reports closed in the reporting period})}$		
Exclusions: <ul style="list-style-type: none"> • Trouble reports coded for Carrier Action (IEC), Customer Provided Equipment (CPE) or other non-Qwest causes, to the extent Qwest is able to identify and code the conditions in its repair and maintenance systems. • Subsequent trouble reports of any trouble before the original trouble report is closed. • Information tickets generated for internal Qwest system/network monitoring purposes. • Time delays due to “no access,” to the extent Qwest is able to capture and record the delays in Qwest’s maintenance and repair tracking systems. • Trouble reports received on the day of installation before the installation work is reported in Qwest’s systems as being restored. • Records involving official company services. • Records with invalid trouble receipt dates. • Records with invalid restored or closed dates. • Records with invalid product codes. • Records missing data essential to the calculation of the measurement per the measure definition. 		
Product Reporting	Trouble Types Measured in MTEI	Minimum Standards
1. Unbundled Loop-Analog	All	Parity with Retail Res and Bus POTS
2. Unbundled Loop-2-Wire Non-Loaded	All	Parity with Retail ISDN BRI (designed)
3A. Unbundled Loop-DS1-capable	All – Dispatched	Parity with Retail DS1 Private Line
3B. Unbundled Loop-DS1-capable	All – Non-Dispatched	Parity with Retail DS1 Private Line
4A. EEL-DS1	All – Dispatched	Parity with Retail DS1 Private Line
4B. EEL-DS1	All – Non-Dispatched	Parity with Retail DS1 Private Line
Availability: TBD	Notes:	

DEFINITIONS OF TERMS

Application Date (and Time) – The date (and time) on which Qwest receives from the CLEC a complete and accurate local service request (LSR) or access service request (ASR) or retail order, subject to the following:

- For the following types of requests/orders, the application date (and time) is the start of the next business day:
 - (1) LSRs and ASRs received after 3:00PM MT for Designed Services and Local Number Portability (except non-designed, flow-through LNP).
 - (2) Retail orders received after 3:00 PM local time for Designed Services.
 - (3) LSRs received after 7:00PM MT for POTS Resale (Residence and Business), Non-Design Resale Centrex, non-designed UNE-P, Unbundled Loops, and non-designed, flow-through LNP.
 - (4) Retail orders for comparable non-designed services cannot be received after closing time, so the cutoff time is essentially the business office closing time.
- For all types of orders that are received from Friday at 7:00 PM MT through Sunday, or on holidays, and do not flow through, the application date (and time) is the next, non-weekend business day.

Business Day – Workdays that Qwest is normally open for business. Business Days are Monday through Friday, excluding weekends and Qwest published Holidays including New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving and Christmas.

Closed Trouble Report – A trouble report that has been closed out from a maintenance center perspective, meaning the ticket is closed in the trouble reporting system following repair of the trouble.

Completion – The time in the order process when the service has been provisioned and service is available.

Coordinated Customer Conversion -- Orders that have a due date negotiated between the ILEC, the CLEC, and the customer so that work activities can be performed on a coordinated basis under the direction of the receiving carrier.

Customer-Requested Due Date – A specific due date requested by the customer which is either shorter or longer than the standard interval or the interval offered by the ILEC.

DS-1 – Digital Service Level 1. Service provided at a digital signal speed of 1.544 Mbps.

Due Date – The date provided on the Firm Order Confirmation (FOC) the ILEC sends the CLEC identifying the planned completion date for the order.

Firm Order Confirmation (FOC) – Notice the ILEC sends to the CLEC to notify the CLEC that it has received the CLECs service request, created a service order, and assigned it a due date.

Installation – The activity performed to activate a service.

Inward Activity – Refers to all orders for new or additional lines/circuits. For change order types, additional lines/circuits consist of all C orders with "I" and "T" action coded line/circuit USOCs that represent new or additional lines/circuits, including conversions from retail to CLEC and CLEC to CLEC.

Lack of Facilities – A shortage of cable facilities identified after a due date has been committed to a customer, including the CLEC. The facilities shortage may be identified during the inventory assignment process or during the service installation process, and typically triggers a jeopardy.

Local Service Request (LSR) – Transaction sent from the CLEC to the ILEC to order services or to request a change(s) be made to existing services.

Projects – Service requests that exceed the line size and/or level of complexity which would allow for the use of standard ordering and provisioning processes. Generally, due dates for projects are negotiated, coordination of service installations/changes is required and automated provisioning may not be practical.

Ready For Service (RFS) – The status achieved in the installation of a collocation arrangement when all “operational” work has been completed. Operational work consists of the following as applicable to the particular type of collocation:

- Cage enclosure complete;
- DC power is active (including fuses available, BDFB [Battery Distribution Fuse Board] in place, and cables between the CLEC and power terminated);
- Primary AC outlet in place;
- Cable racking and circuit terminations are complete (e.g. fiber jumpers placed between the Outside Plant Fiber Distribution Panel and the Central Office Fiber Distribution Panel serving the CLEC). and
- The following items complete, subject to the CLEC having made required payments to Qwest (e.g., final payment): (If the required CLEC payments have not been made, the following items are not required for RFS):
 - Key turnover made available to CLEC.
 - APOT/CFA complete, as defined/required in the CLEC’s interconnection agreement and
 - Basic telephone service and other services and facilities complete, if ordered by CLEC in time to be provided on the scheduled RFS date (per Qwest’s published standard installation intervals for such telephone service).

Ready for Service Date (RFS date) – The due date assigned to a collocation order (typically determined by regulatory rulings, contract terms, or negotiations with CLEC) to indicate when collocation installation is scheduled to be ready for service, as defined above.

Restored Trouble Report – A trouble report for which the trouble has been restored, meaning the customer is “back in service.”

Service Order – The work order created and distributed in ILECs systems and to ILEC work groups in response to a complete, valid local service request.

Service Order Type – The designation used to identify the major types of provisioning activities associated with a local service request.

Standard Interval – The interval that the ILEC publishes as a guideline for establishing due dates for provisioning a service request. Typically, due dates will not be assigned with intervals shorter than the standard. These intervals are specified by service type and type of service modification requested. ILECs publish these standard intervals in documents used by their own service representatives as well as ordering instructions provided to CLECs in the Qwest Standard Interval Guidelines.

Subsequent Reports – A trouble report that is taken in relation to a previously-reported trouble prior to the date and time the initial report has a status of “closed.”

Time to Restore – The time interval from the receipt, by the ILEC, of a trouble report on a customer’s service to the time service is restored or fully restored to the customer.

Unbundled Loop – The Unbundled Loop is a transmission path between a Qwest Central Office Distribution Frame, or equivalent, and the Loop Demarcation Point at an end user premises. Loop Demarcation Point is defined as the point where Qwest owned or controlled facilities cease, and CLEC, end user, owner or landlord ownership of facilities begins.

GLOSSARY OF ACRONYMS

ACRONYM	DESCRIPTION
ASR	Access Service Request (processed via Exact system)
BRI	Basic Rate Interface (of ISDN service)
CKT	Circuit
CLEC	Competitive Local Exchange Carrier
CO	Central Office
CPE	Customer Premises Equipment
CSR	Customer Service Record
DS1	Digital Service 1
EEL	Enhanced Extended Loop
FOC	Firm Order Confirmation
IEC	Interexchange Carrier
ILEC	Incumbent Local Exchange Carrier (e.g., Qwest)
IMA	Interconnect Mediated Access
IOF	Interoffice Facilities (refers to trunk facilities located between Qwest central offices)
ISDN	Integrated Services Digital Network
LSR	Local Service Request
N, T, C	Service Order Types -- N (new), T (to or transfer), C (change)
OOS	Out of service (type of trouble condition)
POTS	"Plain Old Telephone Service"
RFS	Ready for Service (refers to collocation installations)
TN	Telephone Number
UNE	Unbundled Network Element
WFA	Work Force Administration system

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing **Comments of Qwest Corporation** was served on the 14th day of August, 2009 on the following individuals:

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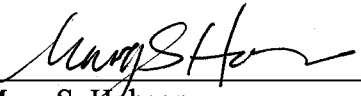
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