BEFORE THE SOUTH DAKOTA PUBLIC SERVICE COMMISSION

In the Matter of Qwest's Performance	)	**Docket No. TC10-027**
Qwest's Assurance Plan Final Report	)	**Comments of Qwest Corporation**

QWEST'S COMMENTS ON ITS PERFORMANCE ASSURANCE PLAN FINAL REPORT

Pursuant to the Commission's Order of May 6, 2010, Qwest Corporation ("Qwest"), by its attorney, provides its comments on the QPAP Review Report prepared by Liberty Consulting ("Liberty Report" or "Report") addressing the Qwest Performance Assurance Plan ("QPAP" or "PAP").

Executive Summary

Qwest believes that the QPAP has fulfilled its purpose, and that there remains no basis in law or regulation for this Commission to mandate its continued existence. The QPAP, in Section 16.3, contemplates its own termination, explaining that "Upon Qwest's elimination of its Section 272 affiliate or upon it exiting the interLATA market, Qwest may petition the Commission to phase out the PAP." The Section 272 affiliate has been eliminated. Further, experience under the QPAP has demonstrated that the wholesale market is irreversibly open, and that other incentives far greater in magnitude than the QPAP have been at work in assuring satisfactory wholesale service performance. Consequently, Qwest proposes that the existing QPAP be terminated. Toward that end, as explained further herein, Qwest believes there are other forms of performance assurance that can appropriately accomplish the "phase out" mentioned in the QPAP.

While there was no statutory requirement that the Federal Communications Commission ("FCC") order the Regional Bell Operating Companies (RBOCs) to establish performance assurance plans, the FCC nevertheless accepted PAPs as a way for RBOCs to provide "probative evidence" that its application was in the public interest, as required by Section 271, and to help provide assurance the market would remain open after the Section 271 grant for a particular state(s). Much has been learned in that seven-year period since the FCC made this determination in regard to Qwest's application for Section 271 authority in, among other states, South Dakota; in particular there is no longer any question that allowing Qwest authority to provide in-region, interLATA service promoted the public interest in South Dakota. The long distance market is even more competitive today, and local telecommunications market continues to demonstrate significant competition as evidenced by Qwest's access line loss in the state. Qwest's obligations pursuant to Section 272 have sunset. Thus, there is simply no need or basis for punitive self-executing mechanisms to assure that Qwest will continue to comply with the Act, and Qwest has specifically demonstrated its willingness and ability to continue to satisfy the market-opening goals of Section 271 of the Telecommunications Act of 1996 ("the Act"). Qwest has consistently maintained its compliance with Section 271 and asserts that it will continue to do so. Qwest has a proven track record of compliance with its wholesale products that are covered by commercial agreements, devoid of the need for additional, penalizing performance assurances such as the PAP.

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 of ensuring nondiscriminatory service and receiving section 271 approval.[1] While adopting another alternative in 2002 may have slowed Qwest's entry into the interLATA market, in addressing the policy issues of today, this Commission should consider supporting alternatives to preserving nondiscriminatory service that are less punitive and burdensome. Accordingly, in these comments, Qwest provides evidence from its experience with commercial agreements that a PAP is not the only way to assure non-discriminatory service performance.

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[1] *In the Matter of Application by Qwest Corporation International, Inc. for Authorization To Provide In-Region, InterLATA Services in the States of Colorado, New Mexico, Oregon and South Dakota*, Memorandum Opinion and Order, FCC 03-81 April 15, 2003.

Further, a recent ruling by the U.S. Court of Appeals for the Ninth Circuit[2] affirms that state commissions have no jurisdiction over matters under Section 271, thus establishing that there is no basis for this Commission to mandate continuance of the QPAP or to assert forward-looking authority over Qwest's QPAP. The QPAP, existing as a part of interconnection agreements, is nothing more than a creature of Section 271 of the Act. And when Qwest agreed to include the QPAP in its interconnection agreements with CLECs, it did so with the understanding, encapsulated in the language of the QPAP itself, that the QPAP would have a finite existence. Accordingly, in responding to Qwest's petition under Section 16.3 to terminate the QPAP and to use other methods of performance assurance for its phase out, the Commission must act within the bounds of the statutory authority it has been given to address such matters.

Finally, both Qwest and its CLEC[3] counterparts in the industry have been consistently losing significant numbers of customers to other competitors and alternatives, such as cable, wireless, and VOIP, which have been steadily growing in their customers. This reality provides enormous incentives to Qwest and CLECs to ensure that service quality is maintained and improved, to at least prevent such line losses from accelerating and, better, to slow or reverse the losses. As pointed out later in these comments, facts derived from the operation of the QPAP bear this out.

In this light, at the very least, because a state commission does not have the authority to mandate the continuance of the QPAP, the Liberty Report is without legal foundation or standing to support its conclusions. The Liberty Report begs the question of whether there is a basis for the continuation of the QPAP. Moreover, even assuming for the sake of argument that there is some legal foundation or standing, the report lacks authoritative basis for its purposes and conclusions. Specifically, the entire basis for its analyses and conclusions is centered in criteria that are, at best, nebulous and, more accurately, nearly nonexistent. The scope given to Liberty by the ROC centers

[2] *Qwest Corporation v. Arizona Corporation Commission,* 567 F.3d 1109 (9th Cir. 2009).

[3] Competitive Local Exchange Carrier.

around the phrase "in relation to their [the PAPs and PIDs[4]] intended purpose and function." Neither the Commission nor the ROC told Liberty what the intended purpose and function of the QPAP was; the QPAP itself is silent as to its own intended purpose, other than that it is a performance assurance plan to allay any lingering Section 271 concerns about the market remaining open; and nowhere in its report does Liberty cite authority for any specific intended purposes or functions it may have used in designing and conducting its analyses or in reaching its conclusions. Clearly, if a state commission does not possess the authority to set new purposes or functions, Liberty Consulting would not have the authority to do so. Further, as a consultant hired to analyze information, and since this is not an audit, Liberty has no valid role or authority to translate what it observed from the information it analyzed into recommendations.

Section 16.3 of the QPAP provides that, after elimination of Qwest's Section 272 Affiliate, the Commission and Qwest are to review the PAP "to determine whether a phase-out of the PAP is appropriate." Qwest asserts that this is fundamentally a legal question, which the Liberty report does not and, as a practical matter, cannot address.

Despite these serious shortcomings affecting the manner in which the Liberty Report can be used in this docket, Qwest does not object to the Report being entered into the record as simply information, since it is certainly not evidence upon which the Commission can base decisions (because, among other reasons, the Report cannot be cross examined and for other reasons of foundation and relevancy Qwest has presented herein).[5] Further, Qwest objects to Liberty's conclusions and recommendations being given any weight, since Liberty Consulting is not a party to this case, is not an industry participant such as a CLEC or other carrier impacted by these matters, as well as, again, for the other reasons of foundation and relevancy Qwest has presented.[6]

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[4] Performance Indicator Definitions.

[5] On this point, Liberty appears to agree. On page 19, in the second bullet point in the last set of bullet points on the page, 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." Accordingly, the Liberty Report itself acknowledges this significant limitation.

[6] This recitation is by no means meant to represent an exhaustive list of objections Qwest may have to use of the Liberty Report and Qwest reserves the right to raise other objections at the appropriate time.

Nevertheless, particularly in light of competitive realities referenced herein, Qwest values competitive local exchange carriers (CLECs) as important partners in the telecommunications industry. Therefore, in conjunction with these comments, consistent with QPAP Section 16.3, and to provide a pathway toward phasing out QPAP, Qwest offers that its commercial agreements with CLECs, which address performance for specified services and elements not covered by the QPAP, provide a reasonable template for providing performance assurance after the termination of the QPAP, with one difference. That difference is that Qwest's proposal would continue to include this future approach to performance assurance as an exhibit in the interconnection agreement (ICA). Thus, Qwest believes that, in accepting this approach, the Commission may not find it necessary to rule on the legal basis or framework for continuing self-executing penalties in a QPAP.

Finally, in the context of the legal and policy framework described in these comments, and without waiving its objections to, among other things, the relevance and standing of the Liberty Report, Qwest nevertheless also provides detailed comments on the Liberty Report, both in the body of these comments and in Attachment 1 hereto, with other attachments providing further support.

Background

1. Pursuant to Section 16.3 of the QPAP, a review of the QPAP is to be conducted to determine whether its continuation is necessary. Specifically, Section 16.3 states:

   > Qwest will make the PAP available for CLEC interconnection agreements. Upon Qwest's elimination of its Section 272 affiliate or upon it exiting the interLATA market, Qwest may petition the Commission to phase out the PAP. At that time, a review of the PAP shall be conducted to determine whether a phase-out of the PAP is appropriate.

2. On February 20, 2007, the FCC granted Qwest's *Petition for Forbearance from Enforcement of the Commission's Dominant Carrier Rules as They Apply after 272 Sunsets* as confirmation that Qwest had stopped providing in-region, intrastate, interLATA interexchange services through section 272 affiliates.

3. In July 2008, Liberty Consulting commenced the ROC multi-state review of the QPAP.

4. On June 30, 2009, Liberty Consulting completed its analysis and issued its Final Report
5. On May 6, 2010, the Commission issued its Order seeking comment on Final Report of Regional Oversight Committee's Analysis of Qwest's Performance Assurance Plan(s).

The QPAP Has Fulfilled Its Purpose

6. The QPAP is silent as to its own purpose, save for the words "performance assurance" in its title. It only states, in paragraph 1.1, 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, interLATA service...."
7. The QPAP does not become operative automatically for every CLEC (although, through the avenue in which QPAP does become operative, its *provisions* are generally self-executing). Instead QPAP is Exhibit K to the template interconnection agreement based on the Statement of Generally Available Terms (SGAT). The QPAP, therefore, does not become operative in regard to services provided to a particular CLEC until the CLEC opts to include Exhibit K in the interconnection agreement and that agreement is approved by the Commission.
8. There is no statutory obligation for Qwest to provide a PAP to a CLEC, much less a statutory obligation to provide a PAP as part of an interconnection agreement. Instead, Qwest voluntarily committed to the QPAP and its inclusion in interconnection agreements as part of its Section 271 application to provide in-region, interLATA service in the state.[7]
9. As the FCC noted in approving Qwest's Section 271 application for nine states, including this state:

> 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. n1598 The nine state PAPs, in combination with the respective commission's active oversight of its PAP, and these commissions' stated intent to undertake comprehensive reviews to determine whether modifications are necessary, provide additional assurance the local

[7] Please see South Dakota QPAP Section 1.1.

market in the five application states will remain open. n1599[8]

The FCC emphasized that the Qwest's voluntary adoption of the QPAP was only a component of the Section 271 public interest consideration. In fact, the FCC noted that the PAP was by no means the only way of ensuring nondiscriminatory provision of service.[9]

10. There was no indication that the FCC, the state PUCs, Qwest, or competitors believed that the QPAP would be in place indefinitely. In fact, as noted, above, the language of the QPAP explicitly contemplated and delineated the manner in which the QPAP would terminate.

11. The purpose of QPAP was simply to provide assurance that Wholesale markets would remain open after the granting of Section 271 authority. Seven years later, there can be no doubt that wholesale markets still remain open, even irreversibly so. In fact, the Liberty Report itself talks of the "significant competition" that CLECs provide, and that commentary does not factor in the significant competition from cable, wireless, and VoIP competitors that further reduces Qwest's access line counts.[10]

<u>There Remains No Legal Basis for Requiring QPAP to Continue, Absent Qwest's Consent</u>

12. There is no requirement in the Act for a PAP. In *Qwest v. Arizona Corporation Commission*, a decision vesting with the FCC exclusive jurisdiction of matters that fall within the purview of Section 271, the Arizona Corporation Commission invoked the savings clause in the Telecommunications Act preserving state jurisdiction over certain issues one of which does

[8] *In the Matter of Application by Qwest Communications 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 Rcd 26303, 26544-26545 (FCC 2002) ("*Qwest Nine State 271 Order*").

[9] The FCC observed "the PAP is not the only means of ensuring that a BOC continues to provide nondiscriminatory service to competing carriers." Id., n1616 In addition to the monetary payments at stake, the Commission stated "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." *Qwest Nine State 271 Order*, 17 FCC Rcd 26303, 26548 (FCC 2002)

[10] Report at 4, *see also*, pp. 51-58.

pertain to service quality.[11] But as the Ninth Circuit emphasized in ruling in that case, the savings clause preserves service quality standards as to "intrastate" telecommunications, and interLATA service is "typically *interstate*."[12] And, as the court added, there is no savings clause pertaining to matters that fall within the purview of Section 271.[13] The court went on to state unequivocally that Congress "'unquestionably' took 'regulation of local telecommunications competition away from the States . . . [w]ith regard to the matters addressed by the 1996 Act."[14] Any authority of the states and state commissions to regulate local telecommunications competition under the 1996 Act is derived solely from express language in the Act or lawful delegation from the FCC.[15] Thus, as the Ninth Circuit articulated, "[i]t is clear from the structure of the Act . . . that the authority granted to state regulatory commissions is confined to the role described in § 252 – that of arbitrating, approving and enforcing interconnection agreements."[16] And, in doing so, states have no authority to impose Section 271 requirements in interconnection agreements. The PAPs came solely from Section 271 concerns and are operative through interconnection agreements.

13. As noted above, there is nothing in the Act that mandates much less addresses performance assurance plans. The FCC itself acknowledged that it could not require PAPs pursuant to any provision in the Act, and that the PAP would serve merely as an "assurance" consideration under the public interest standard of Section 271. Thus, states and state commissions do not possess the statutory authority or the delegated authority from the FCC to require a PAP.

14. When evaluating the PAP, state commissions recognized that the PAP was a byproduct of Qwest's 271 applications and that the state commission's task would be to create a record on

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[11] Per Section 252(e)(3) of the Act, "nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with *intrastate* telecommunications service quality standards or requirements." 47 U.S.C. § 252(e)(3) (emphasis added)
[12] *Qwest v. Arizona Corporation Commission*, 567 F.3d at 1117-8. (Emphasis in original.)
[13] *Id.*
[14] *Qwest v. Arizona Corporation Commission*, 567 F.3d at 1118.
[15] *Qwest v. Arizona Corporation Commission*, 567 F.3d at 1119, *citing, MCI Telecomm. Corp. v. Bell Atlantic-Pennsylvania*, 271 F.3d 491, 510 (3d Cir. 2001).
[16] *Qwest v. Arizona Corporation Commission*, 567 F.3d at 1118, *citing Ting v. AT&T*, 319 F.3d 1126, 1146 (9th Cir. 2003); *accord Pacific Bell*, 325 F.3d at 1126.

which the FCC could evaluate the ability of the PAP to demonstrate that the application meets the Section 271 public interest standard.[17]

15. The QPAP was originally put in place by Qwest's voluntary participation in the process to develop it and by acceptance of the outcome. The resulting QPAP is what contained Section 16.3 that provided for its sunset after elimination of Qwest's Section 272 Affiliate.

<u>The Liberty Report is Without Foundation and is Irrelevant as to the Question of Whether QPAP Must Continue</u>

16. Thus, at best, the Liberty Report is completely out of context. Where QPAP Section 16.3 calls for a review the QPAP to consider whether its continuation is necessary, the basis for that discussion is first and primarily a legal question, as addressed above. Thus, the Liberty Report simply addresses the wrong issue. Until the legal framework is defined, there is no basis for analyzing data and developing associated recommendations.

17. More to the point, as discussed above, because a state commission does not have the authority over Section 271 matters to mandate the continuance of the QPAP, the Liberty Report is without legal foundation or standing to support its conclusions.

18. If a state commission lacks the jurisdiction and authority under Section 271 to mandate continuance of a PAP, then an entity to which it delegates authority lacks the same power.[18] While the Liberty Consulting Report is characterized at various points as "input" and/or "recommendations,"[19] it is hard to fathom how any decision this commission makes in regard to be QPAP would not be influenced by the Report. Perhaps the most illuminative instance of this problem is found in Liberty's statement that it is evaluating the "continuing effectiveness, value

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[17] *See, e.g.,* IN THE MATTER OF U S WEST COMMUNICATIONS, INC.'S MOTION FOR AN ALTERNATIVE PROCEDURE TO MANAGE ITS SECTION 271 APPLICATION, Order No. 28788, 2002 Ida. PUC LEXIS 33, 3-4 (Ida. PUC 2002) *("*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 [*4] 271 approval.")

[18] *See, e.g., United States Telecom Association v. FCC, et al.,* 359 F.3d 554, 566 (D.C. Cir. 2004) ("*USTA II"*) (Holding that "while federal agency officials may subdelegate their decision-making authority to subordinates absent evidence of contrary congressional intent, they may not subdelegate to outside entities--private or **sovereign**--absent affirmative evidence of authority to do so.") (Emphasis in original.)

[19] Report at 19.

and usefulness of the PAPs . . . ."[20] To compound the situation, the Report then posits the "protection of competitors"[21] as an advantage of the PAPs and weighs the burden of the PAP on Qwest against this purported advantage. But even if this evaluation was within the province of Liberty Consulting, the standard is incorrect. PAPs were simply implemented to help ensure that markets remain open to competition in furtherance of the public interest. The key question then is whether the market has remained open to competition, not whether competitors are "protected."[22] This is but one example of why this commission (even assuming for sake of argument that it can pursuant to Section 271 take jurisdiction over the QPAP and render substantive decisions) may not delegate this decision-making authority to third party non-governmental entities.[23]

19. Admittedly this is not the first instance in which consultants have been utilized in proceedings pertaining to the 1996 Act, much less administrative proceedings in general. But the unique posture of this proceeding creates foundational issues in addition to the jurisdictional ones. As a threshold matter, Liberty is not an auditor in this case pursuant to the QPAP, and there is no provision in the QPAP granting them any role in making recommendations. This is the first in a litany of procedural due process issues. There is no formal hearing in which this Report is introduced into evidence. There is no foundational witness. There is no opportunity to raise foundational objections to its introduction. There is no opportunity for cross-examination on the substance of the Report. There is no opportunity for rebuttal testimony and/or evidence in regard to the report. But yet this report may be the most influential, if not sole, "evidence" in this proceeding, aside from evidence Qwest provides in these comments.

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[20] Report at 3.
[21] Report at 4.
[22] This language also ignores a significant component of the public interest – Qwest's customers who ultimately bear the cost of this regulation.
[23] *USTA II,* 359 F.3d at 566.

The Liberty Report Has No Authoritative Basis for its Scope, Purpose, or Recommendations

20. Even if there were some legal foundation for the Report, Liberty was left with the difficult, if not impossible task, of analyzing data without an authoritative basis for its purposes and conclusions. The furthest the ROC Staff went in giving Liberty a charge relative to the purpose of the analysis they were being hired to conduct was to call for "draft recommendations … in relation to their [PAP and PIDs] intended purpose and function."[24]

21. Neither the Commission nor the ROC told Liberty what the intended purpose and function of the QPAP was; the QPAP itself is silent as to its own intended purpose, other than that it was characterized as a performance assurance plan, and it was to allay any lingering Section 271 concerns about the market remaining open.

22. In the first issue below, Qwest provides examples of how this problem manifests itself in the Liberty Report. Importantly, Qwest sees this *not* as a problem that casts aspersions on Liberty Consulting's professionalism and expertise, but rather, as a fundamental problem with the charge they were given to fulfill, which problem cannot avoid leaving the Report without authoritative basis.

Comments on the Liberty Report

23. Without waiving its objections and concerns expressed herein regarding the Liberty Report, Qwest provides detailed comments to specific elements of the Report in Attachment 1. Attachment 1 provides Qwest's overall comments on four important, overarching issues and on the recommendations in the report. Attachment 2 presents specific comments that are interlineated with the narratives given in the Report. Qwest summarizes its overall comments on the most important issues and on the recommendations below.

[24] Liberty Consulting "Proposed Work Plan," August 11, 2008, p.1, first paragraph, first bullet point; and Liberty Report, Section I, Executive Summary, second paragraph, first bullet point.

Overarching Issues

24. **Issue 1: The scope of Liberty's review as defined by ROC Commission Staffs ("ROC Staff") is not supported by any requirement in the QPAP and has no identified, authorized, or definitive basis.** The scope of Liberty's multi-state review centered on developing "draft recommendations … in relation to their [PAP and PIDs] intended purpose and function."[25] However, nothing in the QPAP and, in particular, nothing in Section 16.0 under which the current docket is being held, calls for a multi-state review, authorizes the engagement of a third-party reviewer with valid standing to draft recommendations, or establishes the "intended purpose and function" against which Liberty was asked by ROC Staffs to develop recommendations. As a result, all of Liberty's comments, conclusions, and recommendations are seriously compromised, and Liberty was left to use unsubstantiated, unauthorized opinions of what the "intended purpose and function" of the QPAP are.

25. Attachment 1 identifies and explains seven examples of Issue 1. In sum, these include the following Liberty Report statements that have no authoritative basis as criteria for continuing the PAPs or for supporting associated recommendations:

    a. "The burden on Qwest of maintaining the PAPs and whether this burden outweighs the advantage of ***protecting competitors***" (emphasis added).[26]

    b. "… [T]here 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)[27]

    c. "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

[25] Liberty Consulting "Proposed Work Plan," August 11, 2008, p.1, first paragraph, first bullet point; and Liberty Report, Section I, Executive Summary, second paragraph, first bullet point.
[26] Liberty Report, page 3, second paragraph, fourth bullet point.
[27] Id., page 4, first paragraph.

relying on them" (emphases added). (The paragraph then goes on to refer to examples "in Hawaii and northern New England that demonstrate the ***severe impact on competitors*** when an incumbent local company fails to provide adequate wholesale performance, despite the best intentions and preparations"[28] (emphases added).)[29]

d. Liberty indicates a "focus on the types of service, products, and transactions that continue to be important in ***maintaining a healthy CLEC community in the Qwest territory***" (emphasis added).[30]

e. "… [S]uch a sub-measure ***may provide useful data*** to both the CLECs and Qwest …" (emphasis added).[31]

f. "… [I]t is ***possible that the repeat trouble report metric is missing an important component*** of reporting of chronic troubles" (emphasis added).[32]

g. "To provide Qwest, the CLECs and the states with the ***ability to monitor*** Qwest's performance …" (emphasis added).[33]

26. **<u>Issue 2</u>: The Liberty Report Omits Certain Important Facts and Contexts.** In numerous instances, the Liberty Report does not take into account significant realities and circumstances that have pivotal bearing on its observations and conclusions. Qwest provided large amounts of data for Liberty's analyses, but was not subsequently asked to provide explanations that would account for what was being observed. Nevertheless, as noted below in the examples, this is what the Colorado Independent Monitor (IM) did whenever there were persistent payments (pursuant to Section 17.5 of the Colorado PAP or CPAP), and every instance resulted in explanations that required no further action – meaning, no significant course corrections in

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[28] Id., page 4, second paragraph, and also on page 56.

[29] Liberty admits in the same paragraph on page 4 that, "The circumstances of those cases are very different from what the CLECs face in Qwest's operating territory."

[30] Liberty Report, page 57, in the introductory paragraph, first sentence.

[31] Id., page 82, item 2 (in making a recommendation to add a submeasure for expedited service to the OP-4, "Installation Interval," measurement).

[32] Id., pages 82-83, item 3 (in supporting a proposal to add "chronics" as a submeasure to the MR-7, "Repair Repeat Trouble Rate," measurement).

[33] Id., page 83, item 4 (in proposing an additional submeasure for OP-3, "Installation Commitments Met," for coordinated cutovers).

Qwest's performance were necessary. No instance resulted in a finding of problems related to discriminatory performance, which is the primary basis for PAP standards. However, none of these knowable,[34] available, important facts were incorporated in the Liberty analyses. While these analyses were initiated in Colorado, that state is among the 11 states reviewed in Liberty's analysis and, more importantly, the issues and conclusions are representative of Qwest as a whole, since its network, systems, processes, and people are employed in substantially the same manner across its states (as confirmed in the Operational Support Systems (OSS) third-party test conducted under ROC auspices as part of Qwest's efforts to obtain 271 approval). Further, none of these analyses involved issues that were particularly state specific. As a result, affected elements of the Report are, at the very least, unintentionally misleading or, more often, incorrect or unfounded. In fact, any few of these instances significantly render most of Liberty's recommendations invalid, simply because the Report does not look behind the surface facts to examine the additional facts, circumstances, and reasons underlying what was observed.

27. Attachment 1 identifies and explains four significant examples of Issue 2. These examples illustrate that, to put it simply, it is one thing if payments are consistently high (and thus appear to support a retaining a PID in the PAP), but it is an entirely another thing if virtually all of the high payments are explained by a flaw in the PID or if, despite the existence of the payments, no discriminatory performance has been found or end-user customers are unaffected by the phenomenon. The four examples explained in Attachment 1 are:

    a. <u>Omission of CPAP Independent Monitor (IM) Root Cause Analyses (RCAs)</u>: Perhaps the largest categorical example of this issue, which cuts across most of Liberty's recommendations, is that the Report did not consider the involvement of the CPAP Independent Monitor throughout the term of the CPAP, as called for in Section 17.5. While the Liberty Report looked at PIDs with persistent payments, so did the IM, and the root

[34] In other words, the overlooked information was publicly available or could have been obtained by requesting it from Qwest, as Liberty otherwise did with other data examined.

cause analyses he ordered explained the circumstances, which the Liberty Report did not take into account. In all 19 cases, no need was found for Qwest to resolve customer-affecting performance issues, and no evidence of discrimination was found. This is a major point (i) that affects a large proportion of the dollars the Liberty Report only lists from high to low in Table III-A-2 (p. 29) and (ii) that significantly changes what those data indicate when used in developing conclusions. Prime examples of this issue are MR-8 (Trouble Report Rate), BI-3A (Billing Accuracy), and OP-4 (Installation Interval) – the top three, highest-paying PIDs in Liberty's Table III-A-2. Details are in Attachment 1.

b. <u>Metric Flaws Ignored in Analyzing MR-8, Trouble Report Rate</u>. On page 28, Liberty notes that the "MR-8 measure was associated with over $5 million of the approximately $16 million in Tier 1 and Tier 2 payments during the Study Period," and yet does not inquire as to the role of flaws in the MR-8 PID that led to large payments that were unwarranted. MR-8 is at the top of the list in Table III-A-2. For the time period Liberty analyzed (2004 through October 2008), nearly a million dollars of these payments occurred when the difference between the CLEC performance and the standard was less than one-half of one percent, and an additional million and a half dollars occurred where the difference was one-half to one percent. Often, CLECs are receiving excellent performance by any absolute standard, but there is nevertheless a payment due to those small differences between the CLEC result and the standard. This indicates that the MR-8 PID was making excessively fine statistical distinctions where no practical or meaningful difference existed. This matter was addressed in RCAs and in subsequent discussions in the CPAP 3rd Year Review and in a special audit performed to evaluate MR-8. The auditor found that there was no evidence of discrimination, so the Colorado Commission approved a Qwest motion to suspend MR-8 payments for a time, due to these issues, until a collaborative effort among the parties developed revisions to the PID and to the method of applying the parity standard that dramatically reduced payments after that. Attachment 1 provides details and reasons for what was found and resolved.

c. Flaws in Billing Accuracy Measurement, BI-3. On pp. 28-30, 43-44, and 46, in the Section F Summary and Conclusions on page 54, and on pages 74-75, Liberty makes observations and conclusions involving the billing accuracy measurement, resulting in a recommendation to retain BI-3 in the QPAP. However, these observations and conclusions do not take into account the large volumes of explanatory data available from the CPAP 3rd-year Review and from the 2007 Stipulation among parties (which Liberty mentions on page 5 of the Report and in other places therein, but does not draw from in laying out its analyses and conclusions). The Report also takes no notice of the fact that there have been no payments for BI-3B since 2006. However, the sole criterion Liberty's uses to recommend BI-3A and BI-3B remain in the PAP is the high level of payments, both past and current. Attachment 1 provides detailed explanations.

d. Omitted Regression Analysis Information. Beginning on page 46, Liberty provides the "Historical Analysis of Key Payment Drivers." After acknowledging the "extreme complexity" and the "difficulty" of "summarize[ing] key drivers of payments without some sort of modeling," Liberty indicated that it "performed statistical analyses, including regression modeling, … to determine the major factors driving the payments in the 11 states reviewed during the Study Period." However, the Report gives no supporting data from the analyses and also suffers from the aforementioned lack of reference to RCAs completed for the CPAP IM that would disqualify a large number of payments from any trending or modeling, due to the explanations that showed they were not due to Qwest's performance or did not show discrimination. Attachment 1 provides detailed information and explanations.

28. **Issue 3: The Liberty Report Contains Important Contradictions and Inconsistencies.** Some narratives and conclusions in the Liberty Report appear to be contradictory or inconsistent

with other elements in the Report. As a result, the credibility of important affected items in the Report is at least doubtful and sometimes clearly misleading.

29. Attachment 1 identifies and explains two examples of this issue, with multiple facets. These include:

a. On pages 39 and 40, Liberty correctly notes that, from a statistical perspective, the rate at which Qwest misses measurements are within acceptable bounds of statistical error (5%). This is an important statement that means Qwest is likely making substantial payments on what are essentially errors in statistical testing due to natural, random variation. This is what Liberty's statement at the top of page 40 means, where it says, "Thus failure 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." However, even though the charts on pages 41-45 support this statement and show that, for the last four years in all but one[35] PID category, the failure rate is less than five percent (and all would be less than five percent when accounting for PID design problems), Liberty's recommendations inconsistently supports continuation of the PAPs and retention of metrics in those categories. Attachment 1 provides more details and explanations.

b. On pages 66-78, Liberty reviews measurements in relation to whether they are retained in the PAPs, retained in the reinstatement/removal list, added to the reinstatement/removal list, or removed from the PAPs. However, in reviewing and comparing these recommendations, Qwest has found inconsistencies where, for example, Liberty recommends some metrics for removal, but not others with similar characteristics. Examples include:

(1) OP-13 (Coordinated Cuts On time): Liberty recommends retaining the metric based on a clearly-misleading (albeit inadvertent) characterization, which makes the recommendation inconsistent with other metrics proposed for removal. The Report

[35] The one PID category is Billing, and 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.

notes that, "The payments have been relatively small, but consistent across the Study Period." Examination of the payments for this metric as shown in Table IV-C-10 shows that the OP-13 payments have not only been "relatively small," but they have in reality been ***very, very small*** – amounting to less than $350 per month (in the highest year) across all eleven participating states.

(2) In Attachment 5A, Qwest summarizes measurements recommended for retention or for the reinstatement/removal process and compares application of criteria. This attachment points out four measurements as examples that, if applying Liberty's low-volume criteria consistently, would result in a different recommendation or a new recommendation not considered by Liberty.

30. **<u>Issue 4</u>: The Liberty Report Misinterprets Facts or Indicates Misunderstanding of Circumstances**. In some cases, the Liberty Report offers observations or recommendations that appear to be based on a misinterpretation of facts or on a misunderstanding of relevant circumstances surrounding measurements being addressed. Consequently, the associated observations or recommendations are rendered flawed, incorrect, and invalid.

31. Attachment 1 identifies and explains four examples of this. These include:

   a. <u>Incorrect use of LNP Volumes as Proxy for LSR Volumes</u>. On pages 31-33, the proxy Liberty used (the OP-8C denominator) to indicate volumes of standalone LNP (local number portability) local service requests (LSRs) is not a correct proxy, because it includes non-standalone LNP volumes also (i.e., LNP volumes that are not accompanied by a corresponding LSR). Nevertheless, with this clarification, Qwest agrees that the number of lines lost and the number of requests for stand alone LNP have steadily increased year over year. Further, because increases in LNP volumes represent increases in customers disconnecting from Qwest's central office switches, this data illustrates the results of increased competitive pressures in the marketplace that provide plenty of incentives for Qwest to provide quality service.

b. Misunderstanding of Average Installation Interval, OP-4. On page 82, the Liberty Report puts forward a proposal to add a submeasure to OP-4 to focus on expedited orders. Aside from the fact that there is no evidence or a need presented for such a submeasure, this proposal appears to misunderstand the nature of an Installation Interval measurement like OP-4, in terms of calculating averages among installation intervals, and it also appears to ignore the fact that, by definition, "expedited" orders are defined by the customer. Therefore, any differences that may appear in what this submeasure reports would be explained by differences in what customers request, as much or more than by how timely Qwest performs the installations. The results would thus be virtually meaningless.

c. Misunderstanding of New Service Quality, OP-5, Components. On pages 75-76, Liberty proposes to apply a parity standard to the combined submeasure, OP-5T, rather than applying parity to only OP-5A and a benchmark to OP-5B, as done at present. This reveals an apparent misunderstanding of the reasons for the current arrangement and the problems with applying a parity standard to the combination of a submeasure that has a retail analogue (OP-5A) and a submeasure that does not have a retail analogue (OP-5B). This recommendation would result in penalizing Qwest for OP-5B tickets that, when applied in OP-5T, have no retail analogue and thus would solely count against Qwest.

Recommendations of the Report

32. Notwithstanding and without waiving Qwest's assertions that Liberty Consulting has no authoritative standing to make recommendations and Qwest's other objections concerning the relevance and legal basis of the Liberty Report, Qwest offers the following comments and positions on the recommendations Liberty put forth in its Report.

33. **Overall Recommendation to Continue QPAP:** As an overarching recommendation, Liberty Consulting supports the continuation of the QPAP with relatively few other modifications. As discussed earlier, the justifications Liberty gives revolve around the assertions that CLECs

continue to "rely heavily" on Qwest's wholesale services, and that the QPAP is needed in order provide incentives it claims are necessary for Qwest to continue to provide adequate service quality. However, aside from problems with the relevance of Liberty's rationale, which have already been addressed, nothing in the Liberty report provides actual evidence that QPAP incentives account for or are necessary to assure a continuation of Qwest's excellent performance or that Qwest would not provide such performance without QPAP in place. In contrast, a significant body of evidence does exist that (1) continuing, significant line losses (which were acknowledged in the Liberty Report) provide a very significant incentive for Qwest has to provide not only nondiscriminatory service, but excellent service, in order to stem, reverse, or compensate for such losses; and (2) Qwest can and does provide nondiscriminatory service to CLECs for products that are not addressed by QPAP, through commercial agreements that do not employ self-executing penalties. Actual data show that Qwest provides more than adequate service to CLECs through commercial agreements, without applying self-executing penalties as found in QPAP. Attachment 4 provides a number of graphs that depict various dimensions of service quality results for the QLSP[36] product over the most recent six months (2009). As these graphs show, there is simply no basis for the argument that any incentives QPAP might offer are necessary for Qwest to continue to provide compliant service levels. On the other hand, there is significant evidence that Qwest already has incentives to provide adequate service to CLECs.

34. <u>Recommendation 1</u>: *The Commissions should introduce a new aggregation mechanism to minimize low-volume tests in determining payments. Specifically, transactions for CLECs with low volumes should be aggregated with those of other CLECs, and, as necessary, aggregated over up to a three month period, for the purpose of determining non-conformance and calculating payments.*

<u>Qwest Position:</u> Oppose. Wholesale markets are open and there are no longer any niches that are "newly developing" that warrant special treatment in ways relevant to the Act or the PAPs.

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[36] Qwest Local Service Platform, formerly known as Qwest Platform Plus (QPP) or Unbundled Network Element Platform (UNE-P).

In this context, low volumes indicate low significance in terms of keeping the market open, and thus do not warrant special treatment. Nevertheless, there are additional reasons that the proposed aggregations among CLECs and across time periods are not appropriate, may distort results, and are not needed, as explained in Attachment 1.

35. **Recommendation 2:** *The Commissions should eliminate the following PID measures (in addition to those included in the 2007 Stipulation recommendations) from consideration for PAP payments for those states that use them, and place them on the list of measures subject to the Reinstatement/Removal Process:*
    - *PO-9 Timely Jeopardy Notices*
    - *PO-19 Stand Alone Test Environment (SATE) Accuracy*
    - *PO-20 Manual Service Order Accuracy*
    - *CP-1 Collocation Completion interval*
    - *CP-2 Collocations Completed within Scheduled Intervals*
    - *CP-4 Collocation Feasibility Study Commitments Met.*

Qwest Position: Qwest supports the concept of removing these PIDs, but prefers its proposed QPAP-2, which focuses on a narrow list of the most important PIDs.

36. **Recommendation 3:** *The Commissions should make the following additional changes to certain PID measures in the PAPs:*
    - *For OP-5 (New Service Quality), use sub-measure OP-5T instead of sub-measures OP-5A and OP-5B.*
    - *Replace the current retail analog of "retail Integrated Services Digital Network Basic Rate Interface (ISDN-BRI) designed" with some other retail product or with a benchmark.*

Qwest Position: Oppose. The proposed OP-5 change would penalize Qwest solely due to effects of the change and not due to performance problems.[37] The proposal to replace IDSN-BRI as a retail analogue reflects the overall flaws in a self-executing penalty plan. If, as in Qwest's proposed QPAP-2, the focus were on resolving problems, rather than on assessing self-executing penalties, this retail analogue question would not be an issue.

37. **Recommendation 4:** *The Commissions should eliminate the following low-volume products from the OP and MR measures in the PAPs:*
    - *Unbundled Digital Signaling Level 3 (DS-3) Loops*
    - *Unbundled Dedicated Interoffice Transport (UDIT) – Above DS1*

[37] Please see also Qwest's further explanation under Issue 4 above and in Attachment 1.

- *Unbundled 4-Wire Non-Loaded Loops*
- *Loops with Conditioning (applies only to OP measures)*
- *Unbundled ISDN Capable Loops (applies to all states and measures except for MR measures in Arizona and Colorado)*
- *Line Sharing (already removed in Colorado).*

Qwest Position: Qwest supports the concept of removing these low-volume products, but prefers its proposed QPAP-2, which focuses on a shorter list of the most important PIDs and products.

38. **Recommendation 5:** *The Commissions should make the following additional changes to certain PID measures:*
    - *Limit MR-4 (All Troubles Cleared within 48 Hours) to service-affecting troubles*
    - *Add a diagnostic sub-measure to OP-4 (Installation Interval) to measure performance on expedited orders*
    - *Add a diagnostic sub-measure to MR-7 (Installation Interval) to measure chronic troubles*
    - *Add a diagnostic sub-measure to OP-3 (Installation Appointments Met) to measure the percentage of coordinated appointments met.*

Qwest Position: Oppose. Overall, these recommendations are baseless or unnecessary. The Liberty Report provides no evidence of compelling need for any of these proposals. Given the time and resources involved in making changes, it is not appropriate to consider such changes without a compelling need and a valid basis of requirement. Attachment 1 contains more details. Particularly problematic is the OP-4 recommendation, because the results generated by such a submeasure would be virtually meaningless, because each customer can request a different interval on each order. Hence, any performance level would be explained by differences in customer requests as by Qwest's performance. Instead, OP-3 (Installation Commitments Met) already captures expedites (and is also included in QPAP-2). With regard to MR-7, while chronics are important, they are already captured in both that measurement and in the MR-8 trouble rate measurement. If there is a problem, root cause analyses would isolate whether it was due to chronics. No such problem has been identified.

39. **Recommendation 6:** *The Commissions should adopt provisions to assess Qwest for the cost of PAP administration functions, including independent auditor and audit costs and payment of*

other expenses incurred by the participating Commissions in the regional administration of the PAP, if the Special Funds created by the Tier 2 payments are insufficient for fund these functions.

Qwest Position: Oppose. This recommendation is exactly in the opposite direction of QPAP Section 16.3, which contemplates a limited duration for QPAPs. Further, with all evidence pointing to excellent Qwest performance results, this recommendation creates a perverse incentive – namely, with improved performance, comes lower payments, which in turn prompts a recommendation like this to charge Qwest for PAP administration outside of PAP funding mechanisms. This is inappropriate, as well as unnecessary under Qwest's proposed QPAP-2, which focuses on compliance and resolving problems rather than penalizing Qwest and arguing over such administrative details and costs.

40. **Recommendation 7:** *The Commissions should adopt changes in the PAPs and PID to recognize Qwest's replacement of the Electronic Data Interchange (EDI) interface by the Extensible Mark-up Language (XML) interface.*

Qwest Position: Support insofar as applicable to the Firm Order Confirmation (FOC) Timeliness measurement. Qwest's proposed QPAP-2 includes the FOC Timeliness measurement, which incorporates the change to the XML interface.

41. **Recommendation 8:** *The Colorado Public Utilities Commission should restore the Tier 1B, Tier 1C, and Tier 2 mechanisms to the CPAP, subject to the changes required by Liberty's other recommendations.*

Qwest Position: Not applicable in this state. (Applicable only in Colorado, where Qwest opposed this.)

42. **Recommendation 9:** *The Colorado Public Utilities Commission should make the following additional changes to the CPAP:*
    - *Restore the Unbundled Asynchronous Digital Subscriber Line (ADSL)-Capable Loop product*
    - *Eliminate the UNE-P products.*

Qwest Position: Not applicable in this state. (Applicable only in Colorado, where Qwest opposed this.)

43. **Recommendation 10:** *The Montana Public Service Commission should adopt the recommendations of the 2007 Stipulation.*

Qwest Position: Not applicable in this state. (Applicable only in Montana, where Qwest supported this recommendation.)

Conclusions

44. The context of Qwest's comments in this Section 16.3 review of the QPAP is that the QPAP has fulfilled its purpose and, particularly with the recent ruling of the Ninth Circuit Court of Appeals, there remains no legal basis for mandating the continuation of the QPAP.
45. The Liberty Report thus addresses the wrong question, because a Section 16.3 review is, at its core, a legal question, and so the Report has no legal foundation. Further, even if there were legal foundation, the Report has no authoritative basis for the analyses and conclusions it reaches. Without waiving these objections, Qwest nevertheless has shown and provided evidence that the Liberty Report contains (1) omissions of important facts and contexts; (2) contradictions and inconsistencies; and (3) misinterpretations or misunderstandings of facts or circumstances; that, taken together, invalidate nearly all recommendations.
46. Nevertheless, consistent with the intent of QPAP Section 16.3, Qwest offers as the next iteration of QPAP a new performance assurance plan, "QPAP-2," contained in Attachment 2, which Qwest moves that the Commission accept as a reasonable and appropriate way to proceed. This Plan recognizes the progress in the marketplace and in Qwest's performance and gives Qwest the opportunity to demonstrate, as it has done with Commercial Agreements, that Qwest already has sufficient incentives to comply with service quality dimensions of the Act and that self-executing penalties are not needed. QPAP-2 thus represents a shift from penalties to a focus on compliance and on proactive, responsive resolution of problems.
47. WHEREFORE, Qwest Corporation respectfully requests that the Commission enter an order that accepts Qwest's proposed QPAP-2 as a replacement for the QPAP and as a reasonable next outcome of the Commission/Qwest review, pursuant to QPAP Section 16.3.

RESPECTFULLY SUBMITTED: August 7, 2009

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ATTACHMENT 1 – Overarching Issues and Recommendations

Attachment 1 – Qwest's Comments on Overarching Issues and Report Recommendations

The following are Qwest's detailed comments on overarching issues and recommendations of the Liberty Consulting Final Report of its Analysis of Qwest's Performance Assurance Plans. These comments are provided in the context of the main body of comments and are further supported by Attachment 2 (which contains specific Qwest comments interlineated within the Liberty Report) and by the other attachments referenced herein.

Overarching Issues

48. **Issue 1: The scope of Liberty's review as defined by ROC Commission Staffs ("ROC Staff") is not supported by any requirement in the QPAP and has no identified, authorized, or definitive basis.**

   a. ***Explanation:*** The scope of Liberty's multi-state review centered on developing "draft recommendations … in relation to their [PAP and PIDs] intended purpose and function."[38]

      (1) However, nothing in the QPAP and, in particular, nothing in Section 16.0 under which the current docket is being held, calls for a multi-state review, authorizes the engagement of a third-party reviewer with valid standing to draft recommendations, or establishes the "intended purpose and function" against which Liberty was asked by ROC Staffs to develop recommendations. Unlike other engagements regarding QPAPs in which Liberty filled the role of an auditor with QPAP-supported authority to examine Qwest's data and develop recommendations, the multi-state ROC engagement does not have the character of an audit and, again, it is not authorized by the QPAPs.

      (2) Further, as emphasized above, the QPAP is virtually silent as to its own purpose, and nowhere in the Report does Liberty Consulting indicate that ROC Staff provided it with authoritative bases for determining the "intended purpose and function" of the QPAP, nor does Liberty's report refer to any authoritative sources for such definitive elements or provide guidance to Liberty regarding the specific purpose and function of the QPAP.

   b. ***Consequence:*** As a result, all of Liberty's comments, conclusions, and recommendations are seriously compromised, because they are based upon Liberty's unsubstantiated, unauthorized

[38] Liberty Consulting "Proposed Work Plan," August 11, 2008, p.1, first paragraph, first bullet point; and Liberty Report, Section I, Executive Summary, second paragraph, first bullet point.

opinions of what the "intended purpose and function" of the QPAP is. In addition to examples of this broader problem, there are also specific examples in which the Liberty Report states or implies a requirement without any basis.

c. ***Examples from the Report:*** The following are examples of this problem or the effects of this problem in the Report:

From Section I, the Executive Summary

(1) On page 3, second paragraph, the fourth bullet point states, "The burden on Qwest of maintaining the PAPs and whether this burden outweighs the advantage of ***protecting competitors***" (emphasis added). Nowhere, in the Act, other law, or regulation, is "protecting competitors" a valid purpose of QPAP or a responsibility of Qwest or of state commissions.

(2) On page 4, the first paragraph 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. These CLECs still provide ***significant competition for Qwest***, particularly in such important parts of the market as ***broadband*** and business services. (Emphases added)

As the first sentence indicates, this paragraph represents a summary conclusion regarding the continuation of the PAPs, and what follows in that paragraph are summary reasons Liberty believes the PAPs should continue – all of which reasons are irrelevant or without basis.

(a) First, whether CLECs "rely heavily" or at all on Qwest's wholesale services has never been articulated by valid legal or regulatory authority as a criterion relevant to the existence of the PAPs. Instead, the FCC articulated the original reason as being to insure that markets remain open.[39] As explained above, the question as to whether markets will remain open has been

[39] *Qwest Nine-State 271 Order*, paragraph 453.

answered by experience over the past seven years. (Nevertheless, the Liberty Report nowhere provides data supporting its perspective that CLECs "rely heavily" on Qwest's wholesale services.")

(b) Second, whether there are "readily available alternatives" has never been a criterion for the existence of the PAPs by any valid authority.

(c) Finally, "broadband" is completely out of scope as a reason for the PAPs to continue. The FCC's Broadband Order,[40] is an example of this, under which DSL (a broadband service) was removed from applicability in PIDs and PAPs.

(3) On page 4, second paragraph,[41] Liberty asserts that, "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." The paragraph then goes on to refer to examples "in Hawaii and northern New England that demonstrate the ***severe impact on competitors*** when an incumbent local company fails to provide adequate wholesale performance, despite the best intentions and preparations." (Above emphases added.)

(a) This is another example (an extreme example, as Liberty acknowledges later in the same paragraph) of what is addressed above in the first example. Whether Qwest's wholesale services "remain critical for the CLECs relying on them" is not an authoritative basis to conclude that PAPs should continue.

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[40] *In the Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review -- Review of Computer III and ONA Safeguards and Requirements; Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises; Consumer Protection in the Broadband Era*, CC Docket No. 02-33; CC Docket No. 01-337; CC Docket Nos. 95-20, 98-10; WC Docket No. 04-242; WC Docket No. 05-271, FCC 05-150, 20 FCC Rcd 14853 (September 23, 2005)

[41] Also addressed on page 56 in the Liberty Report.

(b) As importantly, with regard to references to Hawaii and New England, Liberty states in the same paragraph on page 4 that, "The circumstances of those cases are very different from what the CLECs face in Qwest's operating territory." On page 55 of the Report, Liberty goes further to apply what Qwest believes are caveats that are fatal to any use of its references to Hawaii and New England:

> Although 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, the examples do demonstrate the harm to competitors that can result from poor wholesale performance by an incumbent. The Qwest PAPs help assure that the correct incentives are in place to help prevent such conditions occurring.

i. Simply stating the above with an "although" does not change the fact that the Hawaii and New England references are completely irrelevant and inappropriate to use in reference to Qwest's PAPs. They involved a huge cutover of all ordering, provisioning, and maintenance systems from Verizon to Hawaiian Telecom (in Hawaii) and to Fairpoint (in New England). Such activities were never intended to be measured by PIDs or addressed by PAPs.

ii. Liberty offers no other evidence about the Hawaii and New England situations, such as whether there were any PAPs in place, whether PAP provisions could have in any way prevented the problems arising from poorly-executed conversions from one company's systems to another.

iii. The extensive 271 OSS tests that were conducted in preparation for Qwest seeking 271 approvals demonstrated that Qwest's systems were capable of operating in a manner to support market openness.

(c) As an important related point, Liberty's assertions about PAP incentives was made immediately after Liberty stated, at the end of the previous paragraph (the first paragraph on page 4), "Although it is difficult to verify from historical data, the incentive provided by the PAPs has likely contributed to this performance improvement."

i. 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 it apparently "difficult to verify" as Liberty stated, but nowhere does the Report indicate any attempt to verify it. The linkage of PAP payments to true incentives and performance improvements is left totally unsubstantiated.

ii. Thus, even if the concept of "CLECs still relying" on Qwest's wholesale services were an authoritative criterion for continuing the PAPs, a connection between the necessary "incentives" it refers to and the "improved performance" demonstrated in the data evaluated remains unproven.

iii. Instead, Qwest asserts that the evidence (provided later in these comments) shows that Qwest already has sufficient incentives without the PAPs to comply with the Act, and that Qwest has done so and is committed to continuing to do so.

<u>From Section IV, Proposals</u>

(4) On page 57, in the introductory paragraph, first sentence, Liberty indicates a "focus on the types of service, products, and transactions that continue to be important in ***maintaining a healthy CLEC community in the Qwest territory***" (emphasis added).

(a) Again, nowhere in the QPAP, regulation, or law is there a requirement for PAPs or Qwest to be responsible for "maintaining a healthy CLEC community."

(b) Instead, the valid requirement, which has already been long since demonstrated, is that the market remains open.

(c) Thus, what Liberty considered as a key underpinning of its Proposals, is invalid.

(5) On page 82, item 2, in making a recommendation to add a submeasure for expedited service to the OP-4, "Installation Interval," measurement, Liberty states, "… such a sub-measure ***may provide useful data*** to both the CLECs and Qwest …" (emphasis added).

(a) Merely "provid[ing] useful data," has never been a valid reason for adding measurements and justifying the expense and added complexity of such a proposal.

(b) No other basis is provided in the Report for this proposal.

(6) On pages 82-83, item 3, a proposal to add "chronics" as a submeasure to the MR-7, "Repair Repeat Trouble Rate," measurement, is supported only by the unsupported observation that, "… it is ***possible that the repeat trouble report metric is missing an important component*** of reporting on chronic troubles" (emphasis added).

(a) The mere "possibility" of a metric component being important has never been a valid or compelling basis for adding a measurement.

(b) Further, as pointed out below, this proposal ignores the fact that, for there to be a problem with "chronic" repairs, there would first have to be a problem with "repeat reports," which MR-7 already captures, but there is no such problem identified.

(7) On page 83, item 4, in proposing an additional submeasure for OP-3, "Installation Commitments Met," for coordinated cutovers, the only support given is, "To provide Qwest, the CLECs and the states with the ***ability to monitor*** Qwest's performance …" (emphasis added).

(a) The mere "ability to monitor" a particular performance, absent other rationale, has never been a valid reason to add a submeasure. No other basis is given, except perhaps to note that CLECs pay a larger non-recurring charge for coordinated cutovers, which also has never been a valid basis for adding a submeasure.

(b) Further, as pointed out below, this proposal ignores the fact that the OP-13, "Coordinated Cutovers," measurement already measures what is being proposed.

49. **<u>Issue 2</u>: The Liberty Report Omits Certain Important Facts and Contexts.**

a. ***Explanation:*** In numerous instances, the Liberty Report does not take into account significant realities and circumstances that have pivotal bearing on its observations and conclusions.

(1) Qwest provided large amounts of data for Liberty's analyses, but was not subsequently asked to provide explanations that would account for what was being observed. Nevertheless, as noted below in the examples, this is what the Colorado Independent Monitor (IM) did whenever there were persistent payments (pursuant to Section 17.5 of the Colorado PAP or CPAP), and every instance resulted in explanations that required no further action – meaning, no significant course corrections in Qwest's performance were necessary. No instance resulted in a finding of problems related to discriminatory performance, which is the primary basis for PAP standards. However, none of these knowable,[42] available, important facts were incorporated in the Liberty analyses.

(2) While these analyses were initiated in Colorado, that state is among the 11 states reviewed in Liberty's analysis and, more importantly, the issues and conclusions are representative of Qwest as a whole, since its network, systems, processes, and people are employed in substantially the same manner across its states (as confirmed in the Operational Support Systems (OSS) third-party test conducted under ROC auspices as part of Qwest's efforts to obtain 271 approval). Further, none of these analyses involved issues that were particularly state specific.

b. ***Consequence:*** As a result, affected elements of the Report are, at the very least, unintentionally misleading or, more often, incorrect or unfounded. In fact, any few of these instances significantly render most of Liberty's recommendations invalid, simply because the Report does not look behind the surface facts to examine the additional facts, circumstances, and reasons underlying what was observed. As many of the following examples illustrate, it is one thing if payments are consistently high (and thus appear to support a retaining a PID in the PAP), but it is an entirely another thing if

[42] In other words, the overlooked information was publicly available or could have been obtained by requesting it from Qwest, as Liberty otherwise did with other data examined.

virtually all of the high payments are explained by a flaw in the PID or if, despite the existence of the payments, no discriminatory performance has been found or end-user customers are unaffected by the phenomenon.

c. ***Examples:***

(1) Omission of CPAP Independent Monitor (IM) Root Cause Analyses (RCAs): Perhaps the largest categorical example of this issue, which cuts across most of Liberty's recommendations, is that the Report did not consider the involvement of the CPAP Independent Monitor throughout the term of the CPAP, as called for in Section 17.5. Among other duties enumerated in that section, the Independent Monitor has "the authority to require Qwest to perform a root-cause analysis," whenever repeated instances of CPAP payments occur for a given PID. True to this charge, as summarized in Attachment 3, the IM issued ordered RCAs to be completed on 19 instances[43] of repeated payments since late 2003. Thus, while the Liberty Report looked at PIDs with persistent payments, so did the IM, and the root cause analyses he ordered explained the circumstances, which the Liberty Report did not take into account.

(a) As Attachment 3 summarizes, in all 19 cases, no need was found for Qwest to resolve customer-affecting performance issues, and no evidence of discrimination was found. This is a major point (i) that affects a large proportion of the dollars the Liberty Report only lists from high to low in Table III-A-2 (p. 29) and (ii) that significantly changes what those data indicate when used in developing conclusions. Overall, the explanations available from the IM-requested RCAs indicate that these large numbers of dollars, rather than being indicative of performance problems, are more indicative of the fact that Qwest was penalized for questionable reasons, relative to the purpose of the PAPs in assuring that markets remain open.

[43] i.e., PID/Product combinations.

(b) The top nine PID categories in Table III-A-2 were addressed by IM-ordered RCAs. These categories account for $14.3 million of the $15.8 million in payments shown in the Table – fully 90% of the payments listed in the Table. While these dollar amounts are 11-state in composition, the RCAs ordered by the CPAP IM address Colorado-specific payments that, not surprisingly, address the same top-paying PIDs. And in every case, acceptable explanations were found, none of which pointed to customer-affecting performance problems of Qwest.

(c) Prime examples of this issue are MR-8 (Trouble Report Rate), BI-3A (Billing Accuracy), and OP-4 (Installation Interval) – the top three, highest-paying PIDs in Liberty's Table III-A-2.

i. The first two, MR-8 and BI-3A are described separately below, because they were also dealt with in venues that went far beyond the RCAs ordered by the CPAP IM.

ii. As for OP-4, multiple RCA's have found that there are two main factors driving OP-4 payments: record errors and missed commitments. The record errors payment driver consist of Qwest employees incorrectly applying certain codes on the order that are intended to identify when a CLEC orders a longer-than-standard interval, so that the order can be properly excluded, to artificially inflating the result. The missed commitments (OP-3 misses) payment driver is certainly intuitive. However, the high statistical correlation found between OP-3 and OP-4 missing parity standards also reveals that there is, effectively, a double-jeopardy situation with these two measurements, where the same order triggers PAP payments in two different measurements. Accordingly, this observation fits within one of the categories of focus items Liberty indicated it considered (p. 5, fifth bullet): "Whether there are any biases and distortions in the PAPs that need to be corrected." Qwest's CPAP-2 addresses this by focusing on OP-3 commitments met and by focusing on resolution steps that would include those such as identifying and resolving the records errors that are not customer-affecting, in terms of installation interval, but may affect the accuracy of the measurement.

(d) It should be noted that, due to the broad coverage of the IM-ordered RCAs of the PIDs with highest payments, it will be seen that other PID examples used throughout these comments under the heading of other issues or recommendations also refer to specifics about this example (i.e., of the Report omitting IM RCAs) of Qwest's Issue 2.

(2) <u>Metric Flaws Ignored in Analyzing MR-8, Trouble Report Rate</u>. On page 28, Liberty notes that the "MR-8 measure was associated with over $5 million of the approximately $16 million in Tier 1 and Tier 2 payments during the Study Period," and yet does not inquire as to the role of flaws in the MR-8 PID that led to large payments that were unwarranted. MR-8 is at the top of the list in Table III-A-2. For the time period Liberty analyzed (2004 through October 2008), nearly a million dollars of these payments occurred when the difference between the CLEC performance and the standard was less than one-half of one percent, and an additional million and a half dollars occurred where the difference was one-half to one percent. Often, CLECs are receiving excellent performance by any absolute standard, but there is nevertheless a payment due to those small differences between the CLEC result and the standard. This indicates that the MR-8 PID was making excessively fine statistical distinctions where no practical or meaningful difference existed. This matter was addressed in RCAs and in subsequent discussions in the CPAP 3rd Year Review and in a special audit performed to evaluate MR-8. The auditor found that there was no evidence of discrimination, so the Colorado Commission approved a Qwest motion to suspend MR-8 payments for a time, due to these issues, until a collaborative effort among the parties developed revisions to the PID and to the method of applying the parity standard that dramatically reduced payments after that. In the process of this, Qwest produced an analysis that demonstrated the impossibility of discriminating with MR-8. None of these facts are mentioned in the Liberty Report.

(a) The non-discriminatory causes for MR-8 payments, listed further below, were the basis for changes to MR-8 approved by the Colorado Commission, under Docket No. 03M-078T. In section 3 under Decision No. C07-0312, the following commission findings were:

> In that decision, the Independent Monitor found that, over the course of the proceeding, it was clear that MR-8, as currently defined, is flawed when used to determine parity with retail service for unbundled DS1 and Enhanced Extended Loops (EELs) products. Early on, the Independent Auditor determined that, notwithstanding the substantial penalties paid by Qwest for failing the MR-8 DS1 metric, there was no evidence that Qwest was discriminating in the provision, maintenance or repair of the service. The collaborative study confirmed this conclusion.

(b) Multiple RCAs conducted as ordered by the CPAP IM have found that there are four main factors that continue to contribute to the MR-8 payments, regardless of product.

i. First, CLEC product growth accompanied by Qwest product decline. When the CLEC embedded base of a specific product is in a growth trend, there are often parity failures due to the proportionally-higher volume of newly provisioned orders for CLECs, which typically experience higher trouble rates that circuits that have been in place for a longer time. This condition can also affect OP-5A (New Service Quality) payments and MR-7 (Repair Repeat Reports). In contrast, when the Qwest embedded base of a specific product is in a declining trend, there are fewer "hands in plant," which in turn, results in lower rates of trouble. These are generally Qwest retail customers who have had their circuits/lines in service for a very long time.

ii. Second, are weather impacts. There was a flaw in an original belief, expressed or implied in some Commission decisions about the PAPs, that weather events would not cause parity concerns because the belief was that the event would impact both wholesale and retail customers alike. This is often not the case due to differences in the geographic dispersions of CLEC customer locations versus Qwest customer locations. For example, Qwest often finds that large MR-8 PAP payments can occur when a CLEC conducts business in a narrow geographic area. When a severe weather event affects that geographic area, it will impact both wholesale and retail customers, but the retail analogue used in parity calculations encompasses all retail customers within the entire state. By comparing a single CLEC's results in a narrow location against retail results for an entire state, the weather impact for the retail results is diluted. This, in turn, makes the CLEC's result look artificially worse than the retail result.

iii. Third, is "Blind Acceptance." When a CLEC accepts a circuit without first testing and verifying that the circuit is working, this is called Blind Acceptance. In Colorado, among the MR-8 improvements that were developed after the RCAs were conducted and after negotiations among the parties, two products are now excluded from MR-8 for orders that are blindly accepted by the CLEC (Unbundled DS1 and EEL DS1). While this significantly improved MR-8 results in Colorado for these two products, other products and other states continue to be impacted, albeit to a lesser degree.

iv. Fourth, inadvertent variance table anomalies in the states of Colorado and Minnesota create artificially-high levels of MR-8 failures to meet the parity standard. This does not affect South Dakota, but it is one of the factors explaining overall MR-8 payments among the 11 states included in Liberty's analysis. And the Liberty Report took none of this into account.

(3) Flaws in Billing Accuracy Measurement, BI-3. On pp. 28-30, 43-44, and 46, in the Section F Summary and Conclusions on page 54, and on pages 74-75, Liberty makes observations and conclusions involving the billing accuracy measurement, resulting in a recommendation to retain BI-3 in the QPAP. However, these observations and conclusions do not take into account the large volumes of explanatory data available from the CPAP 3rd-year Review and from the 2007 Stipulation among parties (which Liberty mentions on page 5 of the Report and in other places

therein, but does not draw from in laying out its analyses and conclusions). The Report also takes no notice of the fact that there have been no payments for BI-3B since 2006.

(a) Specifically, Liberty points out that "payments for BI-3A accounted for more than $2 million of Tier 1 and Tier 2 combined payments during the Study Period" (p. 29). Liberty reports that "the payments have been very high for UNE and Resale bills (BI-3A)," which leads to the observation that, "the continued high payments for BI-3A indicate good reason to keep both sub-measures of BI-3 in the PAP" (p. 79).

(b) However, this analysis and conclusion fails to consider or give weight to problems inherent in the BI-3A measurement that were found and discussed at length among parties to Qwest's PAPs.

i. As background, experience over the course of the first years of the PAPs had shown that BI-3A was a poor candidate for applying a parity standard, which was exacerbated by the original design of the payment structure in the PAP prior to the revisions implemented with the 2007 Stipulation. This payment structure, which was designed primarily to deal with units of measure that represented numbers of orders and repair reports, unavoidably had to consider one dollar as the unit of measure – i.e., each and every dollar billed. This created volumes that, when applying parity statistics, made the standard far too granular and resulted in parity failures when performance was above 98 percent. Further, each standard-missing "dollar," since it was the unit of measure, became the "occurrence" against which the payment increments were multiplied to calculate the payment.

ii. Additionally, it became clear that there was not an appropriate retail analogue for BI-3A, because wholesale billing and retail billing (which had been used as the retail analogue) are not like-for-like in nature (i.e., they represented an "apples and oranges" comparison).[44]

iii. Therefore, the problems with BI-3A as a parity measure were thoroughly vetted during the discussions leading up to the 2007 Stipulation. Qwest proposed and the parties agreed with changing the BI-3A standard from parity to a benchmark. The Stipulation also removed the application of payment escalations to BI-3A in return for significantly increasing the monthly payment cap, from $5,000 per CLEC, to a variable, tiered structure of increasing caps going up to $25,000 per CLEC, based on Total Bill Adjustment amount.

(c) As Liberty did point out, the third-party facilitator for the CPAP 3rd-year Review, Barrington Wellsley Group, Inc. (BWG), acknowledged that "wholesale billing errors have relatively little impact on end-user customers" (p. 79). BI-3A does not measure wholesale end users customer experience because the CLEC end user bill is not linked to Qwest's bill to the CLEC. There is typically no tie between a carrier's wholesale bills and the bills the carrier issues to its end-user customers, such that an adjustment to the wholesale bill would not result in a corresponding one-for-one adjustment to an end user's bill.

(d) During the discussions of the 2007 Stipulation, Qwest also demonstrated that the high level of payments were not due to chronic performance failures attributable to Qwest. In fact, prior to 2007 Qwest often paid penalties for performance well above 98%. In addition

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[44] To explain further, wholesale and retail billing processes are naturally different. A CLEC's wholesale bill includes multiple end-user accounts, while a retail end-user customer's bill includes only its own account. A CLEC executes its billing processes with respect to all of its end-user customer accounts resulting in processes that can include steps not taken by end-user customers. For example, CLECs contact Qwest when Qwest negates charges in error in order to ensure that all charges that should have been billed are in fact billed. Consumer and small business customers do not always call to point out that Qwest has failed to bill for all charges that should be billed. This difference results in proportional differences of this type of adjustment between wholesale and retail.

CLECs behave differently than end-user customers relative to their bills. Some CLECs engage consultants to review several months of bills. To the extent they find discrepancies and issue claims covering several months, this causes adjustments to be bunched in the month in which the adjustments covering multiple months are made. The practice is not utilized by retail customers so the proportional amount of their claims covering multiple months tends to be different. A month with large adjustment amounts for a CLEC may not reflect on Qwest's quality but be a function of the process.

because the payments were calculated for every $1 of difference from parity, small discrepancies led to unduly high payments. As a result, the per-occurrence payment of $25 established for each unit of measure missing the standard was applied to every dollar by which the parity standard was missed.

(e) The payment structure was further exacerbated by the escalation factor that applied when multiple months were missed. In one example, payments were made to a CLEC in two consecutive months because parity with retail was missed (December 2006: $1,056 payment based on $87 of adjustments at payment level 1; January 2007: $1,940 payment based on $127 of adjustments at payment level 2.) If the 98% benchmark had been in place Qwest would have met the standard in both months and therefore would not have had a payment to this CLEC in either month.

(f) In another example Qwest paid one CLEC a total of $50,000 for September 2006 through December 2006 performance. This CLEC was at payment escalation level 4 in December with four months of performance not meeting parity with retail. With the new standard this CLEC's result met the 98% benchmark in all but the month of November. Had the new payment plan been in place it would have resulted in a $10,000 payment based on November performance but the payment would have been reduced by $40,000 because the standard would have been met in the remaining months and the CLEC would have remained at payment level 1. Clearly BI-3 payments were out of line with the adjustments prior to the changes negotiated in the 2007 Stipulation.

(g) However, the sole criterion Liberty's uses to recommend BI-3A and BI-3B remain in the PAP is the high level of payments both past and current.

   i. In the context of the foregoing facts and context, this one dimensional test of reasonability is clearly incomplete and resulted in an unreasonable and unsupported recommendation to retain BI-3A in the PAPs.

ii. As for BI-3B, Liberty's report shows that the last time Qwest made any payments for BI-3B was in 2005. After four and half years of no failures, continued inclusion in the PAP is unwarranted.

(4) Omitted Regression Analysis Information. Beginning on page 46, Liberty provides the "Historical Analysis of Key Payment Drivers." After acknowledging the "extreme complexity" and the "difficulty" of "summarize[ing] key drivers of payments without some sort of modeling," Liberty indicated that it "performed statistical analyses, including regression modeling, … to determine the major factors driving the payments in the 11 states reviewed during the Study Period." However, the Report gives no supporting data from the analyses and also suffers from the aforementioned lack of reference to RCAs completed for the CPAP IM that would disqualify a large number of payments from any trending or modeling, due to the explanations that showed they were not due to Qwest's performance or did not show discrimination.

(a) Specifically, Liberty stated that its multiple-regression model consisted of four factors: i) transaction volume, ii) PID failure rate, iii) number of CLECs with activity, and iv) severity of failure. But, the Report does not give any standard summary, diagnostic statistics, or other statistics such as R-squared values, residuals, etc., that would enable analysis of the regression model and which are common in regression analyses. Liberty reports the dollar impact of the factors, but there is no way to know how well the data fit the model.

(b) Perhaps more importantly, the four factors themselves are merely functions of the payment calculations that the regression model analyzes. In other words, the four factors are *naturally* interrelated, by *design* of the payment calculation formulae, such that certain regression outcomes would be inevitable, regardless of Qwest's performance, and thus would not indicate anything of relevance other than that the calculation formula works the way it is designed. For example, a regression analysis involves reliance upon selection of a dependent variable. In the context of a PAP analysis, the dependent variable used by Liberty would be

PAP payments (although, again, the Report is silent on this). Since the four factors Liberty identified are all variables in PAP calculations, a regression analysis based on those factors would inevitably show a high correlation, because it is the PAP payment calculation itself that defines the interrelationships of the factors. Again, the result would do nothing more than confirm that the calculations are working the way they are defined. No other meaningful conclusion would be evident.

(c) Further, regression analysis on an 11-state aggregate level could result in a high correlation value (i.e., the "R-square" value), but would likely not sustain high correlation values at a state, product, PID, or CLEC level.

50. **Issue 3: The Liberty Report Contains Important Contradictions and Inconsistencies**

a. ***Explanation:*** Some narratives and conclusions in the Liberty Report appear to be contradictory or inconsistent with other elements in the Report.

b. ***Consequence:*** The credibility of important affected items in the Report is at least doubtful and sometimes clearly misleading.

c. ***Examples:***

(1) On pages 39 and 40, Liberty correctly notes that, from a statistical perspective, the rate at which Qwest misses measurements are within acceptable bounds of statistical error (5%). This is an important statement that means Qwest is likely making substantial payments on what are essentially errors in statistical testing due to natural, random variation. This is what Liberty's statement at the top of page 40 means, where it says, "Thus failure 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." However, even though the charts on pages 41-45 support this statement and show that, for the last four years in all but one[45] PID category, the failure rate is

[45] The one PID category is Billing, and 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.

less than five percent (and all would be less than five percent when accounting for PID design problems), Liberty's recommendations inconsistently supports continuation of the PAPs and retention of metrics in those categories.

(a) To explain, statistical analyses are used in parity evaluations in recognition of the fact that any system or process naturally has random variations in it. The purpose of the statistical analyses is to determine, within specified levels of confidence, the extent to which an observed difference between wholesale and retail results can be explained by random variations, rather than by statistically-significant differences in performance. Only the latter should be considered as possible disparities in a performance assurance plan. In the PAPs, the prescribed parity tests typically employ a 95% confidence interval. This means that differences deemed to be statistically significant will be correctly characterized as being disparate about 95% of the time. In other words, about 5% of the time, differences will be incorrectly judged to be disparities.

(b) From this perspective, where Qwest's PID failure rates are consistently less than 5%, it makes little sense to add more measurements and aggregations to the PAPs for statistical testing as Liberty has recommended. A correct approach would to eliminate or reduce the number of measurements and the number of statistical tests, to reduce Type I error. This is particularly so in light of the fact that Qwest's performance for a single service can be concurrently included in a string of measurements, from gateway availability to pre-ordering to provisioning to repair to billing. Within the provisioning process alone, for example, a single order can trigger a payment in OP-3, OP-4, OP-5A/B and OP-6.[46] In repair, a single trouble report can trigger payments in MR-3/5, MR-6, MR-7 and MR-8.[47] Thus, the

[46] i.e., OP-3 (Installation Commitments Met), OP-4 (Installation Interval), OP-5 (New Service Quality), and OP-6 (Delayed Days).
[47] i.e., MR-3/5 (Troubles Cleared within 24/4 hours), MR-6 (Mean Time to Restore), MR-7 (Repair Repeat Reports), and MR-8 (Trouble Report Rate).

significance of Qwest's low failure rates is amplified, and the unfairness of triggering payments when Qwest's failure rate is so low is also magnified.

(2) On pages 66-78, Liberty reviews measurements in relation to whether they are retained in the PAPs, retained in the reinstatement/removal list, added to the reinstatement/removal list, or removed from the PAPs. However, in reviewing and comparing these recommendations, Qwest has found inconsistencies where, for example, Liberty recommends some metrics for removal, but not others with similar characteristics. Examples include:

(a) OP-13 (Coordinated Cuts On time): Liberty recommends retaining the metric based on a clearly-misleading (albeit inadvertent) characterization, which makes the recommendation inconsistent with other metrics proposed for removal. The Report notes that, "The payments have been relatively small, but consistent across the Study Period." Examination of the payments for this metric as shown in Table IV-C-10 shows that the OP-13 payments have not only been "relatively small," but they have in reality been ***very, very small*** – amounting to less than $350 per month (in the highest year) across all eleven participating states. Further, in saying, "but consistent," the Report implies that the consistency of continued payments supports a recommendation to retain the measurement, but again, the reality is that the payments are, ***"consistently" very, very low***.

(b) In Attachment 5A, Qwest summarizes measurements recommended for retention or for the reinstatement/removal process and compares application of criteria. This attachment points out four measurements as examples that, if applying Liberty's low-volume criteria consistently, would result in a different recommendation or a new recommendation not considered by Liberty.

51. **<u>Issue 4</u>: The Liberty Report Misinterprets Facts or Indicates Misunderstanding of Circumstances**

a. ***Explanation:*** In some cases, the Liberty Report offers observations or recommendations that appear to be based on a misinterpretation of facts or on a misunderstanding of relevant circumstances surrounding measurements being addressed.

b. ***Consequence:*** The associated observations or recommendations are rendered flawed, incorrect, and invalid.

c. ***Examples:***

(1) Incorrect use of LNP Volumes as Proxy for LSR Volumes. On pages 31-33, the proxy Liberty used (the OP-8C denominator) to indicate volumes of standalone LNP (local number portability) local service requests (LSRs) is not a correct proxy, because it includes non-standalone LNP volumes also (i.e., LNP volumes that are not accompanied by a corresponding LSR).

(a) OP-8C measures LNP Timeliness without Loop Coordination). The OP-8C denominator includes ported numbers for unbundled loops without coordination as well as stand-alone number ports to other networks e.g. wireless, cable, and VoIP that would not involve LSRs. Further, in this context, the numbers reported under Total LNP Orders on Table III – B-3 (Stand Alone LNP Service Order Volumes) actually represent the total number of telephone numbers ported, not the number of service orders or LSRs.

(b) Nevertheless, with this clarification, Qwest agrees that the number of lines lost and the number of requests for stand alone LNP have steadily increased year over year. Further, because increases in LNP volumes represent increases in customers disconnecting from Qwest's central office switches, this data illustrates the results of increased competitive pressures in the marketplace that provide plenty of incentives for Qwest to provide quality service.

(c) Accordingly, this section of Liberty's Report supports Qwest's assertion that, without QPAP, there remain sufficient incentives for Qwest to provide quality service to its CLEC co-carriers.

(2) Misunderstanding of Average Installation Interval, OP-4. On page 82, the Liberty Report puts forward a proposal to add a submeasure to OP-4 to focus on expedited orders. Aside from the fact that there is no evidence or a need presented for such a submeasure, this proposal appears to misunderstand the nature of an Installation Interval measurement like OP-4, in terms of calculating averages among installation intervals, and it also appears to ignore the fact that, by definition, "expedited" orders are defined by the customer. Therefore, any differences that may appear in what this submeasure reports would be explainable by differences in what customers request, as much or more than by how timely Qwest performs the installations. The results would thus be virtually meaningless. A more meaningful approach is to measure the extent to which Qwest meets commitments, and this is already measured by the OP-3 measurement (Installation Commitments Met), which includes expedited orders. There are no indications of problems with Qwest's OP-3 performance that would point to expedites as being an issue. (Please see also Qwest's comments on Recommendation 5, second item.)

(3) Misunderstanding of New Service Quality, OP-5, Components. On pages 75-76, Liberty proposes to apply a parity standard to the combined submeasure, OP-5T, rather than applying parity to only OP-5A and a benchmark to OP-5B, as done at present. This reveals an apparent misunderstanding of the reasons for the current arrangement and the problems with applying a parity standard to the combination of a submeasure that has a retail analogue (OP-5A) and a submeasure that does not have a retail analogue (OP-5B).

(a) When Qwest and CLECs negotiated the enhancement to OP-5 to include call center tickets in the measurement, in addition to repair center tickets, OP-5A and B were kept separate for two reasons:

i. First, OP-5A was given a parity standard based on the retail analogue that exists for repair center tickets. However, there is no retail analogue for OP-5B, because there is no retail equivalent to the Call Center tickets measured in OP-5B. Accordingly, OP-5B was given a benchmark standard. Keeping the two submeasures separate, due to the need for a parity standard for one and a benchmark for the other, was the only basis upon which Qwest was willing to agree to add OP-5B to the New Service Quality PID. Otherwise, it would be unfair to apply a parity standard to the combined metric, OP-5T, because, without a retail analogue for Call Center tickets, doing this would simply add tickets on the wholesale side (from OP-5B) without corresponding tickets on the retail side (no retail analogue), and thus increase the number or extent of standards missed.

ii. Second, having separate OP-5A and OP-5B metrics was important to the CLEC community during 271 collaborative PID negotiations, because the CLECs wanted both Network and Call Center tickets to be counted without one masking the other's results.

<u>Recommendations of the Report</u>

52. Notwithstanding and without waiving Qwest's assertions that Liberty Consulting has no authoritative standing to make recommendations and Qwest's other objections concerning the relevance and legal basis of the Liberty Report, Qwest offers the following comments and positions on the recommendations Liberty put forth in its Report.

53. **<u>Overall Recommendation to Continue QPAP</u>:** As an overarching recommendation, Liberty Consulting supports the continuation of the QPAP with relatively few other modifications. As discussed earlier, the justifications Liberty gives revolve around the assertions that CLECs continue to "rely heavily" on Qwest's wholesale services, and that the QPAP is needed in order provide incentives that are necessary for Qwest to continue to provide adequate service quality. However, aside from problems with the relevance of Liberty's rationale, which have already been addressed, nothing in the Liberty report provides actual evidence that QPAP incentives account for or are necessary to assure a continuation of Qwest's excellent performance or that Qwest would not provide such performance without QPAP in place. In contrast, a significant body of evidence does exist that (1) continuing, significant line losses (which were acknowledged in the Liberty Report) provide a very significant

incentive for Qwest has to provide not only nondiscriminatory service, but excellent service, in order to stem, reverse, or compensate for such losses; and (2) Qwest can and does provide nondiscriminatory service to CLECs for products that are not addressed by QPAP, through commercial agreements that do not employ self-executing penalties.

a. Regarding the line losses, Qwest values CLECs as important co-carriers in the marketplace, often helping keep customers on Qwest's network.

b. Accordingly, as demonstrated by measurements used in commercial agreements, actual data show that Qwest provides more than adequate service to CLECs, without applying self-executing penalties as found in QPAP. Attachment 4 provides a number of graphs that depict various dimensions of service quality results for the QLSP[48] product over the most recent six months (2009). As shown in those graphs:

   (1) Out of Service Troubles Cleared within 24 Hours (OOS<24) percentages track well with the retail analogue results and are almost always better that the retail result.

   (2) Mean Time to Restore (MTTR) times are always better for QLSP than for the retail result.

   (3) Trouble Report Rate for QLSP is also always better than for retail residence/business and is always better (lower) than 1%, which is widely considered to be excellent.

   (4) Installation Commitments Met for QLSP is nearly 100% each month and, in such cases, comparison with retail is moot.

   (5) The average Installation Intervals for QLSP are always better (shorter) than for the retail analogue of residence/business and are consistently less than 3.5 business days on average.

c. Thus, there is simply no basis for the argument that any incentives QPAP might offer are necessary for Qwest to continue to provide compliant service levels. On the other hand, there is significant evidence that Qwest already has incentives to provide adequate service to CLECs.

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[48] Qwest Local Service Platform, formerly known as Qwest Platform Plus (QPP) or Unbundled Network Element Platform (UNE-P).

54. **Recommendation 1:** *The Commissions should introduce a new aggregation mechanism to minimize low-volume tests in determining payments. Specifically, transactions for CLECs with low volumes should be aggregated with those of other CLECs, and, as necessary, aggregated over up to a three month period, for the purpose of determining non-conformance and calculating payments.*

   a. ***Qwest Position:*** Oppose.

   b. ***Explanation of Qwest Position:*** Wholesale markets are open and there are no longer any niches that are "newly developing" that warrant special treatment in ways relevant to the Act or the PAPs. In this context, low volumes indicate low significance in terms of keeping the market open, and thus do not warrant special treatment. Nevertheless, there are additional reasons that the proposed aggregations among CLECs and across time periods are not appropriate and not needed:

      (1) CLEC business plans vary widely, and their operational processes differ, as well. Processes for submitting orders and trouble reports vary, which can be reflected in the extent, for example, to which CLECs use cooperative testing on installations of loops, or the extent to which they test troubles before submitting trouble reports to Qwest. These and other differences would contaminate aggregated results with factors that could contribute differences into the results that have nothing to do with Qwest's performance.

      (2) Aggregations across multiple months can distort results with seasonal effects that again inject factors unrelated to Qwest's performance that can trigger problems in applying parity standards. Certainly, the effects of such aggregations are inappropriate in an environment of self-executing penalties such as in the PAPs.

      (3) Further, from a statistical testing perspective, such aggregations of CLEC results would involve a shifting set of CLECs, depending on whether an individual CLEC had volume in a given month and whether the volumes were small enough to be combined. These effects would simply introduce additional Type I statistical error (i.e., false accusations of disparity) to the testing process, which would result in additional payments unrelated to poor performance and would be inappropriate in a self-executing payment plan.

(4) Finally, the PAPs already incorporated provisions to help compensate for the difficulty in assessing compliance with standards when volumes are low. Specifically, minimum payments are made to CLECs with small ordering volumes (less than 1200 per year) where total payments are less than the minimum per-month amount. The minimum payments augment the PAP payments studies by Liberty. From the standpoint of an individual CLEC, annual minimum payments can sometimes be higher than the sum of monthly PAP payments received by the CLEC. With the minimum payments provision, the recommended additional layer of testing was not deemed necessary originally, and nothing has happened to change that.

55. **Recommendation 2:** *The Commissions should eliminate the following PID measures (in addition to those included in the 2007 Stipulation recommendations) from consideration for PAP payments for those states that use them, and place them on the list of measures subject to the Reinstatement/Removal Process:*

- *PO-9 Timely Jeopardy Notices*
- *PO-19 Stand Alone Test Environment (SATE) Accuracy*
- *PO-20 Manual Service Order Accuracy*
- *CP-1 Collocation Completion interval*
- *CP-2 Collocations Completed within Scheduled Intervals*
- *CP-4 Collocation Feasibility Study Commitments Met.*

a. ***Qwest Position:*** Qwest supports the concept of removing these PIDs, but prefers its proposed QPAP-2, which focuses on a narrow list of the most important PIDs.

b. ***Explanation of Qwest Position*:** Qwest appreciates Liberty's efforts to identify PIDs such as these that no longer warrant treatment in the PAPs. Nevertheless, as explained elsewhere herein, Qwest believes a far longer list warrants the same recommendation as these.

56. **Recommendation 3:** *The Commissions should make the following additional changes to certain PID measures in the PAPs:*

- *For OP-5 (New Service Quality), use sub-measure OP-5T instead of sub-measures OP-5A and OP-5B.*
- *Replace the current retail analog of "retail Integrated Services Digital Network Basic Rate Interface (ISDN-BRI) designed" with some other retail product or with a benchmark.*

a. ***Qwest Position:*** Oppose

b. ***Explanation of Qwest Position***

(1) Proposed OP-5 Change. Please see also Qwest's explanations under Qwest Issue 4 above. When negotiating the addition of OP-5B, which measures troubles reported through Qwest's Call Centers, as opposed to its Repair Centers, Qwest was concerned that, while OP-5A has a retail analogue, OP-5B does not. Therefore, Qwest only agreed to add OP-5B on condition that it be measured separately from OP-5A and be given a benchmark standard, and that OP-5T would remain diagnostic. To do otherwise would penalize Qwest unfairly, because a combined measurement (OP-5T) could count Call Center-generated tickets only on the wholesale side, and not on the retail side, due to the lack of a retail analogue. Accordingly, it is unreasonable and unfair to implement this proposal.

(2) "Some other" Retail Analogue to replace ISDN-BRI. First, ISDN-BRI was selected as a retail analogue through negotiations among the parties to change from a previous retail analogue. The issue now is that there is no other product that represents an appropriate retail analogue. Instead this kind of issue should be addressed in accordance with a plan like Qwest's proposed QPAP-2, which focuses on the most important measurements and products in a way that emphasizes compliance and resolving problems, rather than on penalizing Qwest (the latter approach being one that draws undue attention on granular issues such as this recommendation, whereas Qwest's proposal focuses its energies and the attention of other parties, again, on resolving problems).

57. **Recommendation 4:** *The Commissions should eliminate the following low-volume products from the OP and MR measures in the PAPs:*

- *Unbundled Digital Signaling Level 3 (DS-3) Loops*
- *Unbundled Dedicated Interoffice Transport (UDIT) – Above DS1*
- *Unbundled 4-Wire Non-Loaded Loops*
- *Loops with Conditioning (applies only to OP measures)*
- *Unbundled ISDN Capable Loops (applies to all states and measures except for MR measures in Arizona and Colorado)*
- *Line Sharing (already removed in Colorado).*

a. ***Qwest Position:*** Qwest supports the concept of removing these low-volume products, but prefers its proposed QPAP-2, which focuses on a narrow list of the most important PIDs and products.

b. ***Explanation of Qwest Position*:** Qwest appreciates Liberty's efforts to identify products such as these that no longer warrant treatment in the PAPs. Nevertheless, as explained elsewhere herein, Qwest believes a far longer list warrants the same recommendation as these.

58. **Recommendation 5:** *The Commissions should make the following additional changes to certain PID measures:*

- *Limit MR-4 (All Troubles Cleared within 48 Hours) to service-affecting troubles*
- *Add a diagnostic sub-measure to OP-4 (Installation Interval) to measure performance on expedited orders*
- *Add a diagnostic sub-measure to MR-7 (Installation Interval) to measure chronic troubles*
- *Add a diagnostic sub-measure to OP-3 (Installation Appointments Met) to measure the percentage of coordinated appointments met.*

a. ***Qwest Position*:** Oppose.

b. ***Explanation of Qwest Position*:** Overall, these recommendations are baseless or unnecessary. The Liberty Report provides no evidence of compelling need for any of these proposals. Given the time and resources involved in making changes, it is not appropriate to consider such changes without a compelling need and a valid basis of requirement.

(1) MR-4 New Submeasure: MR-4 (All Troubles Cleared within 48 hours) was originally negotiated with the CLEC community and state commissions to include all trouble reports, both service affecting and out of service. The parties to those discussions were well aware that it includes both service affecting and out of service troubles. There has been no new information or developments to prompt a change, and the Liberty Report offers none. No CLECs have complained about Qwest's performance under MR-4, and it accurately captures what was agreed that it should capture. Further, this measurement is not in the PAP for any state.

(2) OP-4 New Submeasure. Expedited orders are already included in OP-3 (Installation Commitments Met), and there has been no evidence presented that there is a need to separate expedited orders into their own submeasure. In any event, the results generated by such a submeasure would be virtually meaningless, because each customer can request a different interval on each order.

(a) As an example, for an Unbundled Loop, which has a seven-day standard interval, the customer can choose any interval of from 1 to 7 days. Averaging these individually-requested intervals into an aggregate result would thus be more representative of intervals customers are requesting than of Qwest's performance.

(b) In addition, an expedited order is a chargeable service and can be declined if Qwest does not have resources to meet the request. If Qwest accepted an expedited order and subsequently was unable to meet the requested expedite date, no charges will apply and the order will count as a miss in OP-3.

(c) There is no justification for expenditure of the time and resources to add this type of meaningless submeasure simply because it 'may provide useful data'. In any event, such a submeasure cannot provide useful data, for the reasons explained.

(3) <u>MR-7 New Submeasure</u>: Liberty's belief that it is "possible" that MR-7 may be "missing an important component of reporting on chronic troubles that may be indicative of faulty facilities, other network problems and/or Qwest repair process problems" is simply not correct in light of data examined in the Liberty Report. For there to be a problem with "chronic" reports, there would first have to be a problem with repeat reports, because MR-7 includes chronic troubles, and there is not a problem. Further, Liberty's statement on page 82 that, "… neither this, nor any other, measure provides data on the number of chronic trouble reports being experienced by the CLECs," is not correct. The MR-8 (Trouble Report Rate) metric includes chronic troubles and would reflect any significant problems.

(4) <u>OP-3 New Submeasure</u>: The proposed submeasure focusing on coordinated installation appointments is already captured by OP-13 (Coordinated Cuts On Time). There is no need for a new submeasure and, further, there is no need for OP-13 to continue, based on Liberty's own criteria for removing metrics with low payment histories. The monthly payment history of OP-

13 (as shown in Table IV-C-10, p. 74 of the Liberty Report) is lower than that of other measurements Liberty is proposing to remove.

59. **Recommendation 6:** *The Commissions should adopt provisions to assess Qwest for the cost of PAP administration functions, including independent auditor and audit costs and payment of other expenses incurred by the participating Commissions in the regional administration of the PAP, if the Special Funds created by the Tier 2 payments are insufficient for fund these functions.*

    a. ***Qwest Position:*** Oppose.

    b. ***Explanation of Qwest Position*:** This recommendation is exactly in the opposite direction of QPAP Section 16.3, which contemplates a limited duration for QPAPs. Further, with all evidence pointing to excellent Qwest performance results, this recommendation represents somewhat of a perverse incentive – namely, with improved performance, comes lower payments, which in turn prompts a recommendation like this to charge Qwest for PAP administration outside of PAP funding mechanisms. This is inappropriate, as well as unnecessary under Qwest's proposed QPAP-2, which focuses on compliance and resolving problems rather than penalizing Qwest and arguing over such administrative details and costs.

60. **Recommendation 7:** *The Commissions should adopt changes in the PAPs and PID to recognize Qwest's replacement of the Electronic Data Interchange (EDI) interface by the Extensible Mark-up Language (XML) interface.*

    a. ***Qwest Position:*** Support insofar as applicable to the Firm Order Confirmation (FOC) Timeliness measurement.

    b. ***Explanation of Qwest Position*:** Qwest's proposed QPAP-2 includes the FOC Timeliness measurement, which incorporates the change to the XML interface.

61. **Recommendation 8:** *The Colorado Public Utilities Commission should restore the Tier 1B, Tier 1C, and Tier 2 mechanisms to the CPAP, subject to the changes required by Liberty's other recommendations.*

    a. ***Qwest Position:*** Not applicable. (Applicable only in Colorado, where Qwest opposed this.)

    b. ***Explanation of Qwest Position*:** This recommendation is not applicable in this state.

62. **Recommendation 9:** *The Colorado Public Utilities Commission should make the following additional changes to the CPAP:*

- *Restore the Unbundled Asynchronous Digital Subscriber Line (ADSL)-Capable Loop product*
- *Eliminate the UNE-P products.*

a. ***Qwest Position:*** Not applicable. (Applicable only in Colorado, where Qwest opposed this.)

b. ***Explanation of Qwest Position*:** This recommendation is not applicable in this state.

63. **Recommendation 10:** *The Montana Public Service Commission should adopt the recommendations of the 2007 Stipulation.*

a. ***Qwest Position:*** Support.

b. ***Explanation of Qwest Position*:** This recommendation is justified independent of the Liberty Report Recommendation. All other states in Qwest's 14-state region have approved the 2007 Stipulation.

ATTACHMENT 2 – Interlineated Comments in the Report

ATTACHMENT 2 – Qwest Comments Interlineated into Liberty Consulting Report

Please Note: The Qwest comments contained in this Attachment should be taken in the context of its main body of comments regarding this Report and of Attachment 1 (Qwest's Comments on Overarching Issues and Report Recommendations).

Analysis of Qwest's Performance Assurance Plans Final Report

Prepared for:

The Qwest Regional Oversight Committee

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Table of Contents

I. Executive Summary

The Performance Assurance Plans (PAPs) in effect in the states in which Qwest Corporation (Qwest) is the incumbent local service provider include provisions for their review and modification. In addition to a regular six-month review to consider potential modifications to the performance measurements, standards, and performance measurement classifications, most PAPs also call for longer-term reviews of the effectiveness of the PAP and whether its continuation is necessary. The triggering event for these longer-term reviews varies from state to state, and the various triggers include Qwest's filing to eliminate its 272 affiliate and a specific point in time (five and one-half years after the PAP's commencement or six months prior to the PAP's proposed end). Because these triggers had occurred or were about to occur, 11 of the 14 state commissions (Commissions) that are members of the Qwest Regional Oversight Committee (ROC) elected to authorize a joint analysis of their PAPs to facilitate the review processes. These 11 participating Commissions engaged The Liberty Consulting Group (Liberty) to conduct this analysis.

The Commission Staff members forming the QPAP/CPAP Collaborative Committee (Collaborative Committee) defined the scope of this work to include a detailed review and analysis of the PAPs and the Performance Indicator Definitions (PID) measures, which are used to assess Qwest's performance. The Collaborative Committee specified that the work would result in draft recommendations concerning:

- The current effectiveness, value, and usefulness of the PAPs and PID measures in relation to their intended purpose and function
- Whether some or all of the PAP or PID measures may no longer be necessary
- Possible modifications to the PAP and PID measures.

The Collaborative Committee intended that the review, analysis, and draft recommendations be provided in a baseline document to be used for collaborative discussions between the various Commission Staffs, Qwest, and the Competitive Local Exchange Carriers (CLECs), and by individual Commissions in appropriate state proceedings. However, each state Commission would use the data and findings in whatever manner it deems appropriate. The present report is meant to provide the baseline documentation of Liberty's review, analysis, and draft recommendations contemplated in the Collaborative Committee's scope definition.

The Collaborative Committee intended this investigation to include consultation with Qwest and the CLECs, in addition to the Commission Staffs. The Commission Staffs and CLECs responded to Liberty's request for input and suggestions, which Liberty used in the analysis and in formulating the recommendations. Qwest elected not to actively participate in the review and declined to provide its positions on or any proposals for changing the PAPs. However, Qwest agreed to provide Liberty with extensive historical data on PAP payments and PID measure results, which were invaluable in supporting the analysis.

Liberty began conducting this analysis in December 2008, focusing on five separate but related lines of inquiry:

1. Analysis of PAP payments and PID measure results
2. Analysis of the structural components of the PAPs
3. Analysis of the structure of the PID measures

4. Analysis of recommendations and experiences of stakeholders
5. Analysis of industry trends.

In evaluating the continuing effectiveness, value, and usefulness of the PAPs, Liberty reviewed:

- The number of active CLECs that have a significant total subscriber base and are dependent on Qwest's wholesale products and services to serve their end users
- The level of Qwest's penalty payments
- The extent of Qwest's performance that is out of compliance with standards
- The burden on Qwest of maintaining the PAPs and whether this burden outweighs the advantage of protecting competitors. **[Qwest Comment: This is not an authoritative purpose of the PAPs or basis for continuing them.]**

Liberty analyzed trends in PAP payments, PID performance measurement results, transaction volumes, and lines in service since January 2004. Based on this analysis, Liberty determined that the PAP penalty payments have declined overall in all the participating states since the beginning of 2004. A significant source of this general[49] decline has been an improvement in the quality of Qwest's wholesale service performance as measured by the PID measurements. However, another significant source of the payment decreases has been a decline in the number of active CLECs. Nevertheless, the volume of CLEC activity remains significant in all the participating states, and Qwest continues to make payments based on inadequate performance for some functional areas, with the largest number of recent payments coming from sub-standard performance on Maintenance & Repair transactions.
[Qwest Comment: Payments are not always the result of inadequate performance. In some cases, payments are due to structural flaws in the PIDS and PAPs and Non-Qwest caused reasons. This has been established through Root Cause Analyses summarized in Attachment 3 and in other forums discussing PID and PAP revisions. Please see also the comments on BI-3A in the main body of Qwest's comments.]

Liberty found that CLEC order volumes and lines in service have declined markedly. Major contributors to this decline were the Federal Communication Commission's (FCC's) Triennial Review Order (TRO) and the Triennial Review Remand Order (TRRO) decisions, which eliminated a number of unbundled services, including Unbundled Network Element – Platform (UNE-P). There has also been a significant decline in Resale transactions and a smaller decline in UNEs unaffected by the TRO and TRRO decisions. Despite these declines, the volume of number porting orders has remained high, indicating the increasing importance of facilities-based competitors like cable companies. The wireless carriers are also major and growing competitors of Qwest, but this source of competition is not reflected in the volumes reported in the PAPs and PID measures, because these carriers rarely, if ever, use the wholesale services monitored in this way. **[Qwest Comment: While Liberty analyzed CLEC volume declines in significant detail, there was no significant review of Qwest retail volume declines. This omission is an important factor when reviewing industry trends and particularly in recommendations associated with PAP changes.**

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[49] In addition to the factors mentioned here that apply to all states, special factors contributed to the declines in some of the states. For example, there was a significant decrease in Tier 2 payments in Colorado after 2006, which resulted primarily from Colorado PAP changes introduced after the Colorado three-year review that reduced the number and types of PID measures eligible for Tier 2 payments.

By analyzing only half of the parity equation, much knowledge is lost to objectively recommend changes associated with competition in the marketplace.]

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. These CLECs still provide significant competition for Qwest, particularly in such important parts of the market as broadband and business services. As noted, Liberty found that Qwest's performance in providing wholesale services continues to improve, contributing to a decline in PAP payments. Although it is difficult to verify from historical data, the incentive provided by the PAPs has likely contributed to this performance improvement.
[Qwest Comment: This does not acknowledge other reasons for improved performance. CLECs are Qwest's customers, and providing them with quality service helps retain customers on Qwest's network. The extent and importance of this is evident, but not addressed in the Report. Other things that provide Qwest with incentives to improve performance include Qwest's cost of doing business, state service quality rules, and terms and condition found in interconnection agreements.]

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. Recent experiences in Hawaii and northern New England demonstrate the severe impact on competitors when an incumbent local company fails to provide adequate wholesale performance, despite the best intentions and preparations.[50] The circumstances of those cases are very different from what the CLECs face in Qwest's operating territory. However, they illustrate conditions that can arise in extreme cases without adequate protections. The Qwest PAPs help ensure that the correct incentives are in place to prevent such conditions from occurring.
[Qwest Comment: No basis exists for relevance of this paragraph to Qwest's PAPs. Using these examples to point out "conditions that can arise," is not much different than saying a volcano could erupt in South Dakota, since such has happened in Hawaii. Possible? Perhaps. But not remotely likely. Further, there is no evidence that a lack of a PAP in these two situations contributed to the service problems, or that a PAP could have made a difference. The service problems were caused by massive process cutover failures when Verizon sold their telecom holdings to new Local Exchange Carriers who had operational issues when they took over. These service problems were experienced by both retail and wholesale customers alike and cannot be appropriately used to demonstrate the need for a PAP in Qwest's region or any other region for that matter.]

Although concluding that the PAPs should continue to be maintained, Liberty believes some changes should be made in the PAPs to simplify them and make them more targeted to the continuing needs of the competitive marketplace. Liberty used the results of its analysis as well as input from stakeholders, including the CLECs, in identifying potential proposals. In evaluating potential proposals, Liberty considered:

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[50] See, for example, Liberty's report on the FairPoint Communications, Inc. cutover: http://www.puc.state.nh.us/Telecom/Filings/FairPoint/Post-Cutover/FairPoint%20Post-Cutover%20Status%20Report%2004-01-09.pdf

- Whether changes in the marketplace have made elements of the PAPs obsolete
- Whether particular types of transactions are no longer relevant
- Whether the volumes of transactions for sub-measures and products are too small to warrant their continued inclusion in the PAPs
- Whether the PAPs and PID can be simplified
- Whether there are any biases and distortions in the PAPs that need to be corrected
- Whether there are important transactions types that are currently not monitored in the PAPs and PID
- Whether the effort to secure support for and cost of making the changes outweighs the advantage of making them.

Liberty offers several recommendations for the participating Commissions as follows. Many of these recommendations continue a process of evolving the PAPs to tailor them to current needs, which has occurred since their inception. Most notably, major changes were made in the Colorado PAP during 2006 after the three-year review in that state, and in most other states at various times since 2006 in response to recommendations from a joint stipulation between Qwest and some CLECs signed in 2007.

<u>The following recommendations apply to all the participating state PAPs.</u>

<u>Recommendation 1</u>. The Commissions should introduce a new aggregation mechanism to minimize low-volume tests in determining payments. Specifically, transactions for CLECs with low volumes should be aggregated with those of other CLECs, and, as necessary, aggregated over up to a three month period, for the purpose of determining non-conformance and calculating payments.

<u>[Qwest Comment: Liberty's analysis omitted consideration of minimum payments and their relevance to low volume situations. There are also significant statistical flaws in this recommendation that Qwest can not support. In addition, new aggregation mechanisms or statistical solutions cannot solve problems such as those identified through root cause analyses (RCAs) provided to the CPAP Independent Monitor (IM) on all PIDs with high, persistent payments. Every RCA was accepted by the IM as non-Qwest caused and with no evidence of discrimination. Please see also Qwest's responses in the main body of its comments.]</u>

<u>Recommendation 2</u>. The Commissions should eliminate the following PID measures (in addition to those included in the 2007 Stipulation recommendations) from consideration for PAP payments for those states that use them, and place them on the list of measures subject to the Reinstatement/Removal Process:

- *PO-9 Timely Jeopardy Notices*
- *PO-19 Stand Alone Test Environment (SATE) Accuracy*
- *PO-20 Manual Service Order Accuracy*
- *CP-1 Collocation Completion interval*
- *CP-2 Collocations Completed within Scheduled Intervals*
- *CP-4 Collocation Feasibility Study Commitments Met.*

[Qwest Comment: There are multiple examples where the logic Liberty used for low volume considerations for metric changes were not consistent. See Attachment 5A, metric changes, for examples. See also Qwest's responses in the main body of its comments.]

Recommendation 3. The Commissions should make the following additional changes to certain PID measures in the PAPs:

- *For OP-5 (New Service Quality), use sub-measure OP-5T instead of sub-measures OP-5A and OP-5B.*

[Qwest Comment: OP-5A and OP-5B were originally kept separate for two important reasons: (1) The lack of a retail equivalent to the Call Center tickets, which would make applying a parity standard invalid; and (2) To provide visibility to Call Center activity. In order to include all call center tickets and not hold Qwest liable for two misses on a single order, the measurement is designed to report on whether an installation was free of Installation problems and separately free of Provisioning problems. Please see also Qwest's responses in the main body of its comments.]

- *Replace the current retail analog of "retail Integrated Services Digital Network Basic Rate Interface (ISDN-BRI) designed" with some other retail product or with a benchmark.*

[Qwest Comment: ISDN-BRI was relatively-recently negotiated as the proper retail analogue for the wholesale products affected by this recommendation. There exists no other proper retail analogue. Please see also Qwest's responses in the main body of comments.]

Recommendation 4. The Commissions should eliminate the following low-volume products from the OP and MR measures in the PAPs:

- *Unbundled Digital Signaling Level 3 (DS-3) Loops*
- *Unbundled Dedicated Interoffice Transport (UDIT) – Above DS1*
- *Unbundled 4-Wire Non-Loaded Loops*
- *Loops with Conditioning (applies only to OP measures)*
- *Unbundled ISDN Capable Loops (applies to all states and measures except for MR measures in Arizona and Colorado)*
- *Line Sharing (already removed in Colorado).*

[Qwest Comment: There are multiple examples where the logic Liberty used for low volume considerations for product changes were not consistent. See Attachment 5B, product changes, for examples. See also Qwest's responses in the main body of its comments.]

Recommendation 5. The Commissions should make the following additional changes to certain PID measures:

- *Limit MR-4 (All Troubles Cleared within 48 Hours) to service-affecting troubles*

[Qwest Comment: MR-4 is not a key metric and was initially negotiated with the CLEC community as it currently exists. The parties knew well what MR-4 measured and were satisfied. There is no new information or development that was not known when this was originally negotiated. There is no basis for this recommendation that warrants the level or effort and cost to produce this change.]

- *Add a diagnostic sub-measure to OP-4 (Installation Interval) to measure performance on expedited orders*

[Qwest Comment: Expedites are included in OP3 and will measure Qwest's ability to meet the expedited date. As far as intervals go, as a metric, it does not make sense. Each customer can request a different interval. So for an Unbundled, say that has a 7 day standard interval, the customer can choose any interval shorter than 7 days. Aggregating these individual requests results in an average interval that is meaningless. Note: expedites are chargeable and can be denied if Qwest does not have resources to provide short intervals.]

- *Add a diagnostic sub-measure to MR-7 (~~InstallationInstallation Interval~~Repair Repeat Report Rate) to measure chronic troubles*

[Qwest Comment: To be 'indicative of faulty facilities', mentioned in more detail in Liberty's review, is one of the primary intents of the MR-8 metric, which does include chronic troubles. MR-7 also includes all chronic-type tickets multiple times, thus also capturing the effects of chronics. There is no basis for a new submeasure.]

- *Add a diagnostic sub-measure to OP-3 (Installation Appointments Met) to measure the percentage of coordinated appointments met.*

[Qwest Comment: already reports these orders under OP-13 'Coordinated Cuts On Time – Unbundled Loop'. OP-13 includes both new orders and cuts on existing circuits. In addition, all coordinated orders are also included in OP-3. Nevertheless, OP-13 itself fits other low-volume and excellent performance criteria for removal from PAPs.]

Recommendation 6. The Commissions should adopt provisions to assess Qwest for the cost of PAP administration functions, including independent auditor and audit costs and payment of other expenses incurred by the participating Commissions in the regional administration of the PAP, if the Special Funds created by the Tier 2 payments are insufficient for fund these functions.
[Qwest Comment: Please see Qwest's response in the main body of its comments.]

The following recommendation applies to all participating states except Colorado and Utah.

Recommendation 7. The Commissions should adopt changes in the PAPs and PID to recognize Qwest's replacement of the Electronic Data Interchange (EDI) interface by the Extensible Mark-up Language (XML) interface.
[Qwest Comment: Please see Qwest's response in the main body of its comments.]

The following two recommendations apply only to Colorado.

Recommendation 8. The Colorado Public Utilities Commission should restore the Tier 1B, Tier 1C, and Tier 2 mechanisms to the CPAP, subject to the changes required by Liberty's other recommendations.
[Qwest Comment: This recommendation is without any justifying evidence or analysis in the report. Nevertheless, Qwest provides evidence that this is not necessary, based on both Commercial Agreement results and on no "backsliding" in the period these Tiers have been out of the CPAP. Please see Qwest's responses in the main body of its comments.]

Recommendation 9. The Colorado Public Utilities Commission should make the following additional changes to the CPAP:

- *Restore the Unbundled Asynchronous Digital Subscriber Line (ADSL)-Capable Loop product*
- *Eliminate the UNE-P products.*

[Qwest Comment: Please see Qwest's response in the main body of its comments.]

The following recommendation applies to Montana only.

Recommendation 10. The Montana Public Service Commission should adopt the recommendations of the 2007 Stipulation.
[Qwest Comment: Qwest supports this recommendation.]

The next chapter of this report (Chapter II) details the background and purpose of Liberty's review, describes Qwest's PAPs and PID measures including a high-level description of recent changes, and outlines Liberty's analysis approach. Chapter III describes Liberty's data analysis. Chapter IV discusses proposals for PAP and PID modifications. Chapter V summarizes Liberty's conclusions and recommendations.

Attached to the proposal are four appendices. Appendix A summarizes the key features of the PAPs, indicating those areas where the PAPs differ among the states. Appendix B provides details of Liberty's data analysis for each of the 11 participating states. Appendix C describes the detailed applicability of Liberty's recommendations for each of the 11 participating states. Appendix D provides a glossary of terms used in the report.

II. Introduction

A. Background and Purpose of the Review

Eleven member state commissions of the Qwest ROC, an organization of the 14 Commissions of the states in which Qwest provides local exchange service, chose Liberty to conduct a review of Qwest PAPs[51] in effect in the 11 participating states. These 11 Commissions are the Arizona Corporation Commission, the Colorado Public Utilities Commission, the Idaho Public Utilities Commission, the Iowa Utilities Board, the Montana Public Service Commission, the Nebraska Public Service Commission, the New Mexico Public Regulation Commission, the North Dakota Public Service Commission, the South Dakota Public Utilities Commission, the Utah Public Service Commission, and the Wyoming Public Service Commission.[52]

The PAP is a mechanism through which Qwest makes payments to the states and/or to CLECs if its performance in providing wholesale services to the CLECs fails to meet the defined standards of certain performance measures that are documented in the Qwest PID. Qwest has filed a PAP in each of the 14 ROC states. The PAPs include provisions for their review and modification;[53] in addition

[51] In this report, the term "PAP" will be used to designate all the Qwest Performance Assurance Plans. The term "CPAP" will be used to refer to the Colorado Performance Assurance Plan and the term "QPAP" will be used to refer to the PAPs in the other ten participating states.
[52] The Oregon Public Utility Commission and the Washington Utilities and Transportation Commission have elected to participate in the review as an observer. The Minnesota Public Utilities Commission chose not to participate in the study.
[53] These provisions are contained in Section 16.0 of the QPAPs and Section 18.0 of the CPAP.

to a regular six-month review to consider potential modifications to the performance measurements, standards, and performance measurement classifications, most PAPs also call for longer-term reviews. In particular, most PAPs call for reviews several years after the initiation of the PAP to assess the PAP's effectiveness and whether its continuation is necessary. The triggering event for these longer-term reviews varies from state to state. In most states, the trigger is when Qwest files to eliminate its Section 272 affiliate. A few states specify a specific point in time (five and one-half years after the PAP's commencement or six months prior to the PAP's proposed end).[54] Because these triggers had occurred or were about to occur, the 11 participating Commissions elected to authorize a joint analysis of their PAPs to facilitate the review processes and engaged Liberty to conduct the analysis. The Commission Staff members forming the Collaborative Committee defined the scope of this review to include:

- A detailed review and analysis of both the performance plan and PID measures, which would include draft recommendations concerning a) the current effectiveness, value, and usefulness of the performance plan and PID measures in relation to their intended purpose and function; b) whether some or all of the performance plan or PID measures may no longer be necessary; and c) possible modifications to the performance plan and PID measures. The review, analysis and draft recommendations should be provided in a baseline document, and the baseline document may be used for collaborative discussions between the various Commission Staffs, Qwest and the CLECs and/or for use by individual Commissions in their separate state six-month, six-year, or other appropriate dockets.
- Participation of and consultation with the PAP stakeholders: Qwest, CLECs with business in the relevant fourteen-state region, and the appropriate participating state public commission regulatory bodies.
- Provision to each state of a copy of the analysis and report; each state would then use the data and findings in whatever capacity it sees fit.

Contrary to what was originally contemplated, Qwest elected not to actively participate in the review, although the Commission Staffs and CLECs responded to Liberty's request for input. Nevertheless, Qwest did voluntarily provide Liberty with extensive historical data on PAP payments and PID measure results and answered questions about the data provided, and this input was invaluable in supporting the analysis.

This report provides the baseline documentation of Liberty's review, analysis, and draft recommendations contemplated in the Collaborative Committee's scope definition. Liberty began conducting the analysis in December 2008.

B. Overview of Qwest's Performance Assurance Plans and Performance Measures

The Qwest PAPs and PID are incorporated as exhibits in the Statement of Generally Available Terms and Conditions (SGAT) for Qwest's wholesale local exchange services in each state. The

[54] The Arizona PAP provides for the six-month reviews but has no specific provisions for a longer-term review. The Colorado and New Mexico PAPs call for reviews to begin five and one-half years after the inception of the PAPs. The Idaho, Iowa, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming PAPs call for a review after Qwest eliminates its Section 272 affiliate.

PID is Exhibit B in the SGAT and the PAP is Exhibit K. Each of the PAPs has unique features, but there are two basic versions, one used by Colorado (CPAP) and Minnesota and the other (QPAP) used by the remaining 12 ROC states.

Appendix A of this report lists the most common provisions of the PAPs and the differences from these common provisions applicable to each of the PAPs for the 11 states participating in this review. The PAPs are generally two-tiered, with Tier 1 used for payments to CLECs and Tier 2 for payments to the states.[55] Payments for each tier are based on Qwest's performance on specific PID sub-measures (or sub-measure/product combinations for the CPAP) applicable to that tier. For the QPAPs, the Tier 1 and Tier 2 sub-measures are classified as High, Medium, or Low, depending on their importance, with dollars at risk declining from High to Low sub-measures. For the CPAP, there is no importance distinction for the Tier 2 sub-measures; the CPAP designates sub-measures and product combinations as Tier 1A, 1B, and 1C, which correspond roughly to the High, Medium, and Low classifications for the QPAPs.

PAP payments are based on tests of the extent of Qwest's conformance with defined standards for the sub-measures and the number of consecutive months of non-conformance. Payments for most sub-measurements (Per Occurrence measures) are based on the number of "occurrences," which are measures of i) the volume of transactions, and ii) the extent to which Qwest has missed the standard. Payments for some sub-measurements (Per Measurement measures), which are generally associated with gateway systems and call center performance, are made on a "per measurement" basis, with specific payments determined by the level of performance relative to certain benchmarks independent of the volume of transactions.

The PID contains the definitions and business rules for the measures and sub-measures that Qwest reports, including those used in the PAPs. Some of the PID measures and sub-measures are only diagnostic and are not incorporated in any of the PAPs. There are three basic types of PID measures: i) means, such as mean time to restore; ii) percentages, such as percent report troubles met; or iii) ratios or proportions, such as trouble report rate. The PID provides the descriptions, calculation formulae, product reporting and other disaggregations, and exclusions for the measures and sub-measures, as well as the standards against which the performance is measured. The standards are either parity with a Qwest retail analogue or benchmarks. The measures are classified into ten different domains:

- Electronic Gateway Availability (GA)
- Pre-order/Order (PO)
- Ordering and Provisioning (OP)
- Maintenance & Repair (MR)
- Billing (BI)
- Database Updates (DB)

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[55] The current version of the CPAP (Ninth Revision, Sixteenth Amended), which has been in effect since January 2, 2009, has eliminated the Tier 2 payments and all Tier 1 payments except Tier 1A. The Colorado Public Utilities Commission adopted these changes in Decision No. C08-1345 by allowing the implementation of Section 18.11 of the CPAP, which provides for such a change after six years but also contemplated the completion of the Colorado Six-Year Review by that time. As noted below, Liberty's analysis provided in this report corresponds to the Six-Year Review for Colorado. In adopting the CPAP change, the Colorado Commission noted, "By the conclusion reached in this Order, we make no predetermination as to the status of any CPAP submeasures following our completion of the Six-Year Review."

- Directory Assistance (DA)
- Operator Services (OS)
- Network Performance (NI and NP)
- Collocation (CP).

For example, MR-6 (Mean Time to Restore) is a Maintenance & Repair measure.

The Qwest PAPs generally went into effect at the time of Qwest's Section 271 approval by the Federal Communications Commission (FCC) in each state, which occurred during 2002 and 2003 depending on the state. The specific provisions of the PAPs have changed since their inception, with some, like the CPAP, changing more significantly than the rest. Liberty's analysis covered the period from January 2004 through October 2008 (Study Period). At the end of this Study Period, the version of the PID referenced in most state SGATs (Exhibit B) was ~~Verizon~~**Version** 9.0,[56] and PAPs (Exhibit K) in effect in each of the participating states were:

- Arizona: SGAT Fourteenth Revision, Fourth Amended Exhibit K, dated June 22, 2007
- Colorado: SGAT Ninth Revision, Fifteenth Amended Exhibit K, dated August 13, 2008
- Idaho: SGAT Third Revised, Sixth Amended Exhibit K, dated June 26, 2007
- Iowa: SGAT Sixth Revision, Fifth Amended Exhibit K, dated June 26, 2007
- Montana: SGAT Fifth Revision, Fourth Amended Exhibit K, dated November 30, 2004
- Nebraska: SGAT Sixth Revision, Fifth Amended Exhibit K, dated June 26, 2007
- New Mexico: SGAT Eleventh Revision, Fourth Amended Exhibit K, dated November 24, 2004
- North Dakota: SGAT Exhibit K, dated June 22, 2007
- South Dakota: SGAT Exhibit K, dated June 22, 2007
- Utah: SGAT Seventh Revision, Fifth Amended Exhibit K, dated June 26, 2007[57]
- Wyoming: SGAT Sixth Revision, Fifth Amended Exhibit K, dated June 26, 2007.

Since October 2008, the Colorado and New Mexico PAPs have been revised again. The latest CPAP (Ninth Revision, Sixteen Amended) became effective on January 2, 2009 and the latest New Mexico PAP (Eleventh Revision, Fifth Amended) became effective on May 1, 2009.

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[56] As of the date of this report, the Commissions in two of the participating states, Colorado and Utah, have adopted changes to recognize Qwest's replacement of its EDI interface by an XML interface. These changes are captured in an updated PID, version 9.1. Liberty understands that the Washington Utilities and Transportation Commission has also adopted these changes.

[57] At the end of the Study Period, this version of the Utah PAP was only applicable to the parties to the 2007 Stipulation. On February 4, 2009, the Utah Commission issued an order to extend the applicability to all CLECs. That order also adopted changes to reflect the replacement of EDI by XML. These changes are not yet reflected in the Utah SGAT Seventh Revision, Fifth Amended Exhibit K. [**Qwest Comment: Qwest notes that these changes are now reflected in the Qwest Utah SGAT Seventh Revision, Sixth Amended Exhibit K that went into effect on February 4, 2009.**]

1. Past PAP Changes

Although most PAPs have had a number of changes since their inception, the most significant changes have happened at two times in the past:

- For the CPAP, in 2006 after the completion of the three-year review
- For the QPAPs, beginning in 2007 in response to a Qwest-CLEC Stipulation agreement.

CPAP Three-Year Review

Sections 18.7, 18.10, and 18.11 of the CPAP require three and six-year reviews to consider fundamental changes in its structure and operations. Section 18.10 specifies that the three-year review was to begin 30 months (two and one-half years) after the effective date of the CPAP and to be performed with the assistance of an outside, independent expert. The Colorado Public Utilities Commission engaged the Barrington-Wellesley Group, Inc. (BWG) as the independent expert. BWG conducted the review during 2005 and produced a final report on December 7, 2005. During the review, BWG solicited input and proposals from Qwest and the CLEC community, and worked with the parties to facilitate an agreement. Several of the interested parties reached agreement on proposed CPAP changes in a stipulation (Three-Year Review Stipulation),[58] which they presented to the Commission for adoption on February 17, 2006. The Commission adopted the Three-Year Review Stipulation on March 15, 2006.

The CPAP in Section 18.10 specifically required the Three-Year Review to analyze:

1. Payment amounts, determining whether there was any harm associated with particular non-conforming wholesale performance and recommending adjustments in the payment amounts accordingly.
2. Economic alternatives, evaluating whether there were such available alternatives to Qwest's wholesale service offerings and whether these alternatives provided competitors with a meaningful opportunity to compete. This analysis was to consider the rationale for removing measures based on the evidence of Qwest's ability to deliver reliable wholesale performance and/or reduction in Qwest's critical role in the market as a provider of key wholesale inputs.
3. Removal of measure dimensions, determining whether some product disaggregations or geographic areas no longer needed to be measured and/or subjected to payments for non-conforming performance.
4. The revision process, evaluating whether these should take place semi-annually, annually, or otherwise.

BWG drew conclusions and made recommendations in each of these four areas. In particular, they concluded that:

- The CPAP was not a source of financial harm for any party.

[58] The parties to the Three-Year Review Stipulation were Qwest; DIECA Communications, Inc. d/b/a Covad Communications Company; Eschelon Telecom Inc., and MCI Metro Access Transmission Services LLC d/b/a Verizon Access Transmission Services.

- Qwest performance had improved in many areas, but should service deteriorate, the CLECs and the competitive environment could be harmed; therefore, penalties should continue as an incentive to Qwest to maintain and improve performance.

[Qwest Comment: Since the BWG review, there has been Commercial Agreement performance that contradicts this conclusion, which Qwest provides in its main body of comments, with attachment.]

- Qwest appeared to be making payments in Colorado out of proportion to those in the other Qwest states and analysis provided by Qwest indicated that if the QPAP used in other states had been in place in Colorado, penalty payments would have been only 38 percent of the CPAP payments.
- The CLECs continued to rely heavily on Qwest's network to reach end-user customers and few adequate alternatives to Qwest's network exist.
- The volume of certain products was too low for continued tracking and should be removed from the CPAP, but there was not enough information to conclude that any geographic disaggregation should be removed.
- The six-month reviews should be changed to annual reviews.
- Several fundamental changes should be made in the CPAP, including both structural and measure/sub-measure changes.

BWG's report[59] recommended a number of specific changes in addition to those just noted which were subsequently adopted by the Commission. The ones that are most relevant to the current analysis are the following:

- A Reinstatement/Removal Process was introduced into the CPAP, designating certain measures to be removed from payment determinations but providing for automatic reinstatement of the measures based on three consecutive months of non-conforming performance. The measures subject to this process are:[60]
  - GA-3 Gateway Availability Electronic Bonding-Trouble Administration (EB-TA)
  - GA-4 System Availability Exchange Access Control & Tracking (EXACT)
  - GA-7 Timely Outage Resolution Following Software Releases
  - PO-2B Electronic Flow-through[61]
  - PO-3 Local Service Request (LSR) Rejection Notice Interval
  - PO-5D Firm Order Confirmations (FOCs) On Time [Access Service Requests (ASR) for Local Interconnection Service (LIS) Trunks]
  - PO-7 Billing Completion Notification Timeliness

[59] Independent Expert Report for the Three-Year Review of the Qwest Corporation Colorado Performance Assurance Plan, Barrington-Wellesley Group, Inc., December 7, 2005.
[60] BWG also recommended including PO-19 – "Stand-Alone Test Environment (SATE) Accuracy" on the list. However, the Colorado Commission had already determined that PO-19 should be treated as diagnostic and removed from measures that can generate payments. This change was made effective in the CPAP version dated May 6, 2005 (Colorado SGAT Ninth Revision, Ninth Amended Exhibit K, dated May 6, 2005).
[61] PO-2B is evaluated on a quarterly basis and thus reinstatement is based on two consecutive quarters rather than three consecutive months. PO-2A had originally been part of the CPAP, but BWG recommended that it be dropped entirely, because it measures all orders, not just those eligible for flow-through.

- PO-8 Jeopardy Notice Interval
- PO-16 Timely Release Notifications
- OP-7 Coordinated "Hot Cut" Interval – Unbundled Loop (UNE-L)
- OP-17 Timeliness of Disconnects Associated with Local Number Portability (LNP) Orders
- MR-11 LNP Trouble Reports Cleared within 24 Hours
- BI-4 Billing Completeness
- NI-1 Trunk Blocking
- NP-1 NXX Code Activation
- CP-3 Collocation Feasibility Study Interval
- QX-1 Timely and Complete Notifications of Product/Process Change.[62]

- Implementation of the One-Allowable Miss rule for low-volume benchmark or non-interval parity sub-measures that otherwise would require perfect performance to meet the standard.
- Elimination of the Per Occurrence measurements from Tier 2.
- Elimination of the following product disaggregations with little activity (the criterion for inclusion on the list was a Colorado volume less than 130 from February 2003 through June 2005):
  - Resale Centrex
  - Resale Centrex 21
  - Resale Frame Relay
  - Unbundled ADSL
  - Resale PBX (non-designed and designed)
  - Resale ISDN BRI (non-designed and designed)
  - Resale ISDN PRI (non-designed and designed)
  - Resale DS0 (non-designed and designed)
  - Resale Digital Subscriber Line (DSL) (designed)
  - 911/E911 Trunks.
- Remove Line Sharing as a product disaggregation because of the FCC Triennial Review Order, which eliminates the requirement for Qwest to provide this product.

2007 Qwest-CLEC Stipulation Changes

Apparently motivated in part by some of the changes to the CPAP resulting from the Three-Year Review, Qwest invited CLECs to join it in discussing recommendations for changes to the QPAPs. As a result of these discussions, three CLECs[63] signed a stipulation with Qwest (2007 Stipulation) proposing QPAP changes, which the stipulating parties subsequently filed for approval in the 14 ROC states. The recommended changes in the QPAPs were similar to many of those made to the

[62] QX-1 is not a PID measurement but is defined specifically for the CPAP.

[63] The CLECs who are parties to the 2007 Stipulation are Eschelon Telecom Inc.; DIECA Communications, Inc. d/b/a Covad Communications Company; US Link, Inc. d/b/a TDS Metrocom; and McLeodUSA Communications Services, Inc. (McLeodUSA now does business as PAETEC Business Services.)

CPAP after the Three-Year Review, but some additional recommendations applied both to the CPAP and QPAPs. Specifically, the proposed changes included:

- Introduction of the Reinstatement/Removal Process for certain measures. The list of measures is the same as in the CPAP Three-Year Review Stipulation except for the removal of PO-19 and QX-1 from the list of excluded measures.
- Elimination of low-volume product disaggregations. The list is the same as for the CPAP Three-Year Review Stipulation except for the addition of Sub-Loop Unbundling, UNE-P plain old telephone service (POTS), UNE-P Centrex, and UNE-P Centrex 21 to the list of excluded products, and the removal of Unbundled ADSL from the list of excluded products.
- Elimination of Resale DSL from PIDs and modification of PID and PAP references to Qwest DSL, because of the FCC Broadband Order classifying these services as information services.
- Introduction of the One-Allowable Miss rule.
- Changing the minimum payment provision from flat to tiered payments.
- Changing the provisions for Tier 2 payment candidacy to be triggered by three consecutive months of non-conformance unless there are two out of three consecutive months of non-conformance. The payments are triggered by two consecutive month's missed for measures with Tier 1 counterparts and the current month's miss for the rest of the measures.
- Other retail analogue and PID changes, many specific to individual states.
- Other specific PAP provisions, applicable to all or subsets of the states.

Liberty understands that all or most of the recommendations of the 2007 Stipulation have now been adopted by the Commissions of all 11 participating states except Montana. The Utah amendments were originally applicable only to the parties to the Stipulation, but on February 4, 2009, after the Study Period for Liberty's analysis, the Utah Commission extended their applicability to all CLECs.[64] The New Mexico amendments became effective on May 1, 2009.

<u>C. Overview of Liberty's Analysis</u>

1. Guidance from the PAPs

The appropriate context for the current analysis differs among the eleven participating states because the requirements of the PAPs vary. The following lists the PAP guidance associated with the most appropriate context in each of these states.

[64] The Public Service Commission of Utah orders in Docket 07-049-31, issued June 30, 2008, approved the changes for the parties to the 2007 Stipulation only. The Commission's order in Docket 08-049-50, issued February 4, 2009, extended the applicability to all CLECs. The February 4 order also approved changes to reflect the replacement of EDI by XML.

Arizona

The Arizona PAP does not specify the need for any longer-term PAP reviews, but requires regular six-month reviews.[65] Liberty understands from the Arizona Staff that the current analysis is meant for use in such a six-month review. Section 16.1 specifies that these six-month reviews shall review the performance measurements to determine:

- Whether PID measures should be added, deleted, or modified
- Whether the applicable benchmark standards should be modified or replaced by parity standards
- Whether to move a classification of a measure to High, Medium, or Low or Tier-1 to Tier-2.

The criteria for review of the measurements, other than for possible reclassification, shall be:

- Whether there exists an omission or failure to capture intended performance
- Whether there is duplication of another measurement.

However, the PAP also notes in Section 16.1 that

> *... the Commission reserves the right to modify the PAP including, but not limited to performance measurements, penalty amounts, escalation factors, audit procedures and reevaluation of confidence levels, at any time as it sees fit and deems necessary upon Commission Order after notice and hearing.*

Furthermore from Section 16.2,

> *Notwithstanding section 16.1, any party may submit a root cause analysis to the Commission requesting removal of a PID or sub-measure from the PAP or requesting exemption of a PID or sub-measure from the application of the trigger mechanism for reinstatement or subsequent removal. In the analysis and recommendations concerning the root cause analysis, the Commission is to consider, at a minimum, whether the root cause analysis provides evidence of no harm, the same harm as covered by other PID measures, non-Qwest related causes, or other factors which directly relate to the harm or circumstances specific to the PID or sub-measure being analyzed.*

Colorado

In Colorado, the timing of Liberty's analysis is most consistent with that of a six-year review. The CPAP states in Section 18.11:

> *Except as provided in this Section, this CPAP will expire six years from its effective date. Only Tier 1A submeasures and payments will continue beyond six years, and these Tier 1A submeasures and payments shall continue until the Commission orders*

[65] All the participating QPAPs (in Section 16.1) call for six-month reviews with terms similar to Arizona's. The CPAP originally required six-month reviews, but amendments introduced after the Three-Year Review changed these to annual reviews (Sections 18.2 - 18.6).

> *otherwise. Five and one-half years after the CPAP's effective date, a review shall be conducted with the objective of phasing-out the CPAP entirely. This review shall focus on ensuring that phase-out of the CPAP is indeed appropriate at that time, and on identifying any submeasures in addition to the Tier 1A submeasures that should continue as part of the CPAP.*

In fact, the six-year point has now passed, and the latest version of the CPAP has implemented the changes required in Section 18.11 (removal of all but the Tier 1A sub-measures). Although the circumstances involved in obtaining commitment for a joint ROC analysis prevented Liberty's analysis from meeting the specific timing for the six-year review, Liberty understands from the Colorado Staff that the analysis will nevertheless be used as part of that review process. The CPAP specifies in Section 18.7 that the following areas are also eligible for change in the three-year and six-year reviews:

- The statistical methodology (Sections 4.0, 5.0 and 6.0) except for additions to the variance tables for new Tier 1A measures
- The payment caps (Sections 11.0 and 18.8)
- The duration of the CPAP (Section 18.11)
- The payment regime structure (Sections 2.0, 7.0, 8.0, 9.0, 10.1, and 10.4) except for the addition of payment amounts for new Tier 2 measures and of payment amounts for violations of change management requirements
- The legal operation of the CPAP (Sections 15.0 and 16.0)
- The Independent Monitor (Section 17.0) with the exception of assignment of the Independent Monitor function to an Administrative Law Judge
- Any proposal that does not relate directly to measuring and/or providing payments for non-discriminatory wholesale performance.

Idaho, Iowa, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming PAPs

The Idaho, Iowa, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming PAPs call for six-month reviews with language and scope similar to Arizona's. In addition, the PAPs call for two other longer-term reviews with similar language. For example, from the Idaho PAP:

> *16.2 Two years after the effective date of the first FCC 271 approval of the PAP, the participating Commissions may conduct a joint review by a independent third party to examine the continuing effectiveness of the PAP as a means of inducing compliant performance. This review shall not be used to open the PAP generally to amendment, but would serve to assist Commissions in determining existing conditions and reporting to the FCC on the continuing adequacy of the PAP to serve its intended functions. The expense of the reviews shall be paid from the Special Fund.*

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

Either the six-month review or the second of these two longer-term reviews (Section 16.3) is the most appropriate context for the current analysis. The PAP language indicates that the key objective of the Section 16.3 review is the appropriateness of the PAP and whether it should continue. In the South Dakota PAP, Qwest must petition the Commission for the elimination of the PAP as a precondition for that review.

New Mexico

The New Mexico PAP has provisions for regular six-month review and a two-year review with language similar to the other QPAPs. In addition, like the CPAP, the New Mexico PAP in Section 16.3 has a sunset provision to occur six years after the PAP's effective date, eliminating all sub-measurements except those listed in Attachment 3 and calling for a review with language similar to the QPAP:

> *This QPAP will expire six years from its effective date. Only the submeasurements identified in Attachment 3 and payments will continue beyond six years, and these submeasurements and payments shall continue until the Commission orders otherwise. Five and one-half years after the QPAP's effective date, a review shall be conducted with the objective of phasing-out the QPAP entirely. This review shall focus on ensuring that phase-out of the QPAP is indeed appropriate at that time, and on identifying any submeasurements in addition that should continue as part of the QPAP.*

In addition (Section 16.4),

> *The Commission may, at its discretion, join a multi-state effort to conduct QPAP reviews and develop a process whereby the multi-state group would have the authority to act on the Commission's behalf consistent with its authority under law.*

2. Approach of the CPAP Three-Year Review

In the CPAP Three-Year Review, BWG noted that it was guided by the requirements in CPAP Sections 18.7 and 18.10 and the following general objectives designed to balance the needs of the Commission, the CLECs, and Qwest:

- Simplification (reduction in complexities) of the CPAP
- Avoidance of significant incremental financial, administrative, or operational harm to CLECs or Qwest
- Continuation of incentives for growth in the competitive marketplace
- Balancing the implications for end-user customers, CLECs, and the competitive environment
- Level of historical penalties and implications for future payments
- Flexibility for interested parties to request appropriate modification and provide feedback on any such request.

BWG used the following factors in determining which specific measures and sub-measures should be removed from the CPAP:

- Importance in measuring aspects of service which impact end-user customers, as well as CLECs' ability to communicate with end-users, make customer commitments, operate efficiently, and compete on a level-playing field
- Simplicity of tracking, measuring, and reporting for Qwest, the Commission, and CLECs
- Limited administrative burdens for Qwest and other parties
- Balancing financial and other harm for Qwest and CLECs
- Implications for future penalty payments given past performance and recent trends (conforming performance in the past does not ensure good performance in the future, while strong performance leading to no penalty payments is not a burden for Qwest)
- Flexibility to address changes in regulatory requirements, business realities, and the competitive landscape.

By design, the current analysis was conducted in a different mode from CPAP Three-Year Review. In particular,

- The analysis was designed to meet the separate needs of the eleven participating states rather than a single state.
- 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.
- There was no collaborative process between the CLECs and Qwest, since Qwest elected not to provide proposals and recommendations and the CLECs provided input through a single Liberty questionnaire.
- There were specific requirements and objectives for the Three-Year Review that do not apply to the Six-Year Review in Colorado.

Thus, the objectives of Liberty's analysis were necessarily somewhat different from BWG's. Nevertheless, Liberty approached aspects of the analysis in ways similar to BWG's.

3. Guidance from the Collaborative Committee

As noted, the ROC Collaborative Committee specifically noted the following areas for this analysis:

- The PAPs and PID measures, with draft recommendations concerning:
  - The current effectiveness, value, and usefulness of the PAP and PID measures in relation to their intended purpose and function
  - Whether some or all of the PAP or PID measures may no longer be necessary
  - Possible modifications to the performance plan and PID measures.
- Participation of and consultation with the PAP stakeholders: Qwest, CLECs, and Commissions.

The Collaborative Committee specifically noted that because of the different contexts of the reviews in the different states, this analysis and the resulting recommendations should be presented in a document to use for discussions and proceedings as each state deems appropriate.

4. Liberty's Approach

Given varied contexts for this review in the different participating states, Liberty relied mainly on the specific requirements of the review outlined by the ROC Collaborative Committee. Based on these requirements, Liberty developed a work plan focused on five separate but related investigations:

1. Analysis of PAP payments and PID measure results
2. Analysis of the structural components of the PAPs
3. Analysis of the structure of the PID measures
4. Analysis of recommendations and experiences of stakeholders
5. Analysis of industry trends.

During the course of the analysis Liberty held project calls with members of the Collaborative Committee and provided monthly status reports of the review to the Committee. Liberty also met with the ROC Commission Staffs on April 23, 2009 in Denver to review the analysis, provide initial results and conclusions, and seek input from the Staffs. Because of the lack of the ability to seek equal input from Qwest and the CLECs, Liberty's analysis was unable to benefit from the give and take that such a process can provide.

Analysis 1 – Historical PAP Payments and PID Measure Results

One method of assessing how well the PAPs and PID measures are working was to examine trends in the payments, transactions volumes, and PID measure results over the life of the PAPs. The purpose of this examination was to identify measures that either might be consistently generating payments or consistently meeting the standards. These were noted for further investigation. The analysis also examined PID measures that are reported but are not currently part of the QPAPs to determine whether there was still any value in Qwest reporting them or if they should be considered for future inclusion in the PAPs. In addition, Liberty examined trends in transaction volumes to determine whether some PID measures or measure reporting dimensions contain so few transactions that they may no longer have value. Liberty also examined any cases where PID measures have been removed from a QPAP and assessed whether there was any evidence that this has influenced Qwest performance.

This analysis included the following steps:

- Qwest provided PAP payment results to Liberty for all 14 states for each month beginning January 2004 and continuing through October 2008 (Study Period)
- Qwest provided PID measure results to Liberty for the 11 participating states for each month from January 2004 through October 2008
- Liberty analyzed trends in the PAP payments at the region-wide (14-state) level
- Liberty analyzed trends in the PAP payments and measure results individually for each of the 11 participating states
- Liberty looked for cases where measures showed low or minimal PAP payments
- Liberty looked for product disaggregations with low activity volumes.

Analysis 2 – QPAP Structure

The purpose of this analysis was to determine whether the current structure of the PAP is meeting its original objectives. **[Qwest Comment: No authoritative "original objectives" are stated or relied upon anywhere in the Report.]** The analysis included the following steps:

- Liberty obtained and reviewed the PAP documentation for each of the 11 participating states.
- Liberty reviewed the PAP structural components (*e.g.,* statistical methods, payment levels, payment triggering mechanisms).
- Liberty examined whether the components appeared to be meeting their apparent objectives **[Qwest Comment: No authoritative "apparent objectives" are stated or relied upon anywhere in the Report.]**or were no longer relevant based on the observed historical trends.

Analysis 3 – PID Measure Structure

The purpose of this analysis was to determine whether the current structure of the performance measures is meeting its original objectives. The analysis included the following steps:

- Liberty obtained and reviewed the 14-state PID documentation
- Liberty reviewed the structure of the PID measures (e.g., formula, exclusions, reporting disaggregations)
- Liberty examined whether there are any PID measures or components of the measures that either do not appear to be meeting their apparent objectives, or are no longer relevant based on the observed historical trends.

Analysis 4 – Stakeholder Input

In addition to examining the historical record and the structures of the PAPs and PID measures, Liberty sought input from the principal stakeholders of the PAPs: the Commissions, the CLECs, and Qwest. Liberty asked the Staffs from each of the participating Commissions to provide their own experiences, concerns, recommendations, and objectives related to the PAPs. In addition, Liberty asked the Staff members to provide lists of CLECs to contact regarding their experiences. Then, Liberty contacted the CLECs and Qwest for their input. This analysis included the following steps:

- Liberty asked the Collaborative Committee Commission Staff members for the 11 participating states for their information on:
  - What historical information the states maintain on PAP payment and Qwest performance results
  - Lists of active CLECs in the state and contact information
  - What information the states maintain about the CLECs and other competitors
  - Any input the Staffs had on concerns about or issues with the PAPs
- Liberty developed a questionnaire and reviewed it with the Collaborative Committee.
- Liberty sent the questionnaire to the CLECs and Qwest addressing:

- What components of the PAPs (including the PID measures involved) are working well and are believed to be necessary to preserve going forward?
- What components of the PAPs (including the PID measures involved) are not working well and should be changed going forward? If any, how should they be changed?
- What components of the PAPs (including the PID measures involved) are unnecessary and should be dropped going forward?
- Other comments or input.

Qwest declined to participate in providing this input.

Analysis 5 – Industry Trends

The purpose of this analysis was to determine trends in the competitive local telecommunications industry in the 11 states that might affect the continued applicability of the PAPs. In particular,

- Liberty used FCC industry analysis reports to examine trends in competition in each of the 11 participating states.
- Liberty examined trends in transaction volumes by product type and function based on the PID measure data provided by Qwest.

Liberty used this information to determine to what extent the PAPs (including the included PID measures, products, and specific structural provisions) still address the needs of the current telecommunications marketplace.

Draw Conclusions and Develop Recommendations

Based on the five streams of analysis described above, Liberty drew conclusions and developed recommendations for the three basic objectives of the study outlined by the Collaborative Committee:

- Evaluation of the current effectiveness, value, and usefulness of the performance plan and PID measures in relation to their intended purpose and function**[Qwest Comment: No authoritative "intended purpose and function" are stated or relied upon anywhere in the Report.]**
- Determination whether some or all of the performance plan or PID measures may no longer be necessary
- Consideration of possible modifications to the performance plan and PID measures.

In particular, Liberty evaluated the continued need for PAPs, including whether they are necessary or helpful in maintaining a competitive market. **[Qwest Comment: Nowhere is "maintaining a competitive market" established in law or regulation as an authoritative objective for PAPs or a criterion for their continuance.]** In addition, if the PAPs are to continue Liberty identified and developed recommendations for:

- PID measures that should be eliminated
- Product disaggregations that should be eliminated
- Revisions to and additions of PID measures
- Modifications to PAP structural components.

In this evaluation, Liberty relied principally on the data from the Study Period. However, late in the analysis, Liberty obtained from Qwest additional information about payments from November 2008 through March 2009 for the 11 participating states, and used this additional information in assessing whether to recommend the elimination of PID measures.

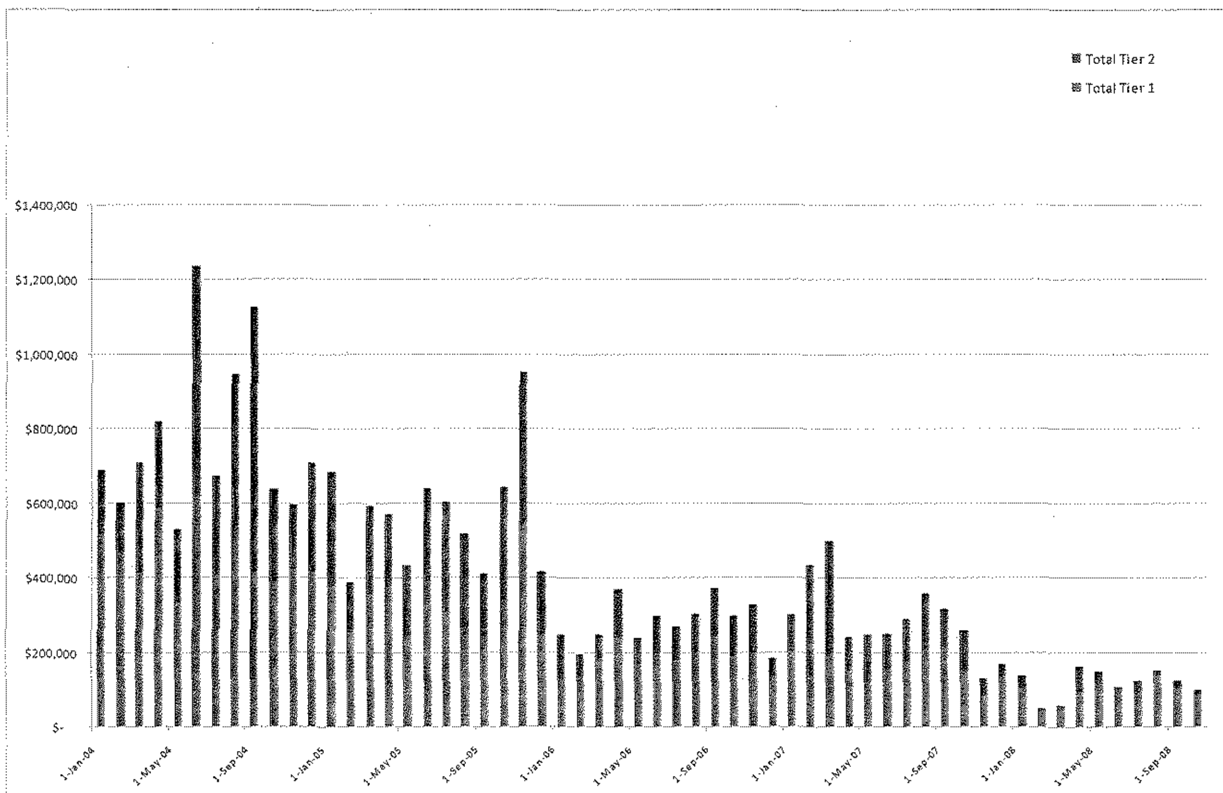
III. Analysis

A. Performance Assurance Plan Payment Trends

Based on data provided by Qwest, Liberty analyzed trends in PAP payments during the Study Period. Through this analysis, Liberty examined which PID measures and product disaggregations contributed most to the payments and how this varies from state to state and during the Study Period.

During the course of its review, Liberty found that both the Tier 1 and Tier 2 payments decreased dramatically during the Study Period. In 2004, monthly payments across all 14 states were more than $600,000 on average (about $500,000 for the 11 states considered in this review). By 2008, monthly payments were typically below $200,000 (below $100,000 in total for the 11 states reviewed). Figure III-A-1 below shows the combined Tier 1 and Tier 2 payments from January 2004 through October 2008 across the Qwest footprint.

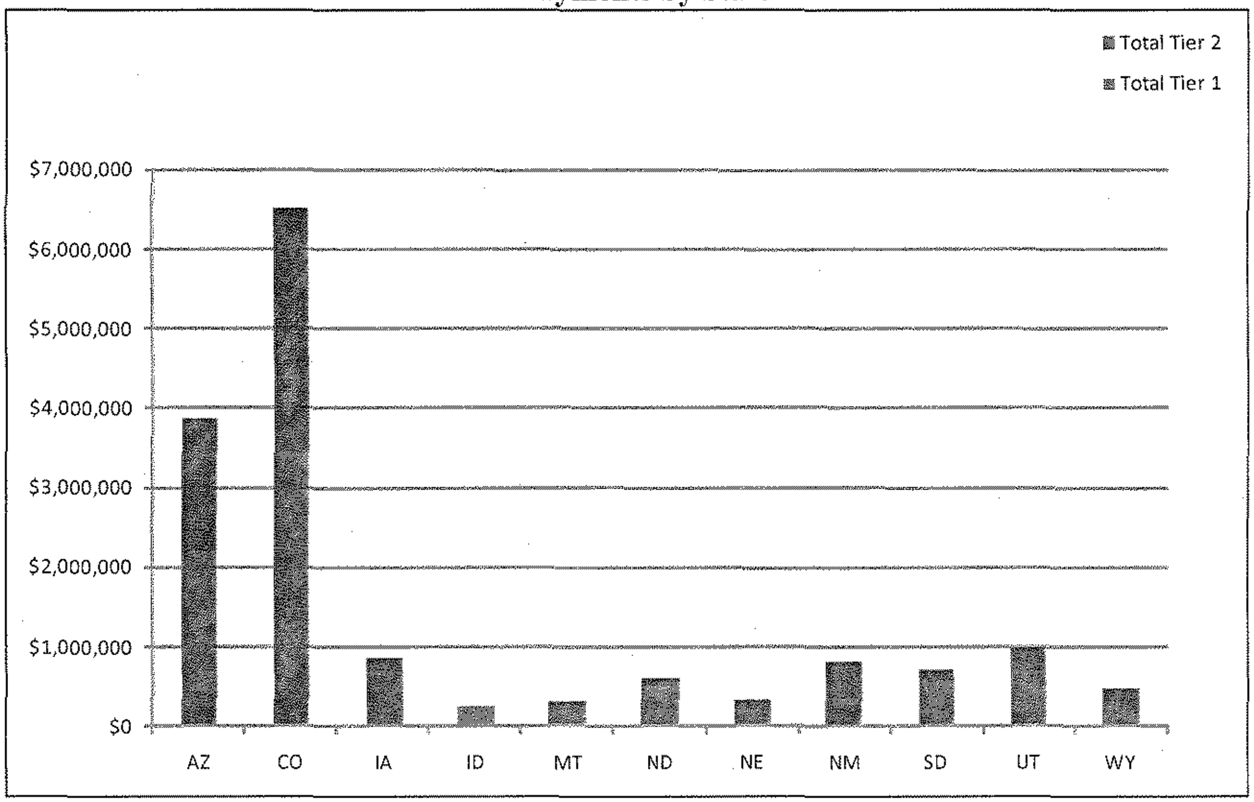
Figure III-A-1
Total Tier 1 and Tier 2 Payments
All 14 States



1. Differences in Payments by State

Analyzing the Tier 1 and Tier 2 payments by state, Liberty found that Arizona and Colorado received about two-thirds of the total payments made during the Study Period for the 11 states that participated in this review. **[Qwest Comment: There is questionable relevance in observing that two states received about two-thirds of total payments, when three of the largest states are no included in the number. Even though the other three states did not participate in the analysis, in looking across the relevant industry that Qwest covers, the 14-state number is more appropriate, which would dramatically reduce the two-thirds figure.]** However, each of the 11 states had significant payments, with a total of at least $250,000 in every state. **[Qwest Comment: Across the entire study period, this is about $50,000 or only about $10,000 per state per year. This challenges the characterization of "significant."]** Figure III-A-2 below shows the Tier 1 and Tier 2 payments by state during the Study Period.

Figure III-A-2
Tier 1 and Tier 2
Payments by State



Liberty also reviewed how the payments changed over time for each state participating in this review. Appendix B contains figures with Tier 1 and Tier 2 payments over time for each of the 11 states. For the most part, the Tier 1 payments went down uniformly. Tier 2 payments by state declined in a similar fashion, with one major exception. Colorado payments for Tier 2 dramatically fell after April 2006.

Liberty found that the dramatic reduction in Colorado's Tier 2 payments resulted from changes to the structure of the CPAP after the Three-Year Review. The August 15, 2005 version of the CPAP included two requirements for Tier 2 payments that were eliminated with the May 1, 2006 version:

- That Qwest make Tier 2 payments for Tier 1A or Tier 1B failures that were missed by at least 50 percent of the applicable standard for two or more consecutive months. This could result in a Tier 2 payment of $25,000 for each Tier 1A sub-measure missed and/or $8,000 for each Tier 1B sub-measure missed.
- That Qwest make Tier 2 payments for "Tier 1Y" failures. Fifty percent of the penalties for Tier 1Y failures were paid to the CLEC that received substandard service and 50 percent was paid to Tier 2 Special Fund. The Tier 1Y measures calculated penalties on a Per Occurrence basis.

With the elimination of these two requirements, the remaining Tier 2 measures were calculated on a Per Measurement instead of a Per Occurrence basis. The May 1, 2006 version of the Colorado PAP maintained Tier 2 payments for the following region-wide Wholesale Support Systems measures, which are also found in the other PAPs:

- GA-1, GA-2, GA-3, GA-4,and GA-6
- PO-1
- OP-2
- MR-2

The versions of the CPAP before and after May 1, 2006 allow for Tier 2 payments for PO-6, which is not a Tier 2 measure in the other states. This measure, which evaluates the aggregate performance to all CLECs, is also subject to Per Measurement instead of Per Occurrence payments.[66]

Table III-A-1 below shows that before the May 1, 2006 revision, the highest Tier 2 payments made in Colorado were similar to, though higher than, the payments per unit (*i.e.,* the payments made per transaction) made in other states. Beginning in May 2006, Colorado's Tier 2 payments for these Per Occurrence measures went to zero while Qwest continued to make payments to other states as before.

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[66] The revised May 1, 2006 Colorado PAP did not contain Per Occurrence Tier 2 penalties like those found in other PAPs for the following measures: GA-7, PO-5, PO-16, PO-19, OP-3, OP-4, OP-5, OP-6, OP-8, OP-13, OP-17, MR-6, MR-7, MR-8, MR-11, BI-1, BI-4, NI-1, NP-1, and CP-2.

Table III-A-1
Tier 2 Payments for All States
Before and After the May 1, 2006 CPAP Revision

Measure	Percent of Total CO Tier 2 Payments Before May 2006	Percent of Total CO Tier 2 Payments Beginning May 2006	CO Average Tier 2 Payment per Unit - Before May 2006	All Other States Average Tier 2 Payment per Unit - Before May 2006	All Other States Average Tier 2 Payment per Unit - Beginning May 2006
MR-5	9.9	0	115	49	48
MR-6	6.0	0	244	58	69
MR-8	37.2	0	187	137	215
PO-2	36.1	0	33	18	48

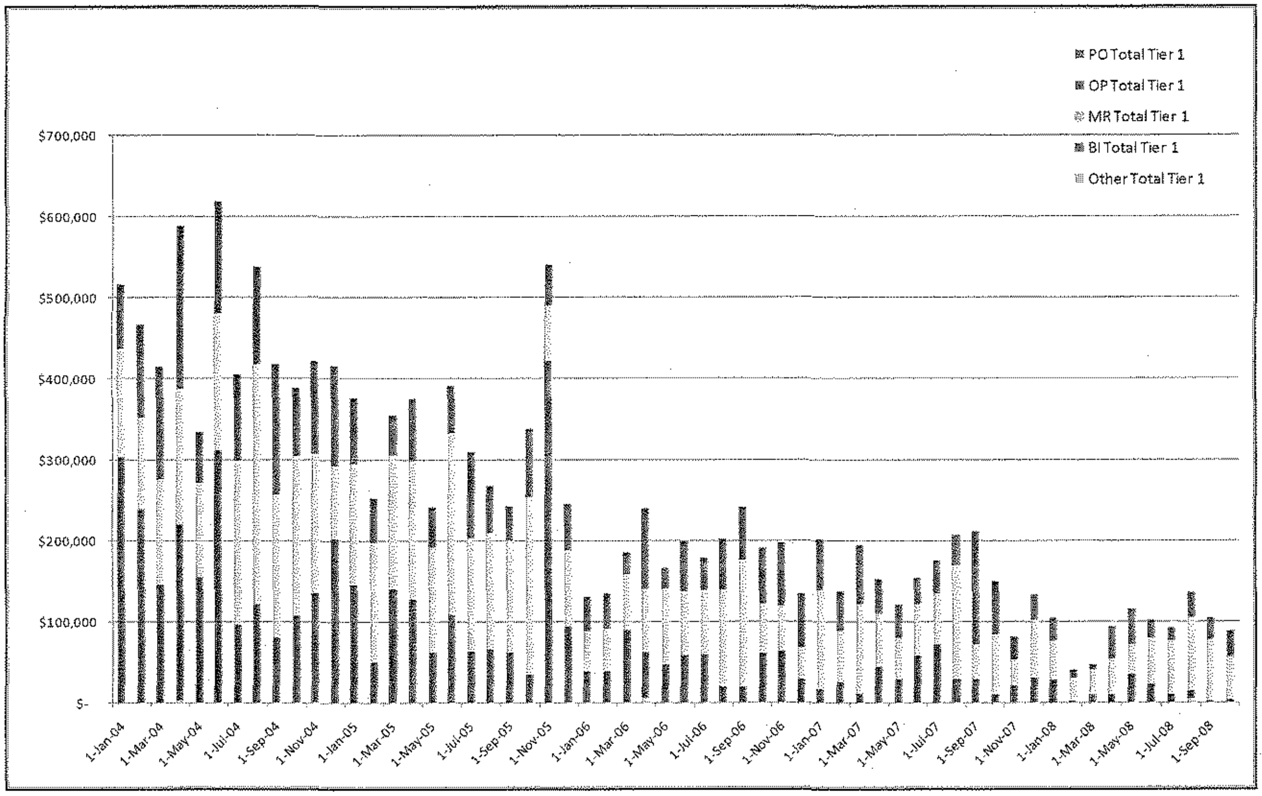
Additionally, Qwest noted that Tier 2 payments made for MR-8 Unbundled DS1 and Enhanced Extended Loop (EEL) DS1 were suspended from May 2005 through June 2007 in Colorado "pending a collaborative investigation by the Independent Monitor, Qwest, and CLECs."[67] Qwest continued to pay Tier 2 penalties for MR-8 Unbundled DS1 and/or EEL DS1 in all other states.

[67] Response to Qwest Data Request #13.

2. Differences in Payments by Domain

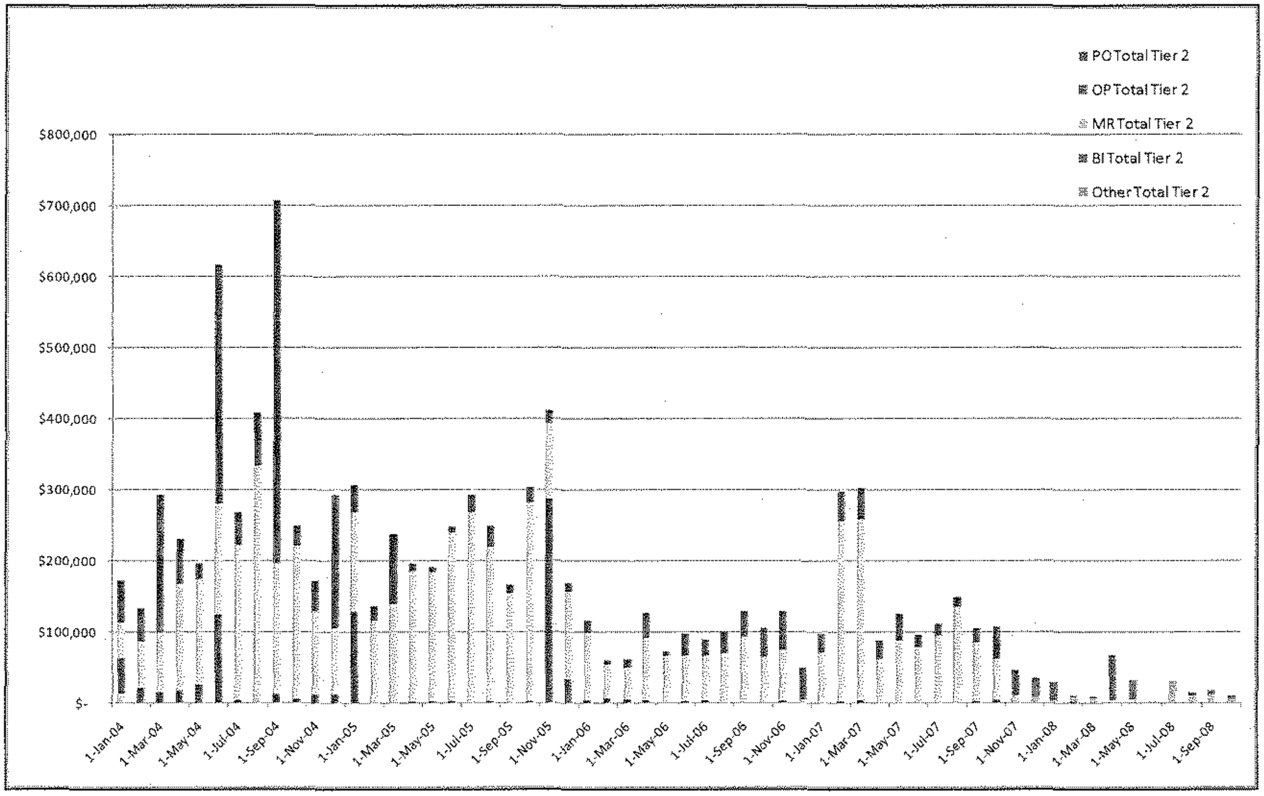
The vast majority of Tier 1 payments during the period under review were for performance in Pre-Ordering/Ordering (PO), Ordering/Provisioning (OP), Maintenance & Repair (MR), and Billing (BI). In 2004 and 2005 Maintenance & Repair and Billing comprised the majority of Tier 1 payments. Since 2005, Maintenance & Repair alone comprised the majority of Tier 1 payments. Appendix B contains figures with Tier 1 payments by domain over time for each of the 11 states. Figure III-A-3 below shows these Tier 1 payments by domain for all 14 states combined.

Figure III-A-3
Total Tier 1 Payments by PID Domain
All 14 States



Most Tier 2 payments were for Maintenance & Repair, but in 2004 and early 2005, Qwest paid significant amounts of Tier 2 payments for Pre-Ordering/Ordering and Billing performance. The large Tier 2 payments for Maintenance & Repair occurred frequently until 2008 when Tier 2 payments in general were minor due to improved performance for MR-2 and MR-8. Figure III-A-4 below shows these Tier 2 payments by domain.

Figure III-A-4
Total Tier 2 Payments by PID Domain
All 14 States



Only 15 measures were responsible for the overwhelming majority (97 percent) of Tier 1 and Tier 2 payments in the 11 states in the study. The MR-8 measure was associated with over $5 million of the approximately $16 million in Tier 1 and Tier 2 payments during the Study Period. Payments for BI-3A accounted for more than $2 million of Tier 1 and Tier 2 combined payments during the Study Period. Figure III-A-5 below shows the Tier 1 and Tier 2 payments by measure. The top three measures (MR-8, BI-3A, and OP-4) generated 57 percent of the payments during the Study Period.

Figure III-A-5
Total Tier 1 and Tier 2 Payments
by PID – 11 States

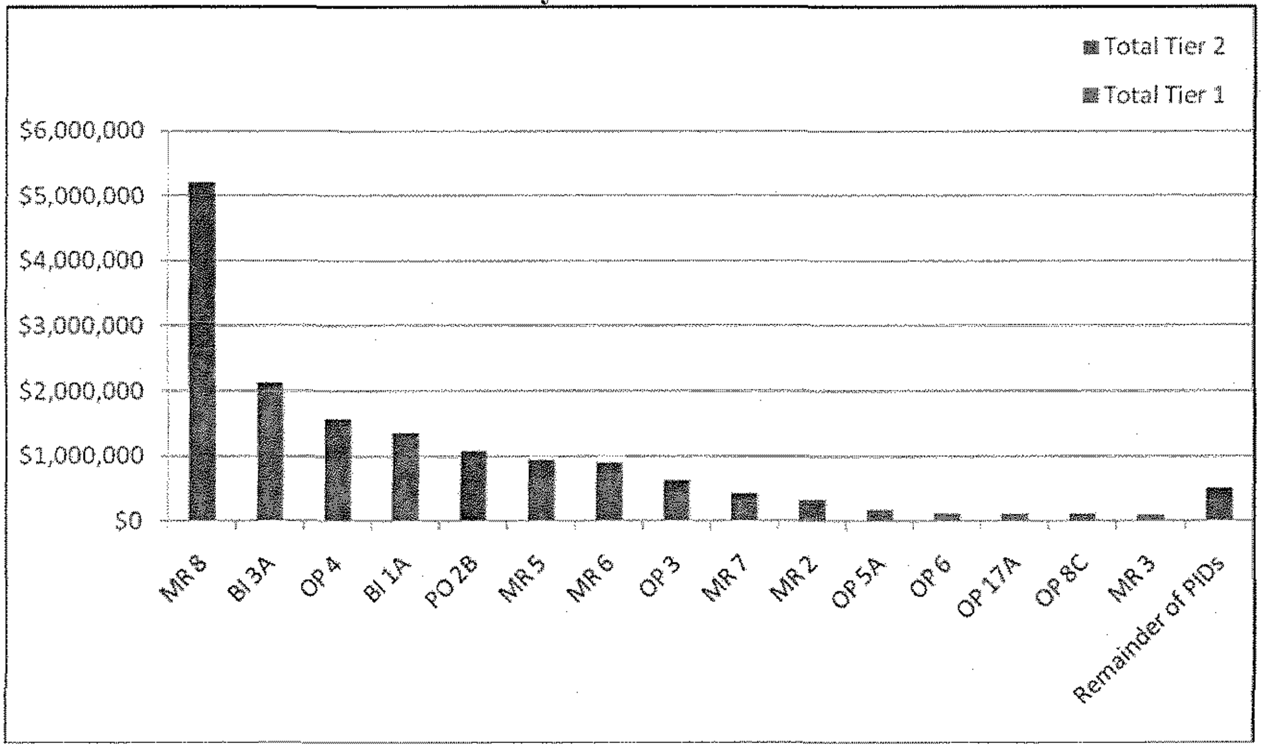


Table III-A-2 below provides the detailed data in the figure above.

Table III-A-2
Total Tier 1 and Tier 2 Payments
by PID – 11 States

PID Code	Title	Total Tier 1	Total Tier 2	Total Tier 1 and Tier 2 Payment
MR-8	Trouble Rate	$2,656,552	$2,556,198	$5,212,750
BI -3A	Billing Accuracy – Adjustments for Errors (UNEs and Resale)	$2,011,695	$114,308	$2,126,003
OP-4	Installation Interval	$1,031,604	$548,242	$1,579,846
BI-1A	Time to Provide Recorded Usage Records (UNEs and Resale)	$964,463	$398,182	$1,362,645
PO-2B	Electronic Flow-through (all flow-through-eligible LSRs)	$4,543	$1,065,000	$1,069,543
MR-5	All Troubles Cleared within 4 hours	$679,753	$268,349	$948,102
MR-6	Mean Time to Restore	$748,702	$161,616	$910,318
OP-3	Installation Commitments Met	$460,897	$178,711	$639,608
MR-7	Repair Repeat Report Rate	$335,064	$95,313	$430,377
MR-2	Calls Answered within 20 Seconds – Interconnect Repair Center	N/A	$344,000	$344,000
OP-5A	New Service Installation Quality Reported to Repair	$162,118	$14,976	$177,094
OP-6	Delayed Days	$105,720	$20,813	$126,533

OP-17A	Timeliness of Disconnects associated with LNP Orders (timely CLEC requests)	$111,190	$0	$111,190
OP-8C	Number Portability Timeliness (without Loop Coordination)	$104,657	$4,500	$109,157
MR -3	Out of Service Cleared within 24 Hours	$90,770	$446	$91,216
Remainder of PIDs	---	$349,996	$182,788	$532,784

The list and order of the top 15 PIDs with regard to total Tier 1 and Tier 2 payments changes slightly if only more recent data after May 2006 is used. Nevertheless, MR-8, OP-4, and BI-3A remain the top three contributors, generating 60 percent of the payments; the top 15 PID measures still represent 98 percent of the Tier 1 and Tier 2 payments in the 11 states during this more recent period. Table III-A-3 below shows these detailed data.
[Qwest comment: The above list begs for questions not answered by the Liberty Report. For example, what might account for MR-8, OP-4 and BI-3A being at the top of the list? What is it about these PIDs that is generating much higher payments than other PIDs? Is this confined to a few products or states? For MR-8, the data shows specifically that the margins between CLEC performance and standard are extremely slim. A large number of payments are made on minutely-small arithmetic differences between the CLEC results (that were very, very good – extremely low trouble rate) and the standard. Similarly, a large number of these metrics were addressed by CPAP Independent Monitor-ordered root-cause analyses that explain the results and universally conclude there was no discrimination, despite the persistent payments – none of which is addressed by the Report.]

Table III-A-3
Total Tier 1 and Tier 2 Payments
by PID after May 2006– 11 States

PID Code	Title	Tier 1 Payment	Tier 2 Payment	Total Tier 1 and Tier 2 Payment
MR-8	Trouble Rate	$675,634	$284,453	$960,087
OP-4	Installation Interval	$503,606	$380,666	$884,272
BI-3A	Billing Accuracy – Adjustments for Errors (UNEs and Resale)	$447,717	$0	$447,717
MR-2	Calls Answered within 20 Seconds – Interconnect Repair Center	N/A	$342,000	$342,000
MR-6	Mean Time to Restore	$275,799	$0	$275,799
OP-3	Installation Commitments Met	$181,432	$75,675	$257,107
MR-5	All Troubles Cleared within 4 hours	$207,662	$0	$207,662
BI-1A	Time to Provide Recorded Usage Records (UNEs and Resale)	$90,099	$0	$90,099
MR-7	Repair Repeat Report Rate	$82,829	$4,000	$86,829
OP-6	Delayed Days	$47,143	$3,900	$51,043
OP-2	Calls Answered within Twenty Seconds – Interconnect Provisioning	$0	$45,833	$45,833

	Center			
OP-5A	New Service Installation Quality Reported to Repair	$39,915	$2,450	$42,365

PO-7A	Billing Completion Notification Timeliness	$27,317	$0	$27,317
PO-6A	Work Completion Notification Timeliness	$26,949	$0	$26,949
MR-3	Out of Service Cleared within 24 Hours	$25,485	$0	$25,485
Remainder of PIDs	---	$57,193	$18,417	$75,610

B. Wholesale Volumes

As part of its review, Liberty analyzed the ordering volumes and total lines in service for the wholesale products and services that Qwest records in the PID measures, and examined how these volumes have changed over the Study Period. Because some products, such as those Qwest provides through commercial agreements, are not included in the PID measurements, this analysis is not meant to depict the full scope of wholesale products available. Nevertheless, it does show the volumes of transactions and lines relevant for determining the PAP payments.

During its examination of ordering volumes captured in the PID measurements, Liberty used the number of service orders Qwest recorded in its PID measurements for inward services[68] and for standalone number ports. As a measure of service order volumes for inward services, Liberty used the denominator of OP-3 (Installation Commitment Met) which provides data on the total number of service orders for inward services completed in the reporting period.[69] As a measure of LSR volumes for standalone number port orders, Liberty used the denominator of OP-8C (LNP Timeliness without Loop Coordination).

Liberty also examined trends in the number of CLEC lines in service which depend on Qwest wholesale services measured by the PID measurements. For this quantity, Liberty used the denominator of the MR-8 (Trouble Rate measure), which provides data on the total number of lines in service for each product disaggregation during the reporting period.

This analysis revealed that overall wholesale service order transaction volumes measured in the PID measures have decreased significantly over the course of the Study Period as shown in Table III-B-1.

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[68] Inward services are defined as order types for change of service, new service, and transfer of service.

[69] In its analysis, Liberty did not include disconnect and record change service orders which are excluded from the OP-3 service order volumes. Liberty also excluded any other service orders subject to the OP-3 exclusions, such as service orders for which the due date was missed for non-Qwest reasons and service orders with invalid due dates or application dates. Despite these exclusions, Liberty was able to obtain sufficient information to determine the order volume trends for the purposes of this study, using the total inward order volumes obtained from the OP-3 denominator.

Table III-B-1
Inward Service Order Volumes
Total 14-State Region

Year	Annual Order Volume	Difference from Previous Year	Monthly Average
2004	1,022,208	N/A	85,184
2005	377,738	-644,470	31,478
2006	245,067	-132,671	20,422
2007	162,966	-82,101	13,581
2008 (through October)	113,643	*	11,364

* The difference will not be indicative of the full year experience as the 2008 data only extends through October.

Liberty found that the biggest factors in this decrease in order volumes measured by the PID measures were the TRO and the TRRO decisions, which removed the requirement for Qwest to offer UNE-P and Line Sharing services as unbundled network elements under Section 251 of the 1996 Telecommunications Act.[70] As a result of these orders, Qwest offers services equivalent to UNE-P and Line Sharing under commercial agreements with the CLECs, which are not tracked or reported by the PID measures.[71] In 2004, these services accounted for 745,490 (72.9 percent) of the 1,022,208 total inward orders issued to Qwest by the CLECs. The vast majority (722,988) of these 745,490 orders were for UNE-P POTS. However, after the effective date of the TRRO in 2005, the order volume for these services dropped to 8,928 orders, a 98.9 percent decrease from the previous year's order volumes. The order volume for Line Sharing and UNE-P service has continued to decline to the 2008 region-wide monthly average of only 31 orders per month for these services.[72]

Liberty found that Qwest has experienced declining ordering volume for all wholesale services and products with the exception of the five products shown in Table III-B-2. For example, in 2004 Qwest averaged 5,260 orders per month for all Resale services, while in 2008 the average dropped to 814 resale orders per month. For all other inward service orders (*e.g.,* unbundled loops, unbundled dedicated interoffice transport, Enhanced Extended Loops, etc.), Qwest averaged 17,800 orders per month in 2004. The average number of monthly orders Qwest received for these services in 2008 was 8,763 (through October). Two factors that may have contributed to the drop in Qwest's overall wholesale service order volumes are i) CLECs entering into commercial agreements with Qwest, thereby removing their ordering activity from the PID calculations, and ii) the general trends in the telecommunications industry of customers migrating away from the wireline service business to competitors such as cable and wireless service providers.[73]
[Qwest Comment: The Report, in seeming to mention this only in passing, appears to ignore the significant meeting of the statements just made above – i.e. that customers migrating away from wireline service to competitors such as cable and wireless service providers represents a massive increase in incentives outside of the PAPs that Qwest has to work with CLECs,

[70] FCC 03-36, Triennial Review Order, August 21, 2003 and FCC 04-290 Triennial Review Remand Order, February 4, 2005.
[71] In response to Data Request #18, Qwest explained that it replaced its UNE-P offer with its commercial products offering of Qwest Platform Plus (QPP). This offering was later replaced by Qwest Local Services Platform (QLSP).
[72] In response to Data Request #18, Qwest indicated that it still reports a small number of UNE-P and Line Sharing services in the PID because not every CLEC completed the interconnection/commercial agreements with Qwest that would have moved these services to the non-reportable comparable commercial agreement service (*e.g.,* the Qwest Local Service Platform replacement service for UNE-P service).
[73] See Section E, "Industry Trends" for additional details.

providing quality service, to help keep customers on its network. Also, this statement overlooks VoIP competitors, which are a major additional competitor.]

Table III-B-2
Products that Experienced an Increase in Order Volumes

Product	Percent Increase (2004 – 2008)
2-Wire Non-Loaded Loops	8.6
ADSL Capable Loops	22.0
EEL-DS-1	34.3
DS-1 Loops	64.0
xDSL Capable Loops	90.7

Consistent with industry trends of reduced reliance on wireline telecommunications service, Qwest experienced a steady increase in the number of service orders it received from its competitors for stand-alone LNP. Stand-alone LNP orders are typically issued by competitors such as wireless carriers and cable companies that are able to gain access to the end-user without relying on Qwest's wireline facilities to do so. These carriers typically only order number ports (to move the existing customer's telephone number to their network), directory listings, and interconnection trunks from the Incumbent Local Exchange Carriers (ILECs). Table III-B-3 shows the trend in Qwest's stand-alone LNP service order volumes.

Table III-B-3
Stand-alone LNP Service Order Volumes[74]

Year	Total LNP Orders	Difference	Monthly Average
2004	466,374	N/A	38,865
2005	553,943	87,569	46,162
2006	588,090	34,147	49,008
2007	597,430	9,340	49,786
2008 (through October)	523,221	*	52,322

* The difference will not be indicative of the full year experience as the 2008 data only extends through October.

As can be expected from the results on Qwest's order volume trends, the wholesale lines in service followed the same downward trend in volume as shown in Table III-B-4.

Table III-B-4
Wholesale Lines In Service

Year End	Lines In Service Volume	Difference
December 2004	2,712,891	N/A
December 2005	1,890,999	(821,892)
December 2006	1,726,161	(164,838)
December 2007	1,691,505	(34,656)
October 2008	1,624,765	*

* The difference will not be indicative of the full year experience as the 2008 data only extends through October.

The very large reduction in the number of lines in service between 2004 and 2005 is also a result of the TRO and TRRO decisions. In December 2004, Qwest reported 876,122 UNE-P and Line Sharing lines in service. By December of 2005 this number dropped by 727,778 lines to a total of

[74] The data for this table was obtained from the denominator of the OP-8C "Number Portability Timeliness" measure, which provides data on the total number of standalone number ports.

148,344 in-service UNE-P and Line Sharing lines, accounting for 88.5 percent of the total loss in wholesale lines between 2004 and 2005. This number was further reduced by 87,612 lines to a total of 60,732 UNE-P and Line Sharing lines in service at the end of 2006, accounting for 53.2 percent of the wholesale line loss in 2006. Qwest also experienced a significant reduction in its Resale service lines during the Study Period. Qwest's year-end-2004 resold lines in service totaled 143,895 lines. Since that time the number of in-service Resale lines has decreased by 60.8 percent to 56,389 lines as of October 2008. Additionally, many of the wholesale lines that are reported in the PID measures may have also been replaced by such commercial-agreement services as Qwest Local Service Platform (QLSP) which would not be reflected in the numbers reported by Qwest in the PID measures.

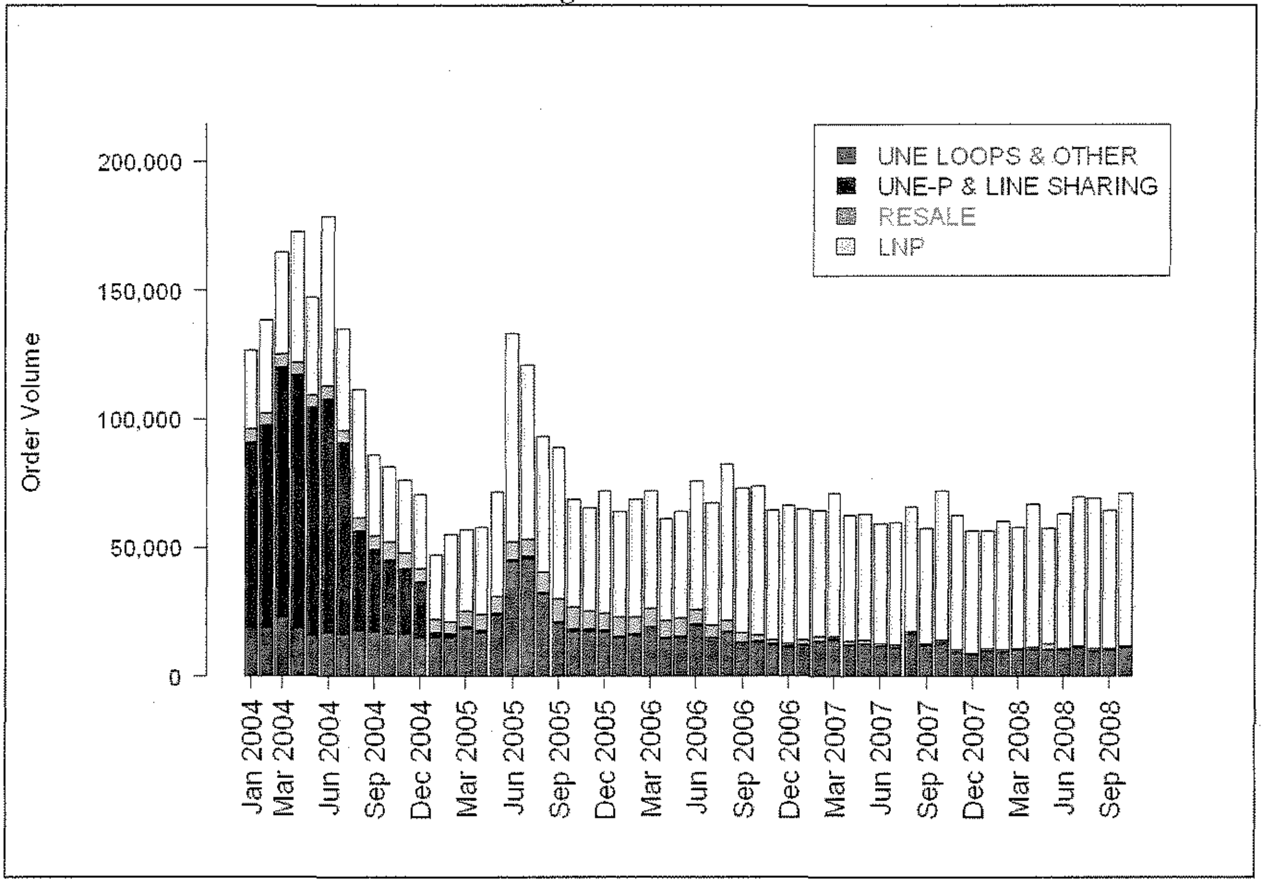
For other wholesale services such as UNE-L, the reduction in in-service lines has not been as significant as it has been for UNE-P and for Resale lines. Qwest ended 2004 with 1,692,874 lines in service for these products, as counted by the PID measures, and since that time there has only been a 10.6 percent reduction in these in-service line counts to an October 2008 total of 1,513,970 lines in service. As shown in Table III-B-5, Qwest has actually experienced very significant growth from 2004 to October 2008 in some products in this product category.

Table III-B-5
Unbundled Products that Experienced Significant Line Growth

Product	Percent Increase (2004 – October 2008)
2-Wire Non-Loaded Loops	20.7
DS-1 Loops	71.1
EEL-DS-1	117.7
Sub-Loops	346.1
xDSL Loops	642.5
ADSL Capable Loops	787.9

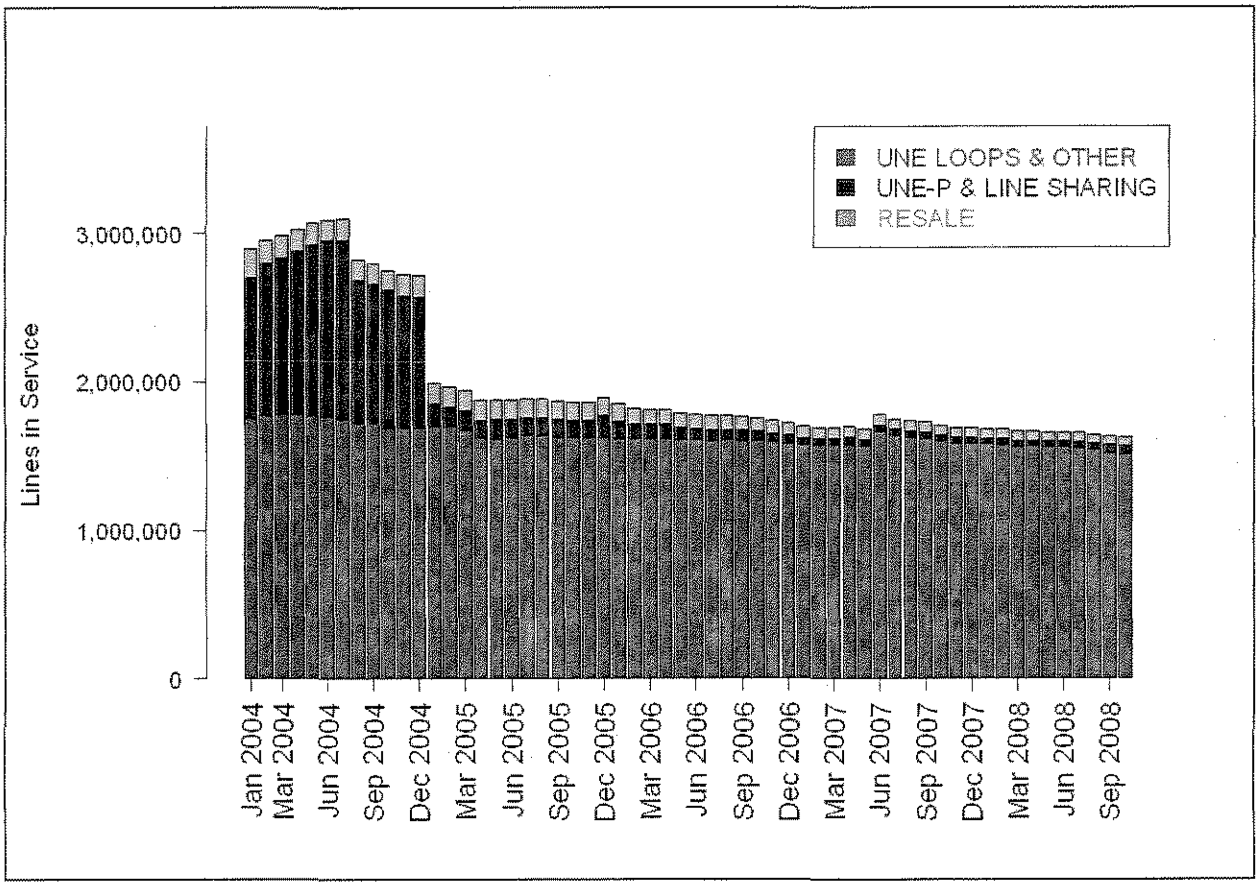
The following region-wide graphs provide a summary view of the trends discussed above in Qwest's wholesale order transactions and wholesale lines-in-service volumes.

Figure III-B-1
Ordering Volumes: All States



[Qwest Comment: If Qwest's volume is decreasing, and CLECs' volumes are decreasing, and facilities-based providers' volumes are increasing, it would seem that an appropriate conclusion is that PAP is misplaced. There is significant competition in the marketplace to provide incentives to provide quality service.]

Figure III-B-2
Lines in Service: All States



The same downward trends in both overall wholesale order volumes and wholesale lines in service can be seen at the state level. Although there are some state-specific variations, such as an increase in the order volumes in Montana, Liberty found that the general trend has been a decrease in the number of inward wholesale orders and in wholesale lines in service as reflected in Tables III-B-6 and III-B-7 respectively.

Table III-B-6
State-Specific Wholesale Order Volumes
Total Inward Orders
2004-2008

State	2004	2005	2006	2007	2008 (through October)
Arizona	305,039	168,613	140,204	117,784	87,890
Colorado	179,329	147,464	120,413	111,231	106,503
Iowa	106,795	53,169	48,830	45,061	29,882
Idaho	29,502	15,761	9,128	16,566	12,367
Montana	11,226	10,327	17,815	16,718	12,253
North Dakota	30,351	17,045	11,549	26,873	9,400
Nebraska	58,881	25,376	18,635	16,169	14,401
New Mexico	42,743	20,514	17,827	17,446	18,295
South Dakota	36,222	11,553	23,032	16,010	8,930
Utah	128,612	83,712	57,623	53,558	53,160
Wyoming	15,352	8,624	13,698	9,415	7,698

**Table III-B-7
State-Specific Wholesale Lines In Service
Total Lines
2004-2008**

State	Year End 2004	Year End 2005	Year End 2006	Year End 2007	October 2008
Arizona	398,595	245,566	230,897	240,901	229,799
Colorado	367,218	289,842	249,935	265,888	250,443
Iowa	175,631	114,844	94,127	82,266	78,682
Idaho	53,886	34,702	31,401	32,573	31,959
Montana	29,603	26,643	28,026	26,677	25,406
North Dakota	42,360	39,981	38,319	34,334	34,006
Nebraska	98,962	50,609	43,549	41,712	41,238
New Mexico	71,298	47,525	45,576	41,913	38,107
South Dakota	54,748	20,715	18,462	16,714	16,702
Utah	208,053	148,250	130,027	129,725	127,288
Wyoming	30,147	12,973	13,256	11,826	11,976

As displayed in Table III-B-8, the trend for standalone LNP orders, which is currently the most prevalent wholesale ordering type, shows quite a bit of variation across the states with many states showing significant growth in the annual volume of these orders while the order volumes in other states (such as North Dakota and South Dakota) seem to fluctuate from year to year. Arizona and Nebraska have experienced a declining volume in these orders.[75] Graphs of the state-specific order volume trends can be found in Appendix B.

**Table III-B-8
State-Specific Standalone LNP Order Volumes
Total Orders
2004-2008**

State	2004	2005	2006	2007	2008 (through October)
Arizona	146,894	135,191	119,841	100,451	77,460
Colorado	53,754	92,245	89,871	91,405	91,000
Iowa	40,041	24,230	32,762	36,438	25,720
Idaho	10,189	9,218	6,517	14,262	9,548
Montana	2,964	6,836	15,087	14,654	10,716
North Dakota	3,460	7,380	4,640	22,645	6,683
Nebraska	19,406	18,886	15,471	13,390	12,986
New Mexico	5,865	12,787	11,643	14,858	16,819
South Dakota	13,033	7,786	19,903	15,431	8,652
Utah	31,110	37,305	38,947	40,383	41,892
Wyoming	990	3,792	11,072	8,487	7,262

Liberty also found that most of the in-service line losses were in the UNE-P and Resale products. The line loss for all other products, such as UNE-L, has not been as large and in some states has even grown. The trends in UNE-P, Resale, and UNE-L are depicted in Tables III-B-9, III-B-10 and III-B-11 respectively. Additionally, graphs of the state-specific trends in line loss can be found in Appendix B.

[75] Because the data for 2008 is incomplete, it is possible that Nebraska's 2008 volumes will match or exceed its 2007 volumes which will represent the first time the downward trend in Nebraska LNP order is reversed.

Table III-B-9
State-Specific Lines In Service
UNE-P[76]
2004-2008

State	Year-End 2004	Year-End 2005	Year-End 2006	Year-End 2007	October 2008
Arizona	149,279	12,066	7,594	4,895	4,057
Colorado	95,748	32,726	17,319	10,420	8,879
Iowa	56,171	6,779	2,140	1,228	1,899
Idaho	15,862	588	6	4	16
Montana	7,264	365	214	83	65
North Dakota	19,085	1,055	24	30	343
Nebraska	38,918	2,743	764	429	479
New Mexico	24,895	6,261	4,484	2,985	3,064
South Dakota	31,151	581	6	5	0
Utah	74,109	16,854	4,514	3,028	2,663
Wyoming	19,142	2,326	2,134	1,430	1,491

Table III-B-10
State-Specific Lines In Service
Resale Lines
2004-2008

State	Year-End 2004	Year-End 2005	Year-End 2006	Year-End 2007	October 2008
Arizona	6,188	5,121	4,332	2,464	1,979
Colorado	11,842	8,506	5,147	4,960	4,494
Iowa	9,958	9,398	5,239	3,841	3,605
Idaho	1,339	1,045	714	551	554
Montana	9,652	6,800	5,067	3,843	3,362
North Dakota	4,818	3,222	2,536	1,506	1,040
Nebraska	2,925	2,179	1,069	846	778
New Mexico	2,812	1,855	1,554	1,165	1,022
South Dakota	5,936	4,263	3,357	2,788	2,399
Utah	2,973	3,688	2,586	1,646	2,140
Wyoming	3,129	2,848	1,681	1,017	839

Table III-B-11
State-Specific Lines In Service
"UNE-L and Other" Lines[77]
2004-2008

State	Year-End 2004	Year-End 2005	Year-End 2006	Year-End 2007	October 2008
Arizona	243,128	228,379	218,971	233,542	223,763
Colorado	259,628	248,610	227,469	250,508	237,070
Iowa	109,502	98,667	86,748	77,197	73,178
Idaho	36,685	33,069	30,681	32,018	31,389
Montana	19,951	19,478	22,745	22,751	21,979
North Dakota	37,542	35,704	35,759	32,798	32,623
Nebraska	57,119	45,687	41,716	40,437	39,981
New Mexico	43,591	39,409	39,538	37,763	34,021

[76] In response to Data Request #18, Qwest indicated that not all CLECs have completed the commercial agreements that require Qwest to continue reporting in-service UNE-P lines as UNE-P rather than as the QLSP commercial agreement replacement product for UNE-P.
[77] The "other" category includes all lines that are not provided by Qwest resold service or by UNE-P service. It does not include lines that are self-provided by the CLEC such as cable company lines.

South Dakota	17,661	15,871	15,099	13,921	14,303
Utah	130,971	127,708	122,927	125,051	122,485
Wyoming	7,876	7,799	9,441	9,379	9,646

Based on this analysis of volume trends, Liberty concludes:

- The TRO and TRRO had a significant impact on the volume of service orders and lines in service that Qwest receives and reports on in the PID measures.
- With the exception of orders for a small number of UNE-L products, EELs, and standalone number ports, the trend in Qwest's overall LSR order volumes continues to show declining volumes.
- Lines in service dropped dramatically for Resale and UNE-P, and to a much lesser extent for unbundled network element products.
- Competition is increasing from service providers that provide their own facilities to the end-users such as wireless and cable companies, as evidenced by the generally increasing volume of standalone number port orders. **[Qwest Comment: Again, the Report, in seeming to mention this only in passing, appears to ignore the significant meeting of the statements just made above – i.e. that customers migrating away from wireline service to competitors such as cable and wireless service providers represents a massive increase in incentives outside of the PAPs that Qwest has to work with CLECs, providing quality service, to help keep customers on its network. Also, this statement overlooks VoIP competitors, which are a major additional competitor.]**
- There are some state level variations to the regional level trends, such as the fluctuating or declining volumes in standalone number port orders in some states.

C. Qwest's Performance

Qwest's overall performance across the states during the course of the Study Period showed improvement. As detailed in Section III.A, failures for specific measures and their product disaggregations were the underlying cause of the majority of Tier 1 and Tier 2 payments.

To better understand the results relating to failure rate, the statistical design of the PAPs needs to be considered. That design allows for random variation in month-to-month performance. This is because a process that is producing parity results will, by chance, be below parity some months and above parity some months. The statistical tests that are part of the PAP only produce a failing result five percent of the time when Qwest is operating at parity. The percentage is lower for small sample sizes. Thus, failure 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.

When sample sizes are small, there is simply not enough information in most circumstances to make a clear determination whether Qwest has met the standard (at or above parity for parity measures or at or above the benchmark for benchmark measures), and the tests applied to determine penalties can lead to biases. For most states, the Z-score cutoff for failure declines when sample sizes are below ten, making it more likely that Qwest will pay penalties even when they are operating at parity. (Such a condition is known in statistics as a "Type I error.") In contrast, most states have now added the "One Allowable Miss Rule," which applies to benchmark and non-interval parity measures. This rule prevents a single miss from causing payments, and means that for small sample sizes (typically below 20) service below benchmark may not lead to payments. (Such a condition is known in statistics as a "Type II error.") The end result is that when sample sizes are small, Qwest will pay penalties in more circumstances when they are operating at parity (for parity measures), and Qwest will not pay penalties in more circumstances when they are operating below the benchmark (for benchmark measures and non-interval parity measures).

Liberty reviewed the average and median sample sizes per test over the Study Period. Because most measures are broken down by product, state, and CLEC, the median sample size was only about four for the entire period. The average sample size began at about 70 and dropped to 50 over the course of the Study Period. As a result, the small sample size rules used in the PAPs are becoming more important in determination of penalties, and the Type I and Type II error issues mentioned above are more prevalent.

The following graphs show the percentage of state-level measure failures over time by measurement domain: Pre-Ordering/Ordering (PO), Ordering/Provisioning (OP), Maintenance & Repair (MR), Billing (BI), and all other measures.

For Pre-Ordering/Ordering, measure failures began at about seven percent in 2004 and slowly declined to approximately three percent by 2008. As noted above, a failure rate near five percent would be expected even when Qwest is providing service at, or slightly above, the standard.

Figure III-C-1
Percent of Failed PO PIDs

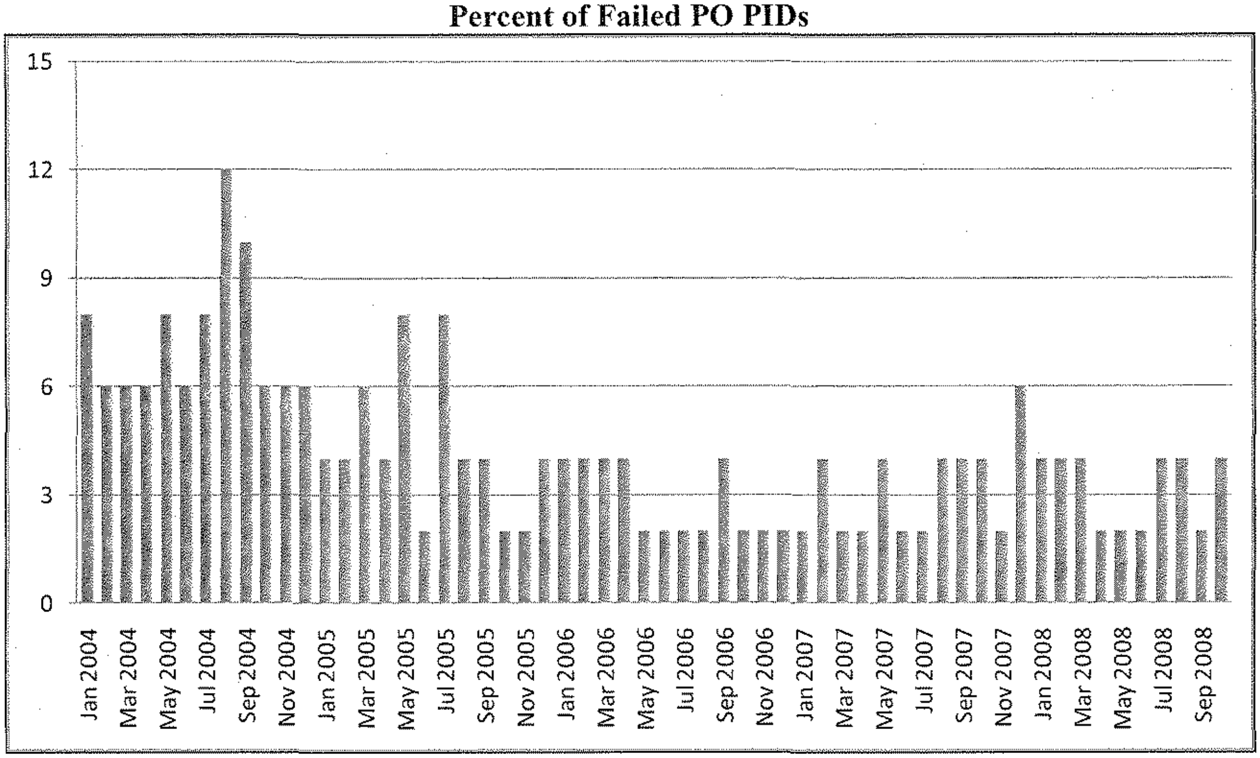


Table III-C-1 table shows the average failure rate by year for PO measures.

Table III-C-1
Average Failure Percent by Year - PO

Year	Average Percent Failure
2004	7.3
2005	4.3
2006	2.8
2007	3.2
2008	3.2

[Qwest comment: If the failure rate is less than 5%, as the above chart and all but one other chart shows, and as acknowledged elsewhere in this Report and in the next comment, Qwest is nly paying on random variation rather than poor service quality? This would be another set of data points supporting that the PAPs are now unduly penalizing Qwest and are no longer appropriate.]

For Ordering/Provisioning, the percent of PID measure failures was similarly low. The monthly average decreased from six percent in 2004 to two percent in 2008. Figure III-C-2 shows the monthly failure rate for OP measures over time.

Figure III-C-2
Percent of Failed OP PIDs

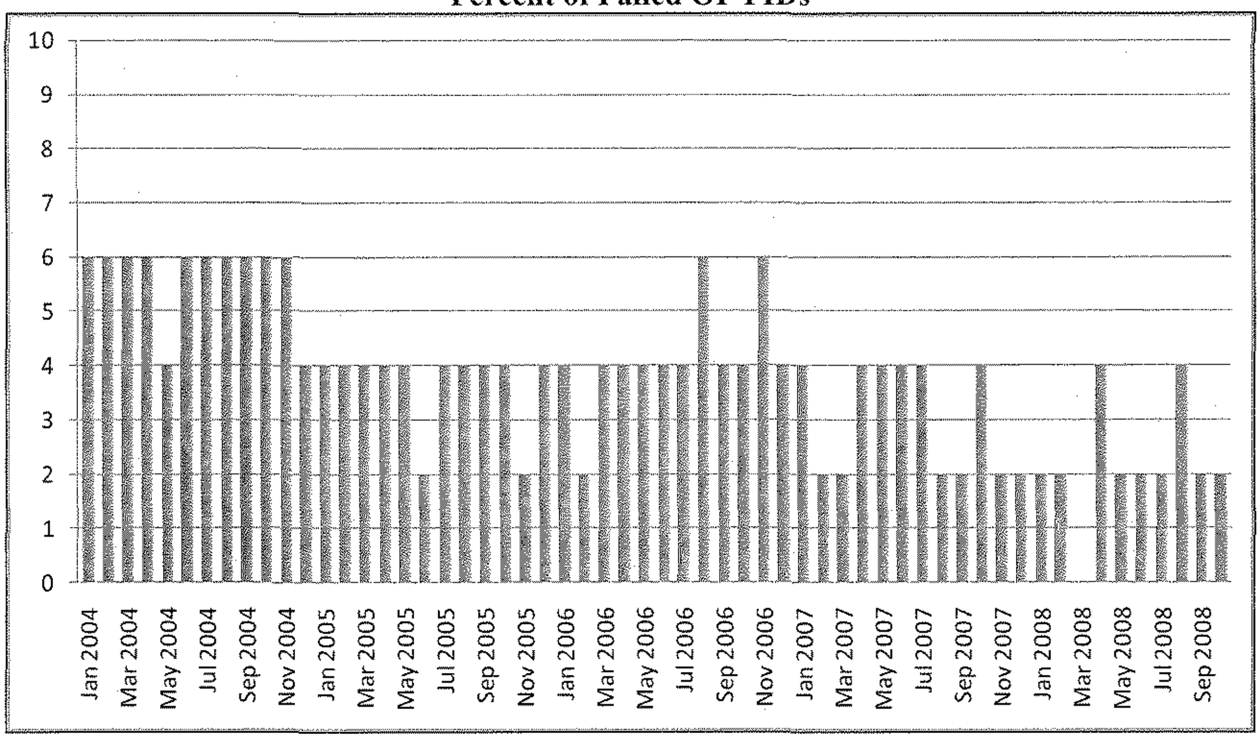


Table III-C-2 show the average failure rate by year for OP measures.

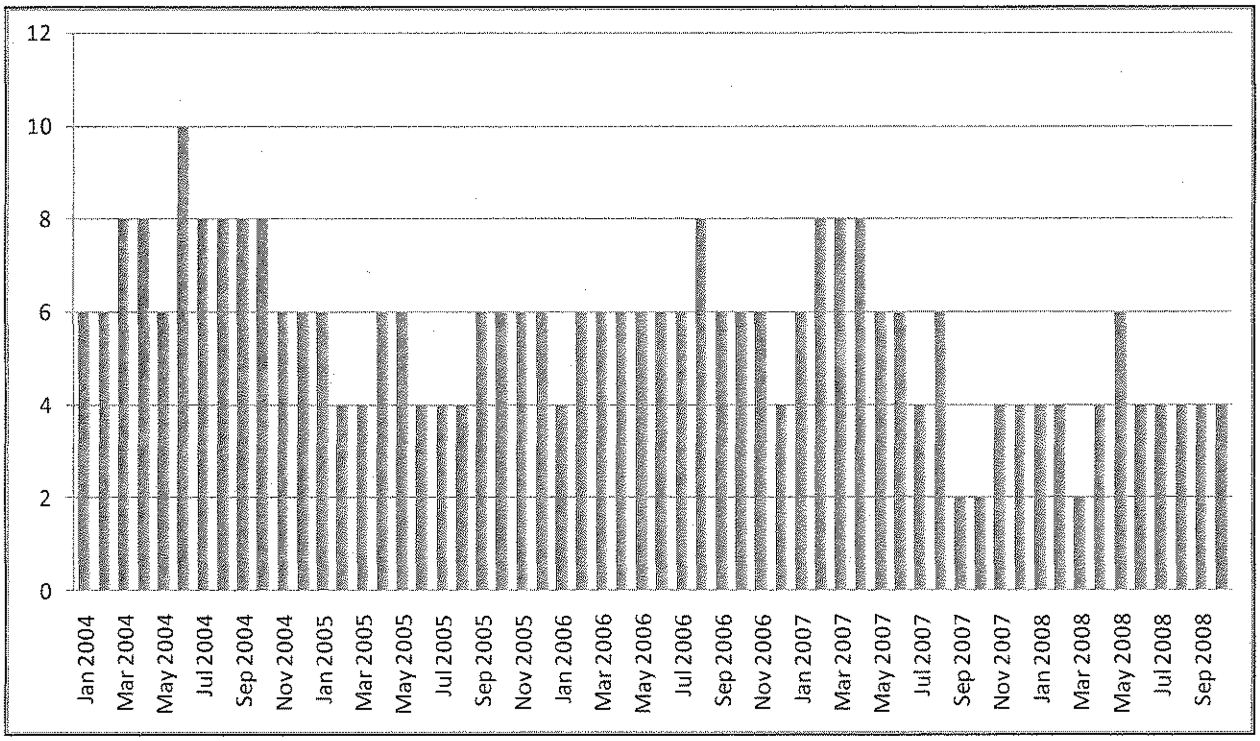
Table III-C-2
Average Failure Percent by Year - OP

Year	Average Failure Percent
2004	5.7

2005	3.7
2006	4.2
2007	3.0
2008	2.2

For Maintenance & Repair the percent of PID failures also remained at or below ten percent. The monthly averages decreased from seven percent in 2004 to four percent in 2008. The following figure shows the monthly failure rate for MR measures over time.

Figure III-C-3
Percent of Failed MR PIDs



The following table show the average failure rate by year for MR measures.

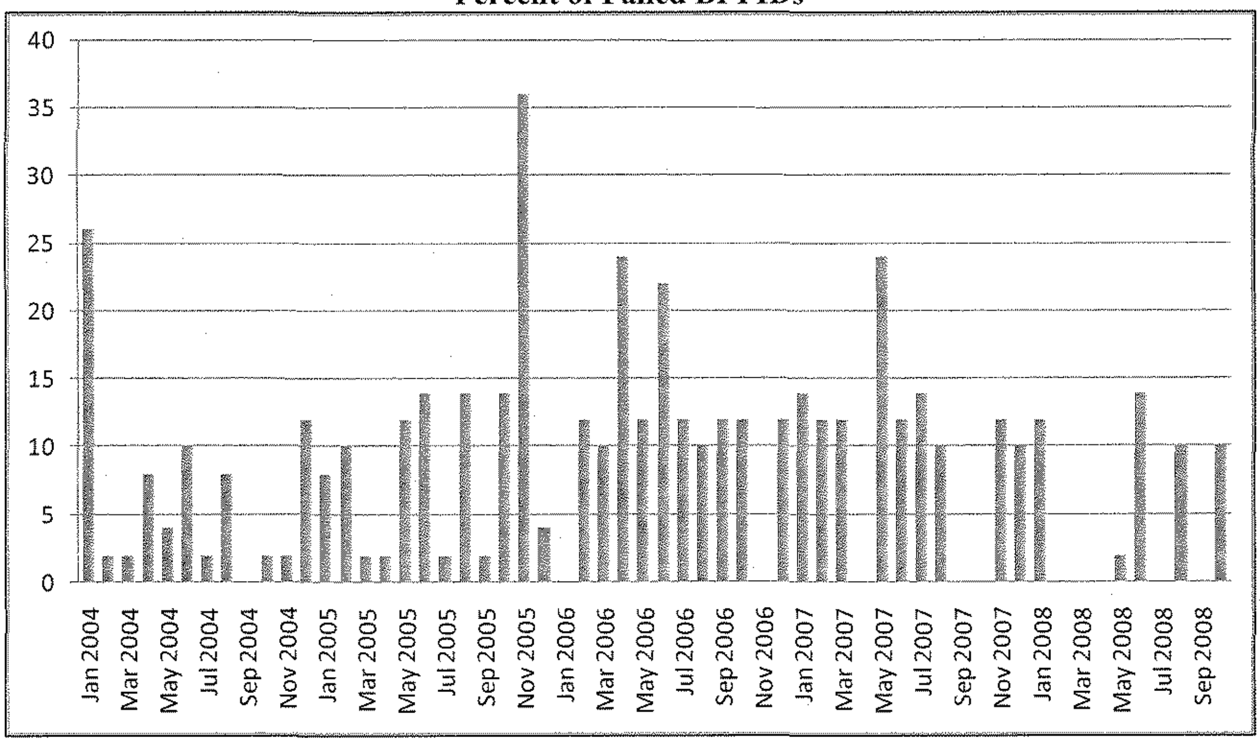
Table III-C-3
Average Failure Percent by Year - MR

Year	Average Failure Percent
2004	7.3
2005	5.2
2006	5.8
2007	5.3
2008	4.0

For Billing measures, the percent of PID measure failures varied more over time than the other domains. In 11 out of the 58 months under review (approximately 19 percent), there were no failures, while in November 2005 the percentage peaked at 36 percent. For six of the last 12 months, failure rates were at or above ten percent. The figure below shows monthly failure rates for BI measures.

[Qwest Comment: In 2008, all categories of measurements had failure rates of less than 5%. According to Liberty, a "failure rate near five percent … would be expected even when Qwest is providing service at, or slightly above, the standard." Performance at this high level warrants consideration of whether the PAP in its present form is appropriate any longer, since it penalizes Qwest where performance is overall above standard, and is thus not needed any longer. Liberty's analysis doesn't consider that some of the higher rates of penalties had more to do with design flaws in the original PAP. For example, for BI-3A prior to 2007, Qwest often paid penalties for performance well above the 98% benchmark that was established with the PMP Stipulation. Please see also comments on BI-3A in Qwest's main body of comments.]

Figure III-C-4
Percent of Failed BI PIDs



The following table show the average failure rate by year for BI measures.

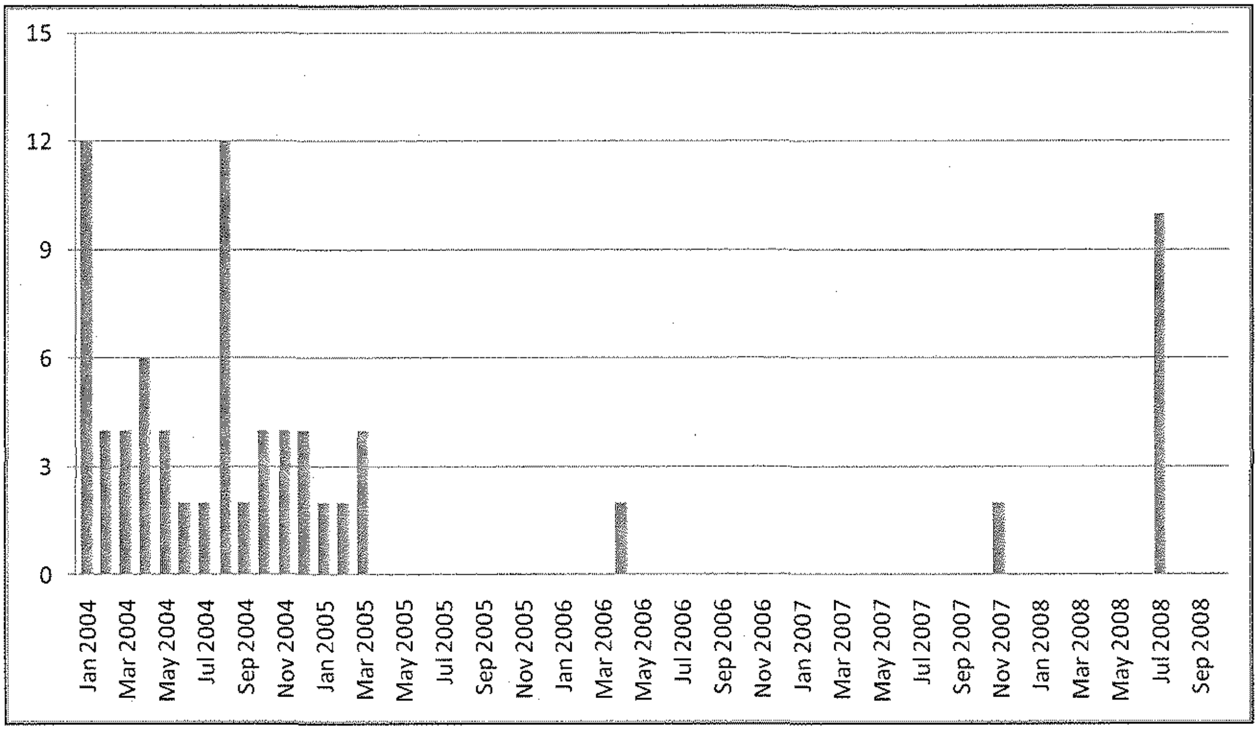
Table III-C-4
Average Failure Percent by Year - BI

Year	Average Failure Percent
2004	6.5
2005	10
2006	11.5
2007	10

2008	4.8

For all other measures, there were no PID failures in 40 out of 58 months under review. In January and August 2004, however, the PID failure rate peaked at 12 percent. In July 2008, the PID measure failure rate was ten percent. In general, the failure rate for the other measures was low with a few anomalies.

Figure III-C-5
Percent of Failed PIDs for Other Measures



The following table show the average failure rate by year for other measures.

Table III-C-5
Average Failure Percent by Year – Other

Year	Average Failure Percent
2004	5.0
2005	0.7
2006	0.2
2007	0.2
2008	1.0

In summary, Qwest's failure rate by measurement area across states showed improvement during the Study Period. For all domains, average failure rates in 2008 are below five percent, indicating that Qwest performance overall is at or above the standard, according to the statistical framework inherent in the QPAPs. **[Qwest Comment: This seems to be in conflict with Liberties earlier statement that, due to volume decline, there is an increase in Type I errors causing increased payments when Qwest did not fail – yet payments are down and continue to decline in conjunction with volume decline.]** However, for certain measurements and products the failure

rates have been consistently high. In particular MR-5 EEL_DS1 and UBL_DS1 **[Qwest Comment: Part of the CPAP IM RCA requests dated 09/06, 05/07, and 10/08 explain the payments, with the IM agreeing that no further action is needed and there was no evidence of discrimination]**, MR-6 (multiple products) **[Qwest Comment: Part of the CPAP IM RCA requests dated 09/06, 05/07, 10/08, and 3/09 explain the payments, with the IM agreeing that no further action is needed and there was no evidence of discrimination.]**, MR-8 UBL_DS1 **[Qwest Comment: Part of the CPAP IM RCA request dated 12/03 explained the payments, with the IM agreeing that no further action is needed and there was no evidence of discrimination.]**, OP-4 EEL_DS1 and UBL_DS1 are consistently above five percent, indicating continued substandard performance. **[Qwest Comment: Please see the chart below, showing sharp decline in year-over-year view.]** Also, as detailed in Section III.A, failures for specific measures and their product disaggregations caused the majority of Tier 1 and Tier 2 payments. These payments were not caused by poor performance for an entire measurement area.
[Qwest Comment: Again, the Report does not consider why certain metrics have high PAP payments. More than half, 34% of the 60% (more precisely 58%), are MR8 payments. The Report did not consider the CPAP IM RCA regarding MR8 or OP4 findings regarding PAP payments. The IM and the Colorado Commission agreed that there were flaws in the MR-8 metric and that none of the PAP payments were due to any discriminatory practices. The Commission suspended MR-8 payments until the issues could be resolved.]

D. Historical Analysis of Key Payment Drivers

The extreme complexity of the PAP payment mechanisms makes it difficult to summarize the key drivers of payments without some sort of modeling. Thus, Liberty performed statistical analyses, including regression modeling, of Tier 1 and Tier 2 payments to determine the major factors driving the payments in the 11 states reviewed during the Study Period. These analyses adjusted for measure and product, and thus the specific results given are averages over measure and product.

Liberty found four major items that led to increases or declines in payments: i) transaction volume,[78] ii) PID failure rate, iii) Number of CLECs with activity, and iv) severity of failure. Transaction volume is expected to impact payment amounts because most payments are Per Occurrence, meaning that the amount paid is based on the number of transactions that fell below the standard or benchmark. However, with lower volume and the same failure rate, there will be fewer such transactions driving payments. PID failures lead directly to payments in most cases, so PID failure rate should be highly associated with payment amount. The number of CLECs with activity should not obviously affect payments once total transaction volume has been considered if the performance for each CLEC is approximately the same. The reason why the number of CLECs might have an effect could be that there are differences among CLECs or that a higher number of CLECs leads to more Type I errors, which is the error that occurs when Qwest is required to make a payment despite service that is at or above standard in general. This error can happen as a result of the statistical testing that is performed to determine that parity was met. Finally, severity should have some impact on payment amounts, since the number of occurrences increase with severity of the failure and because some states have penalties for more severe failures.

[78] Transaction volume is defined as the CLEC denominator used in the measure calculations. For Ordering and Provisioning, volume is typically number of orders while for Maintenance & Repair, it is typically the number of troubles reported. For Billing, it is typically total dollar amount billed.

[Qwest comment: The Report provides no supporting information, such as R-squared values, that would indicate the fit of the regression model to the data and whether this analysis is fruitful. Nevertheless, there may still be serious design flaws in the regression analysis. Please see next comment and also Qwest's responses in the main body of its comments.]

The effects of these four factors were largely consistent across states, product, and measure, with the exception of Billing. Billing is discussed separately below. For non-Billing measures, the biggest determinant of payments made was the number of CLECs, while for Billing, the biggest driver was transaction volume (typically the total dollar amount billed).
[Qwest Comment: Making sterile conclusions about factors that seem to drive payments is fatally flawed without considering whether there are more fundamental explanations, such as design flaws in BI-3A prior to and addressed by the 2007 Stipulation. Because occurrences were calculated on the basis of dollars, the BI-3A payments were often out of proportion to the severity of the miss. For a single dollar variation from parity, Qwest paid $25. Under the compromise payment structure negotiated in the 2007 Stipulation, BI-3A considers the total dollars adjusted in determining the "severity" of the miss and applies a graduated per occurrence amount. Please see also comments on BI-3A in the main body of Qwest's comments.]

Tier 1 Measure Payments

With the exception of Billing-related payments, transaction volume had little or no effect on Tier 1 payment amounts, either at a regional level or by individual state. However, the other three factors considered (*i.e.,* failure rate, number of CLECs, and severity) did affect payments. For example, a doubling of the failure rate typically gave rise to an increased payment of $15 for the related measure and disaggregation. An additional CLEC meant that, on average, $35 more in payments were made. A doubling of the severity of the miss typically resulted in an increased payment of $6. These results varied some by state, but the overall conclusion was the same.

Results for Billing measures were both higher overall and substantively different in that transaction volume had a very significant and substantial effect on total payments. The relationship between failure rate and severity remained similar to that in non-Billing measures; *i.e.,* failure rate had far more effect than severity. On the other hand, the addition of a CLEC was less important than a doubling of overall failure rate. This differs from the non-Billing measures, for which change in the number of CLECs was more important than either failure rate or severity.
[Qwest Comment: Liberty's analysis of payments for Billing measurements is invalid, because flaws in the payment structure in BI-3A were a major contributor to the total dollars paid for Billing measurements over the study period. Please see also comments on BI-3A in Qwest's main body of comments.]

Payments for Tier 2 Measures

For its regression analysis of Tier 2 measures, Liberty found that it was not possible to measure the effects by state, because for many products and measures, there were no Tier 2 payments in a particular state. Thus, Liberty looked at the effects for all 11 states in a single model for non-Billing measures and a second model for Billing measures.[79] Because most Tier 2 payments are for the

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[79] Liberty reviewed Colorado separately for non-Billing measures, but there was not sufficient data to consider Colorado separately for Billing measures. Liberty handled Colorado differently because of the structural change in the CPAP that resulted in almost no Tier 2 payments after May 2006.

aggregate CLEC, Liberty did not attempt to consider the effect of adding an individual CLEC. Liberty found that volume did not have a strong effect on overall Tier 2 payments, though for non-Billing measures (except Colorado) there was a statistically significant effect. Similarly, failure rates were generally not statistically significantly related to Tier 2 payment amounts. Severity had a clear and strong effect on Tier 2 payments.

E. Industry Trends

In order to understand how changes in the telecommunications industry might affect the continued applicability of the PAPs or the relevance of aspects of the PAP structure, Liberty examined recent industry trends in the Qwest local operating territory. Liberty reviewed the most current data available on the FCC's website to investigate industry trends.[80] One of the most significant trends is the continuing decline of in-service access lines for traditional ILEC wireline carriers. Since its nationwide peak of 188.5 million access lines in service at year-end 2000, the number of traditional wireline access lines has decreased by 22.1 percent to a year-end 2006 total of 146.9 million access lines in service.[81] These figures include end-user access lines, access lines resold to other carriers, and UNE-P lines. They do not include CLEC lines provided over their own facilities, such as cable company lines. Table III-E-1 reflects the 10-year trend in ILEC wireline lines in service.

Table III-E-1
Trends in ILEC Wireline Access Lines
1997-2006

Year-end	Wireline access lines in service	Annual Growth
1997	173,866,799	N/A
1998	179,849,045	3.4
1999	185,002,911	2.9
2000	188,499,486	1.9
2001	185,587,160	-1.5
2002	180,095,333	-3.0
2003	173,147,710	-3.9
2004	165,979,938	-4.1
2005	157,037,503	-5.4
2006	146,848,926	-6.5

For total access lines in service the FCC reports include all access lines, including those that are self-provided by the CLECs. Table III-E-2 reflects the three-year trend from year-end 2005 through year-end 2007 of total ILEC and CLEC in-service access lines for each state participating in this study.[82]

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[80] FCC documents referenced by Liberty include "Local Telephone Competition: Status as of December, 2007" and "Trends in Telephone Service," August 2008 report. Both documents were created by the Industry Analysis and Technology Division of the Wireline Competition Bureau and are dated September 2008.
[81] "Trends in Telecommunications Service," August 2008; p. 7-1 and Table 7.1. Unlike other data in these reports which typically extend to year-end 2007, this data was only provided through year-end 2006. Additionally, this reduction is not entirely indicative of the actual reduction in access lines during this timeframe and understates the number of lines that were lost. Prior to 2005 only LECs with at least 10,000 lines in a state were required to report to the FCC. Beginning with the June 2005 report, all LECs were required to report their lines-in-service counts regardless of the number of lines they had. Therefore all access line counts from 2000 to year-end 2004 have been understated by not including the lines for these smaller carriers.
[82] Because of the data issue referenced in the previous footnote, this table does not reflect data prior to 2005.

Table III-E-2
Total ILEC and CLEC Access Lines In Service[83]
11-State View

State	2005 Lines In Service	2006 Lines In Service	Percent change 2005-2006	2007 Lines In Service	Percent change 2006-2007
Arizona	3,273,829	3,193,105	-2.5	3,104,872	-2.8
Colorado	2,928,554	2,658,781	-9.2	2,451,394	-7.8
Idaho	748,393	740,226	-1.1	703,396	-5.0
Iowa	1,546,333	1,511,339	-2.3	1,468,712	-2.8
Montana	524,610	517,114	-1.4	509,566	-1.5
Nebraska	918,609	892,697	-2.8	888,691	-0.5
New Mexico	957,838	934,816	-2.4	888,496	-5.0
North Dakota	345,786	337,370	-2.4	324,159	-3.9
South Dakota	415,243	397,441	-4.3	387,330	-2.5
Utah	1,184,901	1,139,235	-3.9	1,055,368	-7.4
Wyoming	285,637	281,587	-1.4	273,091	-3.0
11-State Total	13,129,733	12,603,711	-4.0	12,055,075	-4.4

According to its 2008 Annual Report, Qwest's line loss has been more severe than for the industry as a whole. **[Qwest Comment: The preceding statement further emphasizes the fact that Qwest has major incentives, outside of the PAPs and more significant that in the industry as a whole, to work with CLECs in providing quality service to stem line losses.]** Qwest indicated that between 2006 and 2007 it lost 1,006,000 access lines, a 7.3 percent decrease in access lines from the previous year, and between 2007 and 2008 it lost an additional 1,224,000 access lines, a decrease of 9.6 percent from the previous year. However, Liberty notes that although the nationwide figures shown in Table III-E-1 and the state-wide numbers shown on Table III-E-2 represent a total reduction of access lines in service for the entire industry, some of the access-line loss reported by Qwest in its annual report was from losses to competitors using their own facilities and not a complete disconnect of the access line.

In its report, the FCC suggests that this reduction in wireline access lines is likely due to some consumers substituting wireless service for wireline service, and some households eliminating second lines when they move from dial-up internet service to broadband service.[84] This assumption is supported by the data in the FCC's report which shows that from 2005 through 2007, there was a 13.3 percent reduction in residential lines nationwide whereas the nationwide reduction in business lines was only 2.1 percent.[85] Residential customers are more likely than business customers to disconnect their wireline service and replace it with a wireless alternative. They are also the most likely users of dial-up internet access.

Unlike the wireline industry, the FCC report indicates that the wireless industry is experiencing robust growth.[86] From year-end 2005 to year-end 2007 the number of wireless subscribers increased by 45,568,000 subscribers, a 22.4 percent increase in wireless phone users over the two-year period. Total nationwide wireless subscribers at year end 2007 were 249,235,715. This means that given the 2007 population estimate of 302 million people in the United States, cell phone penetration has

[83] "Local Telephone Competition Status as of December, 2007;" Tables 10 and 11.
[84] "Trends in Telecommunications Service," August 2008; p. 7-1.
[85] "Local Telephone Competition Status as of December, 2007;" Table 2.
[86] "Local Telephone Competition Status as of December, 2007;" Table 14.

reached 82.8 percent of the total population.[87] Table III-E-3 reflects the three-year trend in wireless growth in the 11-states, providing the number of wireless subscribers in each state at the end of each year.

Table III-E-3
Total Wireless Subscribers
11-State View

State	2005 subscribers	2006 Subscribers	Percent change 2005-2006	2007 Subscribers	Percent change 2006-2007
Arizona	3,844,357	4,405,032	14.6	4,799,648	9.0
Colorado	3,246,994	3,608,209	11.1	3,967,902	10.0
Idaho	834,219	972,825	16.6	1,078,387	10.9
Iowa	1,811,400	2,009,826	11.0	2,165,772	7.8
Montana	525,003	619,620	18.0	693,507	11.9
Nebraska	1,160,062	1,272,067	9.7	1,387,022	9.0
New Mexico	1,170,186	1,333,210	13.9	1,489,120	11.7
North Dakota	431,675	472,799	9.5	513,238	8.6
South Dakota	481,404	547,812	13.8	596,562	8.9
Utah	1,529,501	1,774,755	16.0	1,970,501	11.0
Wyoming	342,008	387,164	13.2	441,161	14.0
Total	15,376,809	17,403,319	13.2	19,102,820	9.8

Nationwide, the CLECs experienced a one percent decline in their market share for access lines in service between 2005 and 2007, going from a market share of 19.1 percent of the total access lines in service to a share of 18.1 percent. During this period the CLECs' portion of the total access-line market dropped from 31.4 million access lines in service at year-end 2005 to 28.7 access lines in service at year-end 2007.[88] As shown in Table III-E-4, this loss was driven mainly by service provided over UNEs, a category which the FCC's TRO and TRRO orders significantly changed by delisting some products, including UNE-P.

Table III-E-4
CLEC Access Lines by Service Type[89]

Year	Total CLEC Lines (000)	Resold[90] Lines (000)	Percent Resale	UNE Lines (000)	Percent UNE	CLEC Owned Facilities (000)	Percent Facilities Based
2005	31,388	6,704	21.4	14,521	46.3	10,163	32.4
2006	28,626	5,819	20.3	11,663	40.7	11,144	38.9
2007	28,717	6,411	22.3	10,582	36.8	11,724	40.8

[87] Population estimate obtained from the Population Reference Bureau at www.prb.org.
[88] "Local Telephone Competition Status as of December, 2007;" Table 1.
[89] "Local Telephone Competition Status as of December, 2007;" Table 3.
90 The FCCs report defines resold lines as including lines that the CLEC provides by using special access lines or other facilities that it obtains from unaffiliated ILECs or CLECs as tariffed services or under commercial agreements

Of the CLECs providing service using their own facilities, the FCC's report indicates that there has been significant growth in cable companies providing telephone service over their cable facilities. According to the FCC data, access lines over cable facilities between 2005 and 2007 grew by 64.7 percent going from 5.1 million lines at year-end 2005 to 8.4 million lines at year-end 2007. By year-end 2007, cable facilities accounted for 29.2 percent of all CLEC lines.[91]

Table III-E-5 shows the year-end CLEC lines in service for the 11-states for 2005 through 2007. According to the FCC report, these figures reflect all CLECs doing business in each of the states and include access lines for cable and other companies that provide their own access-line facilities to the end users. These figures do not, however, include mobile wireless users. As shown in Table III-E-5, there are some very significant variations in the CLEC line growth trends with most states showing growth in overall CLEC access lines, while states such as Colorado and Utah have lost CLEC lines over the three-year period.
[Qwest Comment: These figures do not include cable telephony to the extent it involves VoIP. Cable Companies using VoIP did not have to report lines to the FCC, and it is clear that some, such as Comcast, did not report all of their VoIP phone lines. Thus, some statements on this page are not accurate, and CLEC lines including cable are thus understated. The current FCC requirement for cable companies to report VoIP lines on Form 477 (WC Docket 07-38, R & O Released June 12, 2008) was not in effect for the 2007 data referenced above.]

Liberty notes that the state-specific access line data reported in the FCC's report are very different from the in-service quantities that Liberty derived from the Qwest reported access lines in service using the denominator of the MR-8 "Trouble Rate" measure. For the total CLEC access lines shown on Table III-E-5, in all cases the FCC's line counts are substantially higher than the total CLEC lines reported by Qwest.[92] A number of factors contribute to this difference. These factors include line counts in the FCC report from companies that self-provide access line facilities and thus will not be reflected in Qwest's reported numbers, CLECs doing business with Qwest under commercial agreements that are shown as resold lines in the FCC report but are not included in Qwest's reported MR-8 figures, use of access line equivalents for reporting lines in the FCC report, and possible reporting errors. To the best of Liberty's knowledge there are no audits of the data reported by the telecommunications carriers to the FCC for the creation of its report.

Table III-E-5
CLEC Access Lines
11-State[93]

State	2005 Total CLEC Lines	2006 Total CLEC Lines	Percent change 2005-2006	2007 Total CLEC Lines	Percent change 2006-2007
Arizona	978,582	1,017,866	4.0	1,070,963	5.2
Colorado	590,821	452,270	-23.5	394,574	-12.8
Idaho	75,951	76,063	0.2	74,962	-1.5
Iowa	221,758	238,161	7.4	268,858	12.9
Montana	52,014	71,746	37.9	93,177	29.9
Nebraska	237,496	248,839	4.8	265,020	6.5

[91] "Local Telephone Competition Status as of December, 2007;" Table 5.
[92] Total CLEC lines reported by Qwest can be found in Table III-B-7 in section III.B of this report.
[93] "Local Telephone Competition Status as of December, 2007;" Table 9.

New Mexico	65,123	75,169	15.4	72,932	-3.0
North Dakota	66,830	70,031	4.8	70,767	1.1
South Dakota	136,073	119,025	-12.5	119,051	0.0
Utah	260,478	244,772	-6.0	211,583	-13.6
Wyoming	34,004	43,552	28.1	48,391	11.1
Total	2,719,130	2,657,494	-2.3	2,690,278	1.2

The FCC's August 2008 "Trends in Telephone Service" report, which provides data through June of 2007, shows that the availability of high-speed service lines has more than doubled in the two-year period from June 2005 through June 2007.[94] According to the data reported by the FCC in June 2005 there were 42,517,810 high-speed lines available to end users and by June of 2007 the number of these available lines grew to 100,921,647, an increase of 137 percent over the two year period.[95] Table III-E-6 provides information on the number of lines available by technology type during this period. As can be seen from this table, during this period there was explosive growth in mobile wireless high-speed data access which overtook both cable modem and ADSL as the most prevalent technology available to subscribers.

Table III-E-6
High-Speed Lines Over 200kbps in One Direction
By Technology Type[96]

Technology	June 2005 (000)	June 2006 (000)	Percent change 2005-2006	June 2007 (000)	Percent change 2006-2007
ADSL[97]	16,316	22,584	38.4	27,516	21.8
SDSL[98]	412	337	-18.2	320	-5.0
Traditional Wireline	487	611	25.5	709	16.0
Cable Modem	24,017	29,174	21.5	34,409	17.9
Fiber	316	686	117.5	1,403	104.5
Satellite	377	495	31.3	669	35.2
Fixed Wireless	209	361	72.7	586	62.3
Mobile Wireless	380	11,017	2799.2	35,305	220.5
Power Lines and Other	5	5	0.00	5	0.00

Table III-E-7 reflects the growth in high-speed access lines in the 11-states, while the type of technology used to provide these lines is provided in Table III-E-8.

[94] For FCC reporting purposes, high-speed service "lines" are considered both wired and wireless connections to end users that are faster than 200kbps in at least one direction. For FCC reporting purposes, high-speed service "lines" are defined as connections, both wired and wireless, to end users that are faster than 200kbps in at least one direction.
[95] For ILECs and cable system operators, reporting is based on the availability of high-speed service to their respective end users whether or not the household actually subscribes to the service.
[96] "Trends in Telecommunications Service," August 2008; Table 2.1.
[97] Asymmetric Digital Subscriber Line
[98] Symmetrical Digital Subscriber Line

Table III-E-7
High-Speed Lines Over 200kbps in One Direction
11-States[99]

State	June 2005 (000)	June 2006 (000)	Percent change 2005-2006	June 2007 (000)	Percent change 2006-2007
Arizona	809,819	1,392,711	72.0	2,192,644	57.4
Colorado	688,189	1,165,853	69.4	1,827,860	56.8
Idaho	149,023	202,926	36.2	483,049	138.0
Iowa	325,710	446,187	37.0	826,096	85.2
Montana	90,583	139,946	54.5	346,230	147.4
Nebraska	253,968	355,013	39.8	537,693	51.5
New Mexico	174,534	252,361	44.6	544,706	115.8
North Dakota	86,274	108,476	25.7	144,994	33.7
South Dakota	112,506	138,621	23.2	164,627	18.8
Utah	259,150	471,137	81.8	818,665	73.8
Wyoming	55,905	70,574	26.2	205,711	191.5
Total	3,005,661	4,743,805	57.8	8,092,275	70.6

Table III-E-8
High-Speed Lines by Technology Type
June 2007 - 11-States[100]

State	ADSL	SDSL	Traditional Wireline	Cable Modem	Fiber	Fixed Wireless	Total[101]
Arizona	405,724	1,491	12,630	850,307	1,996	17,122	2,192,644
Colorado	529,504	2,810	16,060	560,557	1,285	21,864	1,827,860
Idaho	129,188	340	1,507	116,273	635	34,905	483,049
Iowa	270,101	4,244	3,151	267,712	5,633	14,802	826,096
Montana	95,790	2,549	876	74,246	286	7,653	346,230
Nebraska	124,126	3,135	1,081	238,019	527	10,866	537,693
New Mexico	179,856	401	1,867	117,336	424	2,518	544,706
North Dakota	51,096	3,288	382	76,353	5,508	4,873	144,994
South Dakota	45,772	3,895	252	100,903	2,724	4,878	164,627
Utah	249,683	5,454	N/A	3,947	1,907	21,252	818,665
Wyoming	49,933	1,657	190	N/A	294	3,445	205,711
Total	2,130,773	29,264	37,996	2,405,653	21,219	144,178	8,092,275

In summary, based on review of the FCC's reports, as well as the data derived from Qwest's PID measurement reports and from Qwest's annual report, Liberty notes the following trends:

- Subscribers to telephone service using traditional wireline facilities (*i.e.,* twisted pair) have been continually declining since 2000.

[99] "Trends in Telecommunications Service," August 2008; Table 2.7.
[100] "Trends in Telecommunications Service," August 2008; Table 2.6.
[101] Total exceeds the sum of the parts because, although specific data for Satellite, Mobile Wireless and Power Lines are not available at the state level, these technologies are included in the total line count.

- Wireless services are experiencing considerable growth and are contributing to the loss of wireline services as customers give up their traditional phone service in favor of a wireless option.
- Facilities-based CLECs such as cable companies are growing while CLEC services provided via Resale and UNE are generally on the decline.[102]
- Though CLECs are becoming less dependent on the Qwest for Resale and, to a lesser extent, UNE products, many CLECs are still dependent on these services and products to serve their end users. **[Qwest Comment: The Report provides no evidence as to this "claimed dependency" other than that, because CLECs subscribe to Qwest's services, they are dependent. Any yet the opening phrase about them "becoming less dependent" implies this characterization is misapplied.]**
- Access to high-speed data lines has grown significantly over the period of 2005-2007, especially through mobile wireless facilities. Cable facilities and ADSL service are also widely used technologies for access to broadband services. Many CLECs that provide a DSL service alternative to Qwest are dependent on Qwest's wholesale products, such as UNE-L to serve their customers.

[Qwest Comment: A more complete analysis of Industry Trends would include what is happening with PAPs in other parts of the country. For example the AT&T Midwest's Remedy Plan now contains a specific end date. See the following excerpt from their plan: "6.5 Notwithstanding the parties' continued operation under the Interconnection Agreement or any "evergreen clause," AT&T MIDWEST's obligation for liquidated damages pursuant to this Performance Remedy Plan will automatically cease on December 31, 2010, unless the parties agree to extend this Plan via an amendment to their Interconnection Agreement or successor Agreement. Upon request of CLEC, AT&T shall commence negotiations, which may include multiple CLECs, for a successor Remedy Plan no later than June 30, 2010."]
Trends such as the shift away from wireline services and the decline in the use of Resale and, to a lesser extent, UNEs by the CLECs suggest the need for some revisions to the PAP. However, because many CLECs continue to depend on Qwest to serve their customers through Resale and UNE services and products, the PAP remains a critical tool to ensure parity of service performance by Qwest.

[Qwest Comment: Please see Qwest's response in the main body of its comments. CLEC dependence on Qwest to serve their customers is not a criterion grounded in law or regulation to require continuation of PAPs.]

F. Summary and Conclusions

From the analysis of the historical data on PAP payments, Liberty determined that both Tier 1 and Tier 2 payments have decreased overall across the Qwest operating region and in each of the participating states during the Study Period (January 2004 through October 2008). The principal reasons for this reduction applicable across the region are: i) a decline in the number of active

[102] As shown on Tables III-B-9 and III-B-10, found in section III-B of this report, between 2004 and 2008 Qwest Resale lines have shown a continuous decline in CLEC lines purchased from Qwest; however, the trend in UNE lines varies by state with some states showing stable to slightly growing UNE line counts.

CLECs and ii) improvement in Qwest's performance. Liberty found that the Qwest failure rate (number of times Qwest has been out of conformance with the standards as determined by the PAP tests) has generally decreased in all measure domains across this time period. Although the general trend in payments was evident in all the participating states, there was some variation in the detail trends from state to state. For example, there was a dramatic decrease in Tier 2 payments in Colorado, after implementation of changes in 2006 after the CPAP Three-Year Review. Only a few PID measures generate the majority of the PAP payments; 15 measures have been the source of 97 percent of the payments, with the Maintenance and Repair (MR) domain dominating the payments, particularly recently. Only three measures have been responsible for approximately 60 percent of the payments: MR-8 (Trouble Rate), BI-3A (Billing Accuracy – Adjustments for Errors), and OP-4 (Installation Intervals).

Liberty found that CLEC order volumes and lines in service reported in the PID measures have also declined markedly during the Study Period. A major contributor to this decline was the adoption by the FCC of the TRO and TRRO orders, which delisted a number of UNEs including those key to UNE-P (particularly unbundled switching). Lines in service dropped dramatically for Resale and to a much lesser extent for UNE products (with the exception of those delisted by the TRO and TRRO). Despite the decline in Resale and UNE orders, orders for number porting have remained high, indicating the increasing importance of facilities-based competitors. There are some state-level variations to these regional trends, with a large share of the market in Resale in some states, for example.

Liberty used data reported by the FCC to examine trends in the telecommunications industry as a whole in the Qwest operating territory, including trends in competition. Such data provide information on the full set of competitors and competitive services, not just those captured in the Qwest PID measures. This data reveals that there has been an increasing decline in subscribers to services using traditional wireline facilities, but growth in the wireless services. Fully facilities-based competitors, such as cable companies, have a growing subscriber base, while services provided via Resale and, to a lesser extent, UNE are in decline. Nevertheless, there is still a significant number of CLECs with a considerable subscriber base that still depend on Qwest's services and products to serve their end users. There has also been a considerable growth in broadband services, and many CLECs use Qwest's UNE-L to provide these services. In addition, Liberty understands that a number of CLECs rely on wholesale services, such as QLSP, that Qwest provides through commercial agreements rather than as UNEs, particularly after the FCC's TRO and TRRO orders eliminated UNE-P and other network elements from the list of UNEs. However, Qwest does not include these services in its PAP payment calculations and PID reports, and Liberty has no data to quantify the volume of products and services provided through these means.

Based on this analysis, Liberty considered the continuing effectiveness, value, and usefulness of the PAP. In making this evaluation, Liberty considered how important the PAPs are in continuing to maintain competition. In particular, this involved considering:

- The number of active CLECs with a significant total subscriber base and dependent on Qwest's wholesale products and services to serve their end users
- The level of Qwest's penalty payments
- The extent of Qwest's performance that is out of compliance with standards
- The burden on Qwest of maintaining the PAPs and whether this burden outweighs the advantage of protecting competitors.

Although recent changes in the industry have resulted in significant reductions in volumes of a number of services, there are still a number of CLECs with significant a subscriber base and transaction volumes. These CLECs depend on Qwest's wholesale services and products in various ways to provide service. There are few realistic alternatives available to Qwest's wholesale products and services for essential components these CLECs use, such as UNE-L. Although these CLECs' share of the market has declined overall since 2004, they continue to provide significant competition for Qwest, particularly in such important parts of the market as broadband and business services, as shown in Tables III-B-2 and III-B-5. These tables show the products that have experienced growth in CLEC orders and lines in service growth between 2004 and 2008. The CLEC growth products are those that a CLEC would typically be ordering to service either a business customer (*e.g.,* DS-1 Loop) or a broadband customer (*e.g.,* xDSL Loops, 2-Wire Non-Loaded Loop).

Although there is evidence that Qwest's wholesale performance has been improving, the PAPs continue to provide incentives to help ensure that Qwest's performance level does not deteriorate. Despite the decline in PAP penalty payments, the level of payments is still significant. In addition, Liberty is aware that there have been recent cases, in Hawaii and northern New England, where the inability of an incumbent local exchange company to provide reliable and high quality wholesale services to CLECs has significantly affected the ability of those CLECs to serve their own end-user customers. Although 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, the examples do demonstrate the harm to competitors that can result from poor wholesale performance by an incumbent. The Qwest PAPs help assure that the correct incentives are in place to help prevent such conditions occurring.
[Qwest Comment: No authoritative criteria has been shown to establish a level that qualifies as "significant" in the above paragraph. Nevertheless, to the contrary, the Report points out that in 2008 all categories of measurements had failure rates of less than the "failure rate near five percent that would be expected even when Qwest is providing service at, or slightly above, the standard." Please also see Qwest's responses regarding the Hawaii and New England examples, both in the interlineated comments in this version of the Report and in the main body of Qwest's comments.]

Because Qwest's participation in this study was limited to providing data on PAP payments and PID results and answering questions about them, Liberty has no data on the costs and other burdens on Qwest of maintaining the PAPs. However, because the infrastructure to maintain the PAPs has been in place for some time, the principal cost to Qwest is likely to be in processing the underlying data and running the PAP systems. Although this certainly imposes a cost on Qwest, it appears to be acceptable given the significant CLEC community relying on Qwest's wholesale services. Liberty recognizes that Qwest has significant competitors, such as the wireless and cable providers, that do not rely on Qwest's wholesale services or only rely on them to a limited extent. These competitors appear to be gaining in market share. Nevertheless, Liberty does not believe this is justification for abandoning the PAP and thereby potentially placing those competitors relying on Qwest's wholesale services at a potential disadvantage.

Although Liberty concludes that the PAPs continue to serve a useful purpose and should be maintained, the industry trends do support the need for some continued fine tuning of the PAP structures. Trends such as the shift away from wireline services and the decline in the use of Resale and, to a lesser extent, UNEs by the CLECs suggest the need for some revisions to the PAPs to ensure that they are focused on those products, services, and transactions that are still important for the CLEC community. Section IV examines which changes would best serve this purpose.

IV. Proposals

Liberty considered a number of changes to improve the PAPs by eliminating unnecessary aspects and increasing their focus on the types of service, products, and transactions that continue to be important in maintaining a healthy CLEC community in the Qwest territory. Liberty also looked at the underlying PID measures to see what changes might be appropriate to achieve the same ends. In evaluating these various options, Liberty used the following considerations:

- Whether changes in the marketplace have made elements of the PAPs obsolete
- Whether particular types of transactions are no longer relevant
- Whether the volumes of transactions for sub-measures and products are too small to warrant their continued inclusion in the PAPs
- Whether the PAPs and PID can be simplified
- Whether there are any biases and distortions in the PAPs that need to be corrected
- Whether there are important transactions types that are currently not monitored in the PAPs and PID
- Whether the effort to secure support for and cost of making the changes outweighs the advantage of making them.

Liberty notes that it is difficult to address all of these considerations simultaneously. For example, the PAPs could be significantly simplified by decreasing the number of sub-measurements and product disaggregations. However, doing so would cause the measurements to lose resolution and potentially introduce biases and distortions.

In identifying possible changes, Liberty used both input from stakeholders and the results of the analysis outlined in Section III. The following sections provide a discussion of the input and analysis Liberty used to develop the PAP change proposals.

A. Stakeholder Input

At the beginning of this study, Liberty contacted the Commission Staff members the Collaborative Committee and requested input on any concerns or issues they have with the PAPs. The responses indicated no specific concerns. Liberty also drafted a stakeholder questionnaire, and shared it with the Staffs for edits and other input. Liberty developed a list of CLECs based on input from the Collaborative Committee, including email and U.S. mail addresses. Where possible, Liberty sent the questionnaire to the recipients by email; when no email addresses were available, Liberty sent the questionnaire to the CLECs by U.S. mail. In some cases, Liberty had multiple contacts for the same company or for different subsidiaries of a company. In those cases, Liberty requested that the recipients coordinate responses so as to obtain a single response for a company. Liberty sent the questionnaire to 92 different CLEC recipients. Although Qwest had indicated it did not plan to participate in this study, Liberty also sent a questionnaire to Qwest. Qwest did not respond to the questionnaire.

Liberty's questionnaire contained the following questions:

1. In which states of the 14-state Qwest operating territory do you do business? For which affiliates and legal entities and under what names do you do business in those states?
2. What Qwest wholesale services (*e.g.*, resold services, specific unbundled network elements, Local Number Porting) do you currently use? What Qwest wholesale services have you used in the past but no longer use? For which states in the Qwest operating region do you use these services?
3. Have you "opted in" to the QPAP (or CPAP) for any of the states in the Qwest operating territory in which you do business? That is, have you adopted the QPAP or CPAP as part of your interconnection agreement with Qwest? If so, in which states?
4. If you are not currently "opted in" to the QPAP or CPAP, have you done so in the past? If so, in which states and for what time periods?
5. If you have "opted in" to a QPAP (CPAP), have you ever received "Tier 1" payments from Qwest?
6. If you have never "opted in" to a QPAP (CPAP), what experience with or knowledge do you have of these plans?
7. Please specify which QPAPs (CPAP) components (*e.g.*, the sizes of the payments, how payments are assessed, focus on individual CLEC vs. aggregate CLEC results) you believe are working well and those you believe are not working well. If relevant, please also include in this response your opinions about the specific PID measures, products tracked, standards (benchmark and parity), and reporting levels (*e.g.*, state, MSA, Zone Type) in the measures.
8. If there were to be changes in the QPAPs (CPAP) in the future, which current components or PID measures (including products tracked, standards, and reporting levels) do you believe are necessary to preserve and/or are particularly important for your company? To the extent that this response might vary by state, please indicate how.
9. What QPAP (CPAP) components or PID measures (including products tracked, standards, and reporting levels) do you believe are unnecessary and can be dropped? To the extent that this response might vary by state, please indicate how.
10. What QPAP (CPAP) components or PID measures (including products tracked, standards, and reporting levels) do you believe should be added? Would you recommend changing any PID measures that are now diagnostic (without standards) to ones with standards and including them in the QPAPs (CPAP), or vice versa? To the extent that this response might vary by state, please indicate how.
11. Please specify the interface used by your company (*i.e.*, IMA-GUI or IMA-XML) for submitting LSRs and ASRs to Qwest. If you use both interfaces, please provide an estimate of your percent usage for each (*e.g.*, GUI – 35%, XML – 65%).
12. Please provide any other comments and input that you believe Liberty and the Commission Staffs should have in conducting this review and analysis.

Liberty received 14 replies, including responses from

- 360networks (USA), Inc.
- American Fiber Network, Inc.
- Blackfoot Communications, Inc. (f/k/a Montana Wireless, Inc.)
- Bullseye Telecom, Inc.
- Cbeyond Communications, LLC
- DIECA Communications, Inc. d/b/a Covad Communications Company
- Integra Telecom, Inc.[103]
- Level 3 Communications, LLC
- LISCO f/k/a LTDS
- McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services
- Unity Business Networks
- Talk America d/b/a Cavalier Telephone
- TW Telecom LLC
- XO Communications Services, Inc.

One of the responding CLECs, Cavalier, indicated that it does not do business in Qwest's territory. Three other CLECs (Level 3, LISCO, and Unity Business Networks) responded that they had limited experience with the PAPs or were unable to provide much input about the PAPs for other reasons. The other eleven CLECs provided a number of comments and suggestions.

Generally, the CLECs indicated satisfaction with the PAPs and PID measures and believed they were important in helping to maintain telecommunications competition in the Qwest region. Integra pointed out that traditionally AT&T and MCI had the most resources to advocate for the CLECs' position. Now that they have merged with Regional Bell Operating Companies, their advocacy for CLECs has significantly diminished, which increases the need for a strong PAP to protect the CLECS.

The CLECs generally believed that no PAP components or PID measures, including product disaggregations, should be dropped because they were no longer necessary. However, several CLECs made specific suggestions for additions to the PAPs and PID measures, as follows.

UNE Facility Assignment

Integra, PAETEC, and Blackfoot Communications expressed concerns about the ability to obtain DSL-capable loops that support their bandwidth requirements because Qwest does not provision available pairs to meet their requirements, substituting lower capability pairs instead. Integra and PAETEC advocate the development of a PID measure to ensure the appropriate and nondiscriminatory assignment of facilities. Blackfoot Communications indicated interest in supporting this proposal.

While Liberty believes the CLECs have raised a valid concern, it is not clear that it can be addressed within the context of Liberty's analysis. It appears that a commitment from Qwest to provide a UNE-L product offering with the bandwidth requirements to meet the CLECs' needs is

[103] Integra subsidiaries and affiliated operating in the Qwest operating territory include Electric Lightwave, Eschelon, Mountain Telecom, InfoTel Communications, One Eighty Communications, and Advanced TelCom,

the most appropriate way to address the concern. Whether Qwest is required to provide such a product and have its performance measured through the PAPs is a question that goes beyond the scope of Liberty's study.

Expedited Ordering

Integra observed that there currently are no requirements in the PAPs that address the process for expedited ordering. PAETEC joins Integra in the recommendation to develop such requirements. Liberty believes this is a relevant issue to address through PID changes, and offers a recommendation for it in Section IV.E.
[Qwest Comment/Question: On what basis is this "a relevant issue"? No evidence is provided, other than an observation. By definition, an expedited order has a non-standard interval. Despite the request expressed, there are currently requirements in the PAPs that address the process for non-standard intervals. There are even specific processes for dealing with expedites. For example, if the requested due date is not met, due to Qwest reasons when an expedite is requested by the CLEC, then any expedite charge included on the service order is removed.]

Chronic Troubles

Integra noted that there is no PID measure that measures chronic troubles, **[Qwest Comment: This is not true. Both MR-7 and MR-8 capture chronics, and if there were an issue with them, to a disparate degree in comparison with retail, it would be captured.]** and indicated that such troubles have serious end-user customer impacts. Integra defines these as cases where there are more than two troubles for a given customer in a specified timeframe, where that timeframe should extend beyond 30 days because the situation can occur over extended periods of time. PAETEC and Cbeyond support Integra's recommendation to develop a measure of chronic troubles and incorporate it in the PAPs. Liberty believes this is a relevant issue **[Qwest Comment/Question: Again, on what basis is this relevant?" No evidence is provided, other than an observation.]** to address through PID changes, and offers a recommendation for it in Section IV.E.

MR-6 (Mean Time to Restore) Modifications

Integra indicated that the 2007 Stipulation included a modification of MR-6 to remove No Trouble Found (NTF) and Test Okay (TOK) trouble reports when the ticket's duration is one hour or less, because there is a greater percentage of NTF and TOK reports for retail than wholesale circuits. Typically, such trouble reports are quickly resolved, and removing short duration ones helped to resolve a bias against Qwest. However, Integra claims that, in retrospect, this change has introduced another bias, because it fails to take into account the fact CLECs provide test results to Qwest before Qwest begins to repair a CLEC facility, unlike the retail case. PAETEC and Cbeyond support Integra's argument that this bias needs to be corrected.

It is not clear to Liberty that the bias the CLECs describe actually exists. To the best of Liberty's knowledge, Qwest performs a mechanized loop test (MLT) on its retail lines before opening a trouble report on a customer's line. The MLT results that the Qwest technician receives should be the equivalent of the test results that the CLEC provides to Qwest. However, if the CLECs have evidence that such a bias exists, the best way to resolve the issue would be through collaborative discussions with Qwest. **[Qwest Comment: Qwest agrees as to the need for evidence. None has been provided in any of these CLEC comments..]**

Retirement of EDI and Replacement by XML

Qwest has retired its Electronic Data Interchange (EDI) interface, which it provided as means for CLECs to submit pre-order and order transactions, and has introduced an Extensible Mark-up Language (XML) interface as a replacement for the retired EDI interface. Integra notes that Colorado, Utah, and Washington have introduced changes to the PID and PAPs to account for these changes. The changes are incorporated into PID Version 9.1. PAETEC supports Integra's recommendation that these changes should be made throughout the Qwest operating territory. Liberty concurs with this recommendation and addresses it Section IV.C.

Coordinated Appointments

Blackfoot Communications noted that there is a large charge associated with coordinated installations and indicated that Qwest has not been reliably meeting these appointments. This causes Blackfoot to be charged more for a service which is no better than the basic installation service. Blackfoot recommends the development of a PID measure to monitor this issue. Liberty believes this is a relevant issue to address through PID changes, and offers a recommendation for it in Section IV.E. **[Qwest Comment/Question: Again, on what basis is this "a relevant issue"? No evidence is provided, other than an observation. Developing a new PID measure to monitor coordinated appointments is completely unnecessary. OP-13 measures coordinated cuts.]**

Increasing Penalties for Chronically Failing Domains

Cbeyond suggested that penalties should increase in cases where Qwest is consistently making PAP payments in a given category. This is an interesting suggestion. However, Liberty believes that the mechanisms for penalty escalation for continuing non-conformance are adequate to address the concern.

Better Ability to Understand Payments

360networks and American Fiber Network noted difficulty in understanding the PAP payments they received; in particular, they find it difficult to tie the payment to specific transaction failures and are unable to receive useful information from Qwest in understanding the payments. 360networks indicates that it would be helpful for Qwest in its reports and the documents that accompany the payments to provide information that enables 360networks to track the payments with particular transactions and the particular service standards with which Qwest failed to comply.

While Liberty agrees that the PAPs are complex, both 360networks and American Fiber Network acknowledged that their experience with the PAPs has been limited. Because CLECs professing more experience with the PAPs did not raise the same concerns, Liberty believes more information would need to be gathered about from the CLEC community as a whole before the need to address this concern could be assessed. Such additional investigation is beyond the scope of this study, but might be appropriate to raise as a point of discussion in industry collaborative sessions.
[Qwest Comment: Qwest agrees such an additional investigation is beyond the scope of not only this study, but also of the PAPs. CLECs already have access to systems that allow them to access their own state-specific PID results. In addition, they have direct access to their Service Managers and Billing representatives (Service Delivery Coordinators or SDCs) to obtain additional PID/PAP details they may have questions about, who in turn have timely access to PID/PAP experts.]

B. Mechanisms to Address Low Volume Issues

As discussed in Section III.C, Liberty's analysis has found that a large number of the tests conducted to determine penalty payments are based on small numbers of CLEC transactions. Small sample sizes can introduce biases into the results. The basic PAP design anticipated that small sub-measure volumes would occur to some extent, and all the PAPs introduced special testing procedures to use in low-volume situations in an attempt to moderate these biases. These include:

- Use of permutation tests for cases where the number of transactions is less than 30
- Restrictions on Tier 2 tests to cases where the volumes are 10 or greater
- Adjustments in the critical Z-values, depending on CLEC volume, for both modified Z-tests and permutation tests
- Variance factor adjustments for Tier 1A measure tests in the CPAP.

For parity measures, small sample sizes create the possibility of failure even when performance is at parity, because both the standard and the permutation test used in these circumstances are typically designed to fail at least five percent of the time due to chance variation in performance.

The basic testing rules in the PAP were intended for typical CLEC volumes of around 140, not the low volumes that occurred during the Study Period. At the volume of 140, the chance of generating payments for a process that was in parity (called Type I error chance) is about equal to the chance of generating no payments for a process that is substantially out of parity (called Type II error chance). In 2008, typical CLEC volume is well below ten for the measurement disaggregations as they currently exist, thus producing a high chance of Type I error for parity measures and a high chance of Type II error for benchmark measures. This higher Type II error is due to the One Allowable Miss Rule, which is explained below. Although the small sample rules listed above were designed to increase the sensitivity to performance and reduce the Type I and Type II error chances when CLEC volumes are small, they are imperfect. Therefore, the probability of bias is significantly higher when these rules are invoked as frequently as they have been during the Study Period.

Some of the changes introduced into the PAPs through the CPAP Three-Year Review and 2007 Stipulation recommendations have helped to alleviate aspects of this problem. Of particular note are the One Allowable Miss Rule and the elimination of low-volume product sub-measures. The One Allowable Miss Rule apples to sub-measure with a benchmark standard (or for non-interval parity sub-measures),[104] which is sometimes the case for Line Splitting and UBL-xDSLI Loops in the OP measures. This rule implies, for example, that consistent performance of 90 percent (*e.g.*, 9 out of 10) for a benchmark measure with a standard of 95 percent will not produce any payments, because there will be only a single miss.

Despite these changes, Liberty observed that there continue to be very frequent low-volume situations that are not accounted for in these changes. To help alleviate this problem with small volumes, Liberty proposes to additional changes to the PAP:

- Elimination of measures from payment calculations that have relatively low CLEC volumes. This is described in Section IV.C.
- Additional elimination of low-volume product disaggregations of measures. This proposal is described in Section IV.D.

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[104] That is, those measuring percent, ratios, or proportions

- A change to the PAP's testing rules to aggregate low-volume transactions.

Liberty considered three main approaches to achieve the aggregation of low-volume transactions: i) aggregation across products, ii) aggregation across months, and iii) aggregation across CLECs. After some analysis, Liberty rejected the first approach. Aggregation across products increases the sample size. However, in order to retain reasonable retail analogues for the aggregated products, it would be necessary to introduce a complex process of weighting both the wholesale and retail transactions. In addition, some measures have product disaggregations with retail analogues and others with benchmarks. The process of combining retail analogues and benchmarks would also be complex. In addition, even with different standards for the different products, such a combination would tend to mask poor performance and could mean that sustained poor performance for one product could be compensated for by sustained good performance for another product. Therefore, Liberty rejected the approach of combining product disaggregations, and believes that the only way to make this approach workable without unnecessary additional complexity would be for the industry to agree to new retail analogues for the aggregated products.

Liberty recognizes there can also be concerns with aggregation across months and CLECs. In particular, aggregation across time would delay the application of payments, and aggregation across CLECs could potentially dilute the impact of an individual CLEC's transactions. However, Liberty notes that there already exists a similar type of CLEC aggregation in the Low Volume, Developing Markets mechanism[105] in the PAPs. Liberty used this as a model for the CLEC aggregation and to combine this with the monthly aggregation, if insufficient volumes are attained.
[Qwest Comment: While Liberty "recognizes" concerns with aggregation, the fact remains that, particularly in low-volume situations, differences between CLECs (their business plans, their ordering and repair processes, and so forth) can and do affect results. Aggregating CLEC results can, by itself, create differences that unduly cause payments and thus disqualify them as candidates for use in a self-executing penalty environment. That there are already some aggregation methods used is no reason to excuse expanding the problems. Please see also Qwest's responses in the main body of its comments.]

Liberty's low-volume aggregation proposal would work as follows:

1. Aggregate transactions for all CLECs that have fewer than ten transactions in a month for any given sub-measure disaggregation (*e.g.,* OP-3A Resold Business Service) before determining whether a payment is due.
2. If the outcome of this CLEC aggregation equals or exceeds ten transactions, use the aggregate result for these CLECs to calculate whether penalty payments are required.
3. Should the calculation determine that Qwest was out of compliance with the standard for the sub-measure, payments will be made to the aggregated CLECs based on each CLEC's relative share of the total number of misses.

[Qwest Comment: This step disregards CLEC-caused payments, such as after-hours tickets in disproportionate volumes submitted by certain CLEC's (which was demonstrated in some of the RCAs done). Further, without waiving the fundamental objection of the basic inappropriateness of this approach, this method provides no way for the statistics necessary for determining occurrences in support of payments. Finally, in talking about the "total

[105] The Low Volume Developing Markets mechanism is described in Section 10.0 of all the QPAPs, but is not included in the CPAP.

number of misses," this assumes each miss is valid when, in reality, it has been determined on an aggregate basis that can invalidate such a presumption.]

4. If the aggregate total does not exceed ten transactions, then carry forward the aggregate result to the following two months until either the threshold of ten aggregate transactions is met or three months of results data have been used in an attempt to meet the minimum volume threshold.[106]
5. When either of these criteria has been met, the process starts again the following month for that sub-measure.[107]

Qwest comment: Overall, this proposal is unworkable, since it would require inordinate numbers of multiple aggregations of CLECs to be run through the statistical engine in order to run the necessary permutation tests. Further, this approach would create a shifting set of CLECs in the aggregated measurement, from one month to the next, thus making identification of valid issues difficult, if not impossible.]

Any CLEC with ten or more transactions on the same sub-measure would not have its results aggregated with the other CLECs; it will be treated as a standalone CLEC consistent with the current process. By way of a hypothetical example, assume that a state has four CLECs with transaction volume for the OP-3A, Resale Business product. CLEC A has three transactions, CLEC B has four transactions, CLEC C has four transactions and CLEC D has 12 transactions. Under this proposal, CLECs A, B and C would have their respective results combined together. This would bring the aggregate total to 11 transactions, which would be used for penalty payment calculations assuming there were some failures. Because it has 12 transactions on its own, CLEC D's results would not be combined with the others.

[Qwest Comment: While this mathematically achieves desired volumes, it does so at the price of aggregating dissimilarities that exist between CLECs, rending the approach entirely unfair in a self-executing payment environment.]

Liberty examined one other approach to minimize low volume situations: combining MSA and Zone disaggregations. In order to assess the applicability of this approach, Liberty considered whether the MSA and Zone designations, which apply to the measures OP-3, OP-4, OP-6, MR-3, MR-4, MR-5, MR-6, MR-7, and MR-9, make a difference in performance. Liberty found that although these designations did not always make a difference in performance results, there were frequently statistically significant differences, and thus these designations were still important in determining and comparing performance overall.

Table IV-B-1 below shows by measure the calculated p-values and a determination of whether there exists a statistically significant difference between MSA and Zone disaggregation results. A p-value of less than .05 indicates that there does exist a statistically significant difference in the results for the measure. While these differences do not appear to exist for all measures, Liberty does not

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106 Another issue that needs to be addressed is how to account for the consecutive month payment escalation when such aggregation across months is required. There are multiple ways to address this issue, but Liberty recommends treating aggregation across months as if it were a single month for payment escalation purposes. For example, suppose a CLEC experienced a failure requiring payment in April, either because there was a single failure for that CLEC in April or because April was the last month of an aggregation across months in which that CLEC participated. Then, if the CLEC participates in an aggregation across May, June, and July that results in a failure, that failure would be treated as the next consecutive month of failure for the purpose of determining the payment level.

107 This is superior to having a rolling three month window, because a single bad month will not affect payments more than one time.

recommend combining Zone and MSA for any measures, because that would make comparisons across measures difficult.

Table IV-B-1
Statistical Analysis
MSA and Zone Disaggregation Result Differences

Measure	p-value	Statistically Significant Difference?
OP3	0.742	No
OP4	0.000	Yes
OP4-AB	0.415	No
OP4-DE	0.000	Yes
OP6	0.003	Yes
OP6-12	0.102	No
OP6-45	0.010	Yes
OP6A	0.140	No
OP-6A12	0.334	No
OP-6A45	0.188	No
OP6B	0.000	Yes
OP-6B12	0.334	No
OP-6B45	0.001	Yes
MR3	0.115	No
MR4	0.425	No
MR5	0.811	No
MR6	0.003	Yes
MR6-AB	0.001	Yes
MR6-DE	0.584	No
MR7	0.037	Yes
MR9	0.000	Yes

Liberty also reviewed the other mechanisms involving low volume situations, including the "Low Volume, Developing Markets" mechanism found in Section 10 of every participating state PAP except Colorado's. Liberty found these mechanisms to still be useful and does not recommend changing them. In particular, the "Low Volume, Developing Markets" provisions provide minimum payments for certain products (mainly ADSL) when ordering volumes are low and Qwest does not meet the PID standard. Liberty concluded that these provisions appear to be obsolete in most states for ADSL, where volumes are far above the minimums. However, Liberty also believes that this provision is helpful in ensuring parity for developing markets and that new products could be added as needed.
[Qwest comment: It is a stretch at this point to designate any markets relevant to the PAPs as being "developing." No evidence of such is provided in the Report.]

C. Proposed Performance Measure Changes Affecting the PAPs

Through the CPAP Three-Year Review and consideration of the 2007 Stipulation recommendations, all participating states except Montana have already removed a number of PID measures from automatic inclusion in the PAP payment mechanisms. In almost all cases,[108] the

[108] The PO-2A sub-measures was completely eliminated from the CPAP in 2006.

eliminated measures are subject to a PID Reinstatement/Removal Process. This mechanism reinstates the measures and allows them to generate payments after three months of non-conforming performance, and removes them once conforming performance is restored.

Based on the analysis of historical payments and Qwest performance described in Section III, Liberty reexamined PID measures excluded. Liberty also used the following criteria to determine whether any additional PID measures should be excluded from the PAP payment mechanism:

- Payment history and hence Qwest's performance for the wholesale process the PID measurement measures
- Transaction volumes for the measured process
- Impact of the poor performance for the measured process on the CLECs' ability to conduct its business and on the CLECs' end-user customers.

After further analysis, Liberty concurs with the list of measures identified in the 2007 Stipulation, but noted five measures on this list that nevertheless have generated modest to substantial payments. Liberty also identified six additional measures that should be considered for removal from PAP payment plans and included on the Reinstatement/Removal Process list.

In conducting its analysis, Liberty used the PAP payment data from January 2004 through October 2008. To identify additional candidates for PAP removal Liberty initially focused on all measures that generated less than $10,000 in total payments for all states during the January 2007 through October 2008 time period. Liberty then examined the payment history on these measures in prior years and in the November 2008 through March 2009 timeframe to determine whether the low level of payments was consistent throughout the entire period. If the payment amounts were relatively small, Liberty considered the other factors listed above. In addition to the measures that Liberty proposes adding to the Reinstatement/Removal Process list, Liberty also proposes revisions to three other performance measures that would affect the PAP payment calculations. These proposals are detailed below.

1. Review of Measures on the Reinstatement/Removal List

One of Liberty's primary criteria for removal of PID measures from the PAP is the history of payments during the Study Period. The size and consistency of these payments is a measure of Qwest's performance for the process underlying the PID measure. Liberty reexamined these payments for the PID measures removed through the CPAP Three-Year Review or recommendation from the 2007 Stipulation, taking into account the fact that these payments would necessarily drop off significantly after their removal from a PAP. In almost all these cases, the PAP payments were small or modest even before the measures were placed on the Reinstatement/Removal list. However, five of the measures generated modest to substantial payments: PO-2B (Electronic Flow-through), PO-3 (LSR Rejection Notice Interval), PO-7 (Billing Completion Notification Timeliness), OP-17 (Timeliness of Disconnects Associated with LNP Orders), and BI-4 (Billing Completeness). After further examination, Liberty concludes that these measures are appropriate to remain on the Reinstatement/Removal list, as discussed below.

PO-2B - "Electronic Flow-Through"

PO-2B is a measure that is only in the Colorado and the New Mexico PAPs among the participating states.[109] It measures the percentage of orders expected to flow through without manual handling that actually flow through. Order flow-through is important because manual handling of orders can slow implementation and increase errors. PO-2B is a benchmark measure, and only Resale, UNE-L, LNP, and UNE-P have benchmarks and thus affect payments. The benchmarks for these products are 95 percent, 85 percent, 95 percent, and 95 percent, respectively. As noted in Section III.B, only UNE-L and LNP continue to have substantial ordering volumes in the Qwest region. Table IV-C-1 shows the payments generated by PO-2B during the Study Period.

Table IV-C-1
11-State Penalty Payment History
PO-2B "Electronic Flow-Through"

2004	2005	2006	2007	2008 through October	November 2008 to March 2009
$984,202	$79,434	$742	$1,898	$3,267	$2,062

As can be seen, the payments were very large before the removal PO-2B from the CPAP in 2006, and have been significant since then, despite the inclusion of the measure in only in the New Mexico PAP.[110] Despite the size of the payments, BWG supported the removal of this measure during the CPAP Three-Year Review because Qwest's performance had recently improved (as shown by the reduced payments in 2005 over 2004) and other PAP measures help assure and timely installation (OP-3). Liberty believes that this logic is still sound.[111] In addition, because the measure is on the Reinstatement/Removal list, consistent poor flow-through performance for three months would still cause payments to be assessed.
[Qwest Comment: Please see Attachment 5A regarding Liberty incomplete or inconsistent application of low volume criteria for the reinstatement/removal process. In this case, Liberty ignores payments and looks at recent improvement of results and good performance, whereas in other cases it does not.]

PO-3 - "LSR Rejection Notice Interval"

PO-3 is a measure in all the participating state PAPs which assesses the timeliness of Qwest's providing notices of rejection of CLECs' service requests. The payment history is shown in Table IV-C-2, and shows modestly high payments continuing into the present, despite the removal of this measure from most of the PAPs.

Table IV-C-2
11-State Penalty Payment History
PO-3 "LSR Rejection Notice Interval"

2004	2005	2006	2007	2008 through October	November 2008 to March 2009
$29,061	$10,314	$9,985	$534	$2,914	$2

[109] PO-2B is also in the Minnesota and Washington PAPs.
[110] Of the $984,202 in total 2004 payments, $900,000 was Tier 2 payments made to Colorado. In 2005, of the $79,434 paid in total payments, $75,000 was Colorado Tier 2 payments.
[111] Although Liberty recommends in Section IV.B.2 the removal of PO-20 also, Qwest's performance on this measure has been reasonably good and it remains on the Reinstatement/Removal list.

In the CPAP Three-Year Review, BWG recommended removal of this measure because PO-5, which measures FOC timeliness, provides an incentive for Qwest to provide FOCs on time. Timely FOCs indirectly allow CLECs to determine whether their orders have been rejected. Liberty believes that this logic is still sound.

PO-7 - "Billing Completion Notification Timeliness"

PO-7 is a measure in all the participating state PAPs which assesses the timeliness of Qwest's providing notices of completion of the CLECs' orders in Qwest's billing systems. The payment history is shown in Table IV-C-3, and shows modestly high payments continuing into the present, with particularly high payments during 2007, despite the removal of the measure from the CPAP and several QPAPs.

Table IV-C-3
11-State Penalty Payment History
PO-7 "Billing Completion Notification Timeliness"

2004	2005	2006	2007	2008 through October	November 2008 to March 2009
$18,148	$8,113	$2,123	$25,752	$335	$61

In the CPAP Three-Year Review, BWG recommended removal of this measure because it measures only notification timeliness not the actual completion of the order, and therefore does not measure a process that has a direct impact on a CLECs' customers. Liberty notes that there can be some end-user customer impact from failure of a CLEC to receive a timely billing completion notification. The billing completion notification is Qwest's notification that all parts of an order are complete, including updating of the billing records. However, Liberty supports the continued removal of PO-7 from the PAPs. PO-6, which measures the timeliness of work completion notifications, remains in the PAPs and provides an indication to the CLEC of completion of all the provisioning work on the order. Furthermore, any consistent poor performance on providing timely billing completion notices would still produce penalties, because PO-7 remains on the Reinstatement/Removal list.

OP-17 - "Timeliness of Disconnects Associated with LNP Orders"

OP-17 is a measure in all the participating state PAPs which assesses whether Qwest completes number ports without disconnecting the customer's line before the scheduled time and date. Only OP-17A is non-diagnostic and part of the PAPs. The OP-17A payment history is shown in Table IV-C-4, and shows high payments initially but relatively small payments since 2004. While a premature disconnect of the customer's line by Qwest prior to the date and time of the number port will remove the customer from service, Liberty notes that the significant reduction in payments since 2004 indicates that Qwest is providing relatively good service for this function and believes it is appropriate to keep the OP-17 measures on the Reinstatement Process List.

Table IV-C-4
11-State Penalty Payment History
OP-17A "Timeliness of Disconnects Associated with LNP Orders"

2004	2005	2006	2007	2008 through October	November 2008 to March 2009
$108,940	$1,500	$0	$600	$150	$150

BI-4 - "Billing Completeness"

BI-4 is a measure in all the participating state PAPs which assesses the completeness of Qwest's bills to the CLECs. BI-4 payment history is shown in Table IV-C-5, and shows a continuing modest level of payments.

Table IV-C-5
11-State Penalty Payment History
BI-4 "Billing Completeness"

2004	2005	2006	2007	2008 through October	November 2008 to March 2009
$19,697	$5,462	$312	$2,239	$6,171	$1,262

In the CPAP Three-Year Review, BWG recommended removal of this measure, because BI-3 measure the extent of billing adjustments, and such adjustments would be required if the bills were not complete. Furthermore, with the phase-out of UNE-P, the likelihood that CLECs will rely on Qwest's bills to invoice usage to end-users is reduced. Given the relatively modest payments for BI-4 relative to BI-3, Liberty sees no reason to change that assessment.

2. Additional Measures Recommended for the Reinstatement/Removal Process

Through this analysis, Liberty identified six other measures to recommend as additions to the Reinstatement/Removal list.

PO-9 - "Timely Jeopardy Notices"

PO-9 is a parity measure that can be found in the PAP for all states which assesses how well Qwest provides timely notices to the CLECs that the installation date and an order is in jeopardy. Table IV-C-6 demonstrates that the PAP payments generated by this measure have been relatively small. PO-9 is disaggregated into four sub-measures; PO-9A – "Non-Designed Services," PO-9B – "Unbundled Loops." PO-9C – "LIS Trunks," and PO-9D – "UNE-P POTS," all of which experience low to moderate transaction volumes each month.

Table IV-C-6
11-State Penalty Payment History
PO-9 "Timely Jeopardy Notices"

2004	2005	2006	2007	2008 through October	November 2008 to March 2009
$9	$0	$28	$371	$39	$56

PO-9 was considered for removal during the CPAP Three-Year Review, but BWG decided not to recommend removal because timely jeopardy notices are critical to the CLECs' ability to provide a realistic date to their end-user customers for service implementation. Liberty agrees that it is important for a CLEC to be able to communicate with its customer when a due date will be missed, but notes that the payments have continued to be small, implying that Qwest's compliance with the standard has been relatively good. **[Qwest Comment: There is nothing "relatively good" about this. Compliance with the standard clearly has been extremely good, which supports entire**

removal, not just on the reinstatement/removal list.] Additionally, Liberty found the volumes of jeopardy notices associated with this measure to be very small for three of the four PO-9 sub-measures, with the PO-9A, PO-9C and PO-9D sub-measures averaging less than ten transactions per month at the 14-state level between January 2007 and October 2008. The PO-9B sub-measure experienced a moderate level of jeopardy notices averaging 403 transactions per month across the 14-state region during the same time frame. By placing this measure on the Reinstatement/Removal list, it can affect payments after three months of poor performance, thereby continuing to provide an incentive to Qwest to provide timely jeopardy notices.

[Qwest Comment: For the remaining measurements, below, in this section, no reason has been shown that they all should not be entirely removed, not just placed on the reinstatement/removal list.]

PO-19 – "Stand-Alone Test Environment (SATE) Accuracy"

PO-19 is a benchmark measure that is currently used only in the Arizona and New Mexico PAPs.[112] This measure addresses Qwest's performance in providing an accurate test environment for new software releases. This measure has never experienced a penalty payment from January 2004 through March 2009 demonstrating that Qwest's performance has been good over the entire Study Period. In addition, the process has limited immediate impact on end-user customers. Therefore, Liberty recommends placing this measure on the Reinstatement/Removal list.

PO-20 – "Manual Service Order Accuracy"

The PO-20 measure has a history of low penalty payments, as shown on Table IV-C-7. Liberty found that although Qwest often fails to meet the 95 percent benchmark on this measure, this failure frequently results from a single miss on a low volume of transactions (*i.e.,* Qwest would need to have 100 percent performance or it would fail as the result of a single miss). Of the total payments that Qwest made between 2004 and October 2008, 29.7 percent were generated by single miss failures to meet the 95 percent benchmark. Now that the One Allowable Miss Rule has been implemented in most states, the number of such failures would be diminishing, as shown in the recent payment history.

Table IV-C-7
11-State Penalty Payment History
PO-20 "Manual Service Order Accuracy"

2004	2005	2006	2007	2008 through October	November 2008 to March 2009
$2,846	$4,356	$2,542	$1,885	$212	$225

PO-20 was not considered for removal in the CPAP Three-Year Review because it was argued that there could be significant end-user consequences from manual service order errors. However, given the relatively low volume of Qwest manual inward service orders evaluated each month and recent payment history, Liberty believes that placing this measure on the Reinstatement/Removal list will provide adequate protection for the customers.

[112] PO-19 is listed as a diagnostic measure in the CPAP. In early versions of the CPAP, PO-19 was eligible for generating penalty payments. However, it was made diagnostic during 2005 prior to the completion of the Three-Year Review in the CPAP version dated 5/6/05 (Colorado SGAT Ninth Revision, Ninth Amended Exhibit K, dated May 6, 2005).

CP-1 – "Collocation Completion Interval"

CP-1, a benchmark measure only found in the Arizona and Colorado PAPs, has generated only a minimal Tier 1 payment of $4 in Arizona in 2007. There were no other payments in Arizona and no payments made in Colorado during the 2004 through March 2009 timeframe. The CP-1 measure is also a very low volume measure with an average of only 1.3, 0.8, and 3.0 transactions per month in Colorado and an average of 1.0, 1.3 and 3.3 transactions per month in Arizona for the CP-1A, CP-1B and CP-1C sub-measures respectively. Qwest did not miss the benchmark on any of the CP-1 sub-measures in any other state from January 2007 through October 2008.

CP-1 was considered for removal during the CPAP Three-Year Review, but BWG elected not to recommend its removal because of the importance of collocation for CLEC market entry. Because of the recommendation to remove CP-3, BWG felt it was important to maintain at least one collocation measure in the PAP. At the time of BWG's analysis, the FCC had recently issued the TRO and TRRO orders, which eliminated UNE-P. BWG speculated that this would likely increase the importance of collocation, because the elimination of UNE-P would force the CLECs to rely on other UNEs. However, Liberty's analysis shows that overall CLEC entry and the volume of collocation has in fact decreased since 2005. Thus, given the relatively low volumes and the consequent limited impact of temporary poor performance on collocation completion timeliness, Liberty recommends placing CP-1 on the Reinstatement/Removal list,

CP-2 – "Collocations Completed within Scheduled Intervals"

CP-2 is a benchmark measure which is in the PAPs of all participating states, except Colorado. It has generated no payments during the Study Period in any of the participating states. During the January 2007 through October 2008 timeframe, the CP-2B sub-measure averaged only 20 collocation completions per month and the CP-2C sub-measure averaged only 23 monthly collocation completions across the entire 14-state region. There were no collocation completions measured by the CP-2A sub-measure during this time. The focus of CP-2 is similar to CP-1, timely collocation completion intervals. Therefore, the same considerations apply, and Liberty recommends placing CP-2 on the Reinstatement/Removal list.

CP-4 – "Collocation Feasibility Study Commitments Met"

The CP-4 measure appears in the PAPs for all participating states, except Colorado. This measure did not result in any penalty payments from January 2004 through March 2009. It is also a measure that typically has a relatively low volume of transactions with an average of 43 transactions per month across the entire 14-state region for the period of January 2007 through October 2008. This measure is similar to CP-3, which was removed from the CPAP as part of the Three-Year Review. In its analysis, BWG concluded that CP-3 was relatively unnecessary, given the existence of CP-1, which measures ultimate completion timeliness, rather than one step in the process, like CP-3. Liberty agrees with this assessment. Given the low collocation volumes and lack of past penalty payments Liberty recommends placing CP-4 on the Reinstatement/Removal list.

3. Other Measures Considered for the Reinstatement/Removal Process

Liberty considered several other measures for inclusion in the Reinstatement/Removal process because of low PAP payments. However, after considering other factors, Liberty does not recommend that these measures be removed from the PAPs. The reasons that Liberty recommends their continued inclusion in the PAPs follow.

[Qwest Comment: Again, for all of the measurements, below, in this section, no reason has been shown that they all should not be entirely removed, not just placed on the reinstatement/removal list. Qwest has the incentive outside PAPs to perform well with these measurements and has demonstrated it is doing so.]

GA-1 – "Gateway Availability – IMA-GUI" and GA-6 – "Gateway Availability – GUI-Repair"

Both of these measures have had low PAP payments over the Study Period, as shown in Table IV-C-8. However, the IMA-GUI is necessary for the many CLECs to electronically transmit automated pre-ordering and ordering transactions, and the Repair GUI is similarly necessary for transmitting electronic maintenance and repair transactions. The ability to conduct these transactions is critical for the CLECs and would have a significant impact on their end-user customers if these systems were unavailable to the CLECs. All the parties during the CPAP Three-Year Review concurred that these measures should not be removed at that time. The same considerations that were raised at that time are still valid. Sustained poor availability of these interfaces would have a major impact on the CLECs' ability to do business, and if they were to be placed on the Reinstatement/Removal list, Qwest would only be assessed penalties after three months of poor performance. Therefore, Liberty does not recommend that these two measures be removed from the PAPs and put on the Reinstatement/Removal list.

Table IV-C-8
11-State Penalty Payment History
GA-1 "Gateway Availability – IMA-GUI" & GA-6 "Gateway Availability – GUI-Repair"

	2004	2005	2006	2007	2008 through October	November 2008 to March 2009
GA-1	$9,167	$0	$0	$0	$9.167	$0
GA-6	$9,167	$0	$0	$0	$0	$8,167

PO-1 – "Pre-Order/Order Response Times"

The PO-1 measure never experienced a penalty payment due to a failure during the 2004 to 2008 timeframe. However, similar to the GA-1 and GA-6 measures, the PO-1 measure monitors a high volume activity critical to the entire CLEC community. As a result, Liberty does not recommend removing it from the PAP. This is consistent with BWG's conclusion during the CPAP Three-Year Review.

PO-5 – "Firm Order Confirmations On Time"

PO-5 measures the timeliness of FOCs, and contains four sub-measures. One sub-measure, PO-5D, which measures FOC timeliness for LIS trunks, was placed on the Reinstatement/Removal Process list for the CPAP after the Three-Year Review and on the PAPs of all the other participating states except Montana following a recommendation in the 2007 Stipulation. The other three sub-measures remain active in the PAPs of all the participating states. Table IV-C-9 shows the history of payments generated by this measure during the Study Period. The payments have not been large, particularly recently, but there have been payments for all three of the sub-measures remaining in the PAP.

Table IV-C-9
11-State Penalty Payment History
PO-5 "Firm Order Confirmations On Time"

2004	2005	2006	2007	2008 through October	November 2008 to March 2009
$14,748	$3,000	$13,050	$1,496	$1,169	$942

Despite the relatively low recent payments from PO-5, Liberty does not recommend placement of this measure on the Reinstatement/Removal list. This is consistent with the recommendations of all parties during the CPAP Three-Year Review, and there is no evidence that the circumstances since that time have changed to alter the considerations leading to those recommendations. Timely FOCs are very important for CLECs, because they contain information crucial to meeting their end-user customers' needs in service installations, such as installation due dates and assigned telephone numbers, which the CLECs need for communicating service delivery expectations with their customers. There also remains a high volume for such transactions. FOCs are needed for every order issued by the CLEC, unlike jeopardy notices, which are only required in cases where there is a delay in providing service. Therefore, Liberty believes it is appropriate for PO-5 (FOCs on Time) to remain in the PAP while PO-9 (Timely Jeopardy Notices) can move to the Reinstatement/Removal list.

OP-13A – "Coordinated Cuts On Time – Unbundled Loop"

OP-13A measures the timeliness of coordinated hot cuts for UNE-L. The payment history is shown in Table IV-C-10. The payments have been relatively small, but consistent across the Study Period. Despite, the relatively low payments, Liberty does not recommend removal of OP-13A from the PAPs. Hot cuts continue to be an important transaction for a large number of CLECs that provide service through UNE-L; poor hot cut performance can have a significant impact on such CLECs' customers. Therefore, Liberty does not recommend removal of this measure from the PAPs. This is consistent with the BWG's conclusions during the CPAP Three-Year Review, and the changes in the industry since then have not minimized the importance of these arguments.

Table IV-C-10
11-State Penalty Payment History
OP-13 "Coordinated Cuts On Time – Unbundled Loop"

2004	2005	2006	2007	2008 through October	November 2008 to March 2009
$2,733	$890	$4,172	$1,330	$1,247	$1,608

[Qwest Comment: See Attachment 5A regarding inconsistent application volume criteria for reinstatement/removal process, for which this is an example.]

BI-1 – "Time to Provide Recorded Usage Records"

BI-1 is a measure in all participating state PAPs which assesses Qwest's timeliness in providing usage records. CLECs use these records to bill their customers or other carriers and to verify the accuracy of their Qwest bills. There are two sub-measures BI-1A, which assesses the timeliness of usage for Resale and UNE products, and BI-1B, which assesses the timeliness of usage for jointly provided switched access. The payment history is shown in Table IV-C-11. The payments have been very high in the past, but have been dropping off significantly recently, partly because the reduction in CLECs use of Resale and UNE products involving switched usage (like UNE-P) has dropped dramatically over the Study Period. Nevertheless, the BI-1A payments remain well above the threshold Liberty used for identifying candidate measures to remove from the PAPs.

Table IV-C-11
11-State Penalty Payment History
BI-1 "Time to Provide Recorded Usage Records"

	2004	2005	2006	2007	2008 through October	November 2008 to March 2009
BI-1A	$443,324	$804,073	$66,315	$38,866	$10,067	$5,008
BI-1B	$5,380	$55,002	$0	$0	$0	$0

During the CPAP Three-Year Review, BWG recommended keeping BI-1 in the PAP largely because of the impact on the CLECs and their end-user customers of untimely usage records. Despite the drop in volume of these usage records resulting from changes in the CLEC service mix, a number of CLECs continue to rely on them for the data the CLEC needs to bill its costumers. Late usage records provided to the CLECs will result in late billing to the CLECs' customers. Therefore, Liberty believes BI-1 should remain in the PAP.

BI-3 – "Billing Accuracy – Adjustments for Errors"

BI-3 is a measure in all participating state PAPs which assesses the accuracy of Qwest's bills rendered to the CLECs for wholesale services by measuring the percentage of billed revenue that has been adjusted because of errors. There are two sub-measures BI-3A, which measures errors in UNE and Resale bills, and BI-3B, which measures errors in reciprocal compensation bills. The payment history is shown in Table IV-C-12. The payments have been very high for UNE and Resale bills (BI-3A), but recently there have been no payments for reciprocal compensation bills (BI-3B). Liberty therefore considered whether to eliminate BI-3B from the PAPs.

Table IV-C-12
11-State Penalty Payment History
BI-3 "Billing Accuracy – Adjustments for Errors"

	2004	2005	2006	2007	2008 through October	November 2008 to March 2009
BI-3A	$1,111,576	$403,809	$297,355	$253,935	$59,328	$36,999
BI-3B	$21,074	$10,726	$0	$0	$0	$0

During the CPAP Three-Year Review, BWG recommended keeping BI-3 in the PAP although wholesale billing errors have relatively little impact on end-user customers. BWG noted that billing errors nevertheless can absorb considerable CLEC resources. Liberty agrees. Despite the lack of recent payments for BI-3B, the continued high payments for BI-3A indicate good reason to keep both sub-measures of BI-3 in the PAP.

4. Additional PID change proposals that would affect the PAP

In addition to proposing measures that should be considered for removal from the PAP and placed on the Reinstatement/Removal Process list, Liberty has identified three additional PID change proposals that would impact the PAP.

OP-5 - "New Service Quality"

This measure was designed to evaluate the quality of newly-installed service orders that are free of CLEC/customer-initiated trouble reports during the provisioning process and within 30 calendar days following installation completion. Currently this measure is divided into four sub-measures: OP-5A "New Service Installation Quality Reported to Repair," OP-5B "New Service Provisioning Quality," OP-5T "New Service Installation Quality – Total," and OP-5R, "New Service Quality Multiple Report Rate." OP-5A has a parity standard and OP-5B has a benchmark standard for those product disaggregations that have a standard, and both OP-5A and OP-5B are in all the state PAPs.[113] Both the OP-5T and OP-5R sub-measures are currently diagnostic measures. The OP-5A performance measure reports the percentage of inward line service orders that are free of trouble repair reports within 30 calendar days of installation completion. The PID defines repair trouble reports as CLEC or retail customer notifications to Qwest of an out-of-service or other service affecting condition for which Qwest opens a repair ticket in its maintenance and repair management and tracking operations support systems. The PID specifies that OP-5A considers trouble reports created by Qwest's call center and stored in its call center database provisioning trouble reports and includes these tickets in the OP-5B results calculation.[114]
[Qwest Comment: This statement is incorrect. The PID does *not* specify that OP-5A considers trouble reports caused by Qwest's call center. Rather, it is OP-5B that does so.]

OP-5B measures the percentage of inward line service orders free of provisioning trouble reports during the provisioning process and within 30 calendar days of installation completion. The PID defines provisioning trouble reports as CLEC notifications to Qwest of out-of-service or other service affecting conditions that are attributable to provisioning activities, including but not limited to LSR/service order mismatches and conversion outages. For provisioning trouble reports, Qwest creates call center tickets in its call center database. Qwest captures call center tickets closed in the reporting period or the following month for this measurement. Qwest does not count call center tickets closed to network reasons in OP-5B when a repair trouble report for that order is captured in OP-5A.[115]

Liberty believes that the manner in which this measure is currently split between repair center trouble reports and call center trouble reports creates an unnecessary complexity to the reporting structure. This split of trouble reports is not required to make a determination of the quality of Qwest's new service installations, which is the overall purpose of OP-5. It also creates a low volume problem for the calculation of OP-5B payments, because the number of call center

[113] Each of these two sub-measures has a few products that are diagnostic.
[114] 14-State 271 PID, Version 9.0.
[115] Ibid, p 59.

provisioning trouble reports created by Qwest that count toward this sub-measure is very small. For example, for the time period of January 2007 through October 2008, with the exception of two product disaggregations, every product reported under the OP-5B sub-measure averaged less that one provisioning trouble report per month across the entire 14-state region. Additionally, the two products that did average more than one provisioning trouble reports per month, unbundled analog loops and resale residential service, also experienced extremely low volumes of 8.3 and 1.6 provisioning troubles per month, respectively. Total Tier 1 payments for this sub-measure for all of 2007 and 2008 were $681. In contrast, OP-5A had nine product disaggregations that exceeded an average of 10 repair trouble reports per month across the 14-state region with five of these nine product disaggregations averaging more than 30 trouble reports per month.[116] Tier 1 payments for the OP-5A sub-measure during this same time period were $31,184.

To eliminate the low volume problem for OP-5B, that sub-measure could be removed from the PAPs. However, Liberty believes that a better approach **[Qwest Comment: Not so. It is not a better approach to combine a parity metric (OP-5A) with a benchmark metric (OP-5B, which has no retail analogue) which thus creates an unfair distortion of the parity result that would artificially disadvantage only the CLEC result, not the retail comparative. These two metrics measure completely different performance elements. OP-5A measures Network repair processes for new service installations, *after* they have been installed. On the other hand, OP-5B measures Call Center processes dealing with troubles occurring *during* the provisioning of an order or troubles called into the Call Center within 30 days of installation. OP-5A and OP-5B thus measure separate processes and completely different work group functions. Combining the two disparate measures would simply not yield a meaningful metric and could lead to payments not related to Qwest performance problems.]** would be to use what is effectively a combination of OP-5A and OP-5B. This can be accomplished by changing OP-5T from a diagnostic to a parity measure and replacing OP-5A and OP-5B in the PAPs with OP-5T. Qwest calculates the OP-5T based on both types of trouble reports (*i.e.,* repair trouble reports and provisioning trouble reports) essentially combining the OP-5A and OP-5B sub-measures into a single measure that can be used to determine the quality of Qwest's new service installations. Because the OP-5T measure would be used to determine parity of new service installation quality based on the total number of repair trouble reports referred to Qwest within 30 calendar days of service installation, the same parity standards that are used for the OP-5A measure would be used for the OP-5T measure.
[Qwest Comment: Please see also Qwest's responses to this recommendation in the main body of its comments.]

Electronic Gateway Availability (GA) and Pre-Order/Order (PO) Measures

Version 9.0 of the PID document (Exhibit B) and the QPAP (Exhibit K) for most states, still contains measures that involve reporting on the availability and the performance of the IMA-EDI interface. However, Qwest retired this interface in November 2007 and replaced it with the IMA-XML interface, which was made available to the CLECs in October 2006. Currently most states do not have measures in the PAP monitoring Qwest's performance on the XML interface. Colorado was the only state among the 11-states participating in this study for which the reporting measures specific to the XML interface had been approved before the end of the Study Period. The Utah

[116] The five products and the average monthly trouble report volume for each are: unbundled analog loops (122..2 troubles per month), unbundled DS-1 loops (66.8 troubles per month), EEL DS-1 (65.0 troubles per month), Unbundled 2-wire non-loaded loops (56.5 troubles per month) and Resale residential service (48.5 troubles per month).

Commission approved PAP changes to incorporate the XML interface on February 4, 2009.[117] Liberty recommends that the remaining states adopt those changes in Version 9.1 of the 14-State PID document and corresponding PAP changes which eliminate reference to the EDI interface and replace the EDI performance results with those for the XML interface. The specific measures affected by this proposal are:

- GA-2 – "Gateway Availability – IMA-EDI" – this PID should be replaced by GA-8 in the PAPs
- GA-8 – "Gateway Availability – IMA-XML" – this PID should replace GA-2 in the PAPs
- PO-1 – "Pre-Order/Order Response Time"
- PO-2 – "Electronic Flow-through"
- PO-3 – "LSR Rejection Notice Interval"
- PO-4 – "LSRs Rejected"
- PO-5 – "FOCs On Time"
- PO-6 – "Work Completion Notification Timeliness"
- PO-7 – "Billing Completion Notification Timeliness"
- PO-16 – "Timely Release Notifications"
- PO-19 – "SATE Accuracy"
- PO-20 – "Manual Service Order Accuracy"

Ordering and Provisioning Measures (OP)

Versions 9.0 and 9.1 of the PID document use retail ISDN-BRI designed service as the parity standard for a number of wholesale UNE-L products in the ordering and provisioning measures. However, Qwest rarely has any order volumes for its retail ISDN-BRI designed service. As a result, Qwest cannot fail the measure test for these wholesale products because there is no retail analog result to measure against. Liberty recommends that the standard for these wholesale products be changed to either i) a retail product that experiences consistent volumes or ii) a benchmark measure, if such a retail comparative does not exist. Liberty recommends that that a collaborative process be used to determine the appropriate replacement standards for retail ISDN-BRI. The measures and products affected by this recommendation are:

- OP-3 – "Installation Commitments Met"
  ISDN Capable Loop
- OP-4 – "Installation Interval"
  ISDN Capable Loop
- OP-5 – "New Service Quality"
  Non-Loaded 2-Wire Loop
  ADSL Qualified Loop
  ISDN Capable Loop
- OP-6 – "Delayed Days"
  Non-Loaded 2-Wire Loop
  XDSLI Capable Loop

[117] The Washington Utilities and Transportation Commission has also approved these changes.

ADSL Capable Loop
ISDN Capable Loop

- OP-15 – "Interval for Pending Orders Delayed Past Due Date"
  Non-Loaded 2-Wire Loop
  ADSL Qualified Loop
  ISDN Capable Loop

D. Proposed Product Changes

One of the recommendations in the 2007 Stipulation is to remove low volume products from applicable OP and MR measures from the PAPs in all 14 states in the Qwest operating territory except Colorado. Most of these products were eliminated from the CPAP in 2006 after the Three-Year Review. The performance results for these low volume products continue to be reported in the 271 performance plans. The products identified for removal from the PAPs in the 2007 Stipulation include:

- Resale Centrex
- Resale Centrex 21
- Resale DS0 (Designed and Non-Designed)
- E911/911 Trunks
- Resale Frame Relay
- Resale Basic ISDN (Designed and Non-Designed
- Resale Primary ISDN (Designed and Non-Designed)
- Resale PBX (Designed and Non-Designed)
- Sub-Loop Unbundling
- UNE-P POTS
- UNE-P Centrex
- UNE-P Centrex 21

Liberty agrees that, with the exception of sub-loop unbundling in Colorado,[118] the products shown on the list above have a low level of transaction activity in all the participating states, and that it is appropriate to remove them from the PAP. Because of the continued low order and trouble report volumes for these products, Liberty recommends that they be removed from the PAP in all states that still include them, with that one exception.[119]

Liberty examined the historical ordering and trouble reporting volumes on the remaining products to identify other candidates for removal from the PAPs. As the basic criterion for product removal, Liberty used the condition that the ordering and trouble reporting volumes never exceeded ten

[118] Sub-loop unbundling averaged 14.4 orders per month in Colorado from January 2007 through October 2008, but had little to no order activity in the other ten participating states during this same time period.
[119] Montana should remove all the products on the 2007 Stipulation list. Colorado should remove UNE-P POTS, Centrex, and Centrex 21.

transactions per month in any state at the CLEC aggregate level from January 2007 through October 2008. Liberty also considered products that came close to meeting this criterion and considered them on a case-by-case basis. Based on this analysis, Liberty recommends that the states remove six additional low volume products from the PAPs for all OP and MR measures in which they appear, with one exception noted below:

- Unbundled DS-3 Loops
- UDIT – Above DS-1
- Unbundled 4-Wire Non-Loaded Loops
- Loops with Conditioning[120]
- Unbundled ISDN Capable Loops (Applies to all states and measures except for MR measures in Arizona and Colorado)
- Line Sharing

[Qwest Comment: Please see Qwest's responses in the main body of its comments and in Attachment 5B regarding low volume products.]

Appendix B contains tables that show the state-by-state ordering and trouble report volumes for these six products. As shown in these tables, in Arizona and Colorado there were low monthly ordering volumes for the Unbundled ISDN Capable Loops but a significant number of trouble reports each month. **[Qwest Comment: This is simply not so. The Arizona trouble rate was never greater that 1.77%, which is excellent by any standard.]**

This is because of the substantial embedded base of such loops in Arizona and Colorado (1,356 and 1,000, respectively, in October 2008). Thus, Liberty recommends making the exception for these two states in removing this product from the MR measures.[121]

[Qwest Comment: Please see also Qwest's responses in the main body of its comments, in Attachment 5B, and in reference to Footnote 73. Footnote 73 seems to contradict this statement. Liberty says that 'in the interest of enhancing simplicity, they would not introduce the extra complexity of including both the numerator and denominator of MR8 to decide volumes issues.]

Table IV-D-1 below provides a summary view of the ordering volumes on the products listed above for January 2007 through October 2008. The information provided in this table is the 22-month average monthly volume in the state that had the greatest level of transaction activity, the highest transaction level for the state that had the greatest number of transactions in a single month, the number of states that average more than three transactions per month during the 22-month period, the number of states that exceeded ten transactions in any given month, and the number of times ten transactions per month were exceeded across all states. The only product that experienced more than ten transactions in a single state more than once was Loops with Conditioning which occurred in Iowa in May 2008 (18 transactions) and again in September 2008 (12 transactions). However, Iowa's monthly average volume for this product was 1.8 orders per month. Thus, these two months

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[120] "Loops with Conditioning" is a product disaggregation for OP measures but not for MR measures. Loops ordered in this way appear in other provisioned product categories in the MR measures, such as UBL 2-Wire Non-Loaded Loops.

[121] Because calculation of MR-8 (Trouble Report Rate) includes not only trouble report volumes but also lines, an argument could be made that both the trouble reports and lines should be considered in determining whether "volumes" are too small for product disaggregations of this measure. Thus, states with large quantities of lines in service for the products Liberty has identified for elimination might want to modify Liberty's recommendations. However, in the interest of enhancing simplicity, Liberty chose not to introduce the extra complexity this would entail.

appear to be exceptional and do not affect Liberty's recommendations to remove the product in all states.

Line Sharing requires special mention. Ordering volumes in Colorado exceeded Liberty's low-volume threshold during the first six months of 2007. However, the volumes have been very low in Colorado since then, probably as a result of the TRO/TRRO phase-out provisions for this product. Thus, it is still appropriate for Line Sharing to be excluded from the CPAP, as occurred in a CPAP in 2006 after the Three-Year Review. For all the other states, this product meets the low ordering volume criterion; only one other state received any orders for the product. All states, including Colorado, met Liberty's criteria for Line Sharing trouble reports, supporting Liberty's recommendation to removing the Line Sharing product from all the MR measures.

Table IV-D-1
CLEC Aggregate Ordering Volumes for Selected Products
January 2007 – October 2008
11-State Summary View

Product	Greatest Average Monthly Volume in Any State (Transactions Per Month)	Greatest Single Monthly Volume in Any State (Transactions)	Number of States that Averaged Less than 3 Transactions Per Month	Number of States that Exceeded 10 Transactions	Number of Times 10 Transactions Was Exceeded
UBL-DS3	0.5	3	11	0	0
UDIT Above DS1	3.5	16	10	1	1
UBL 4-Wire Non-Loaded Loop	1.3	11	11	1	1
Loops with Conditioning	4.9	18	10	3	4
UBL ISDN Capable Loop	3.9	12	10	1	1
Line Sharing[122]	6.8	40	10	1	3

There are a number of other product disaggregations with typically low to moderate ordering and trouble report volumes although larger than the products considered above. Although the volumes are high enough for continued inclusion in the PAPs, they are small enough in many states that the kind of low-volume test situations discussed in Section IV-C occur. As discussed in that section, Liberty recommends an aggregation method for these low volume situations that will help alleviate this problem.

In addition to the product removals mentioned, Liberty has one recommendation for adding a product. The Colorado Commission should add the Unbundled ADSL Capable Loop product to the CPAP. This product was removed from the CPAP as part of the Three-Year Review decision in 2006. Since that time, the ADSL Capable Loop product has been experiencing increasing volumes in Colorado and appears to be an increasingly important competitive product for the CLECs in that

[122] All the Line Sharing statistics on this summary table are for Colorado. New Mexico was the only other state with any Line Sharing order volumes during the 2007-2008 period, and it only received a single order for the service.

state. This product is currently included in the QPAP for the other 10 states participating in this study. As shown in Table IV-D-2 below, for the period of January 2007 through October 2008, Colorado's order volumes for this product generally exceed those of the other participating states. Additionally, for the most recent period of November 2008 through March 2009, which is not included on the table below, Colorado averaged 73.8 ADSL capable loop order per month, showing continuing growth in the volumes of these orders in the state.

Table IV-D-2
Order volumes for ADSL Capable Loops

State	2007 volumes	January through October 2008 volumes	Average monthly volume for 10 month period in 2008	Total Volumes
Arizona	16	337	33.7	353
Colorado	2	527	52.7	529
Idaho	0	0	0	0
Iowa	257	87	8.7	344
Montana	40	47	4.7	87
North Dakota	830	760	76.0	1,590
Nebraska	184	113	11.3	297
New Mexico	363	181	18.1	544
South Dakota	0	0	0	0
Utah	0	41	4.1	41
Wyoming	82	67	6.7	149

E. Proposed Performance Indicator Definition Changes

Liberty proposes that the states consider four changes to the PIDs that will not have an impact on the PAPs. These proposals are a result of both the measure analysis performed by Liberty and input that Liberty received from the CLECs. Some of these changes will make the reported results more meaningful. Others add sub-measures to monitor Qwest's service quality for activities that CLECs indicate are important to their business and are not monitored today. These sub-measures would be diagnostic and allow evidence to be developed as to whether Qwest's performance for these activities warrants inclusion of the sub-measures in the PAP. These changes are described below.

1. MR-4 – "All Troubles Cleared within 48 Hours"

The purpose of the MR-4 measures is currently described as: "[e]valuates timeliness of repair for specified services, focusing on trouble reports of all types (both out of service and service affecting) and on the number of such trouble reports cleared within the standard estimate for specified services (*i.e.,* 48 hours for service-affecting conditions)."[123] Liberty proposes that the definition of this measure be modified so that it only reports service affecting trouble reports and not all trouble reports, thereby eliminating the out-of-service troubles from the report. The rationale for this is that Qwest's performance for out-of-service trouble reports, which have an objective restoral time of 24 hours, is reported by the MR-3 "Out of Service Cleared with 24 Hours" measure. Because the

123 14-State 271 PID Version 9.0

product disaggregations for both the MR-3 and MR-4 measure are identical, including out-of-service trouble reports in the MR-4 reported results could potentially mask poor performance in the resolution of service affecting troubles on these products within 48 hours. The lower objective restoration time of 24 hours for out-of-service troubles will effectively lower the overall restoration time for all trouble reports. By limiting the MR-4 measure to service affecting troubles only, the users of the report will receive more accurate data on Qwest's ability to resolve these troubles within 48 hours.
[Qwest Comment: Please see Qwest's responses to this recommendation in the main body of its comments.]

2. OP-4 - "Installation Interval"

The OP-4 measure evaluates the timeliness of Qwest's ability to install service for customers by calculating the average time it takes Qwest to install inward service orders for various products. One of the CLECs suggested that Qwest also report on its performance on expedited service orders. Liberty believes that such a sub-measure may provide useful data to both the CLECs and Qwest regarding Qwest's ability to install service on a reduced interval in circumstances that call for it. As such, Liberty proposes that a diagnostic sub-measure be added to OP-4 to report on Qwest's results in meeting expedited due dates.
[Qwest Comment: Please see Qwest's responses to this recommendation in the main body of its comments.]

3. MR-7 – "Repair Repeat Trouble Rate"

The MR-7 measure evaluates the accuracy of Qwest's repair performance by calculating the number of repeat trouble reports on the same line or circuit within 30 days of the initial trouble report being closed. However, neither this, nor any other, measure provides data on the number of chronic trouble reports being experienced by the CLECs. Chronic troubles would be defined as lines or circuits that receive greater than two trouble reports over an extended period of time. Liberty believes that it is possible that the repeat trouble report metric is missing an important component of reporting on chronic troubles that may be indicative of faulty facilities, other network problems and/or Qwest repair process problems. Liberty proposes that Qwest include a diagnostic sub-measure to the MR-7 measure or create an entirely new MR measure that will report the number of lines and circuits that receive more than two trouble reports over a rolling six month period to provide the users of the PID reports data on the number of chronic trouble reports that CLECs are experiencing.
[Qwest Comment: Please see Qwest's responses in the main body of its comments. This is effectively a mythical problem because, if there were an issue with chronics, it would appear in MR-7, which includes each and every chronic ticket, if there is one. But there is no problem evident in the data. MR-8 also captures chronics.]

4. OP-3 – "Installation Commitments Met"

The OP-3 measure is intended to evaluate Qwest's ability to install services for customers by the scheduled due date. One of the inputs that Liberty received from the CLECs is that Qwest does not reliably meet coordinated installation appointments that it sets with the CLEC. The CLECs pay a greater non-recurring installation charge for such appointments. To provide Qwest, the CLECs and the states with the ability to monitor Qwest's performance on these coordinated appointments,

Liberty proposes that Qwest add a diagnostic sub-measure to the OP-3 measure. This sub-measure would report the percent of coordinated appointments that Qwest is able to meet.
[Qwest Comment: Please see Qwest's responses in the main body of its comments. Coordinated installation appointments are already measured in OP-13. Nevertheless, OP-13 also fits volume and low payment criteria for removal.]

F. Other PAP Changes

As noted, the decline in Tier 2 payments during the Study Period has been particularly significant, and larger than that for Tier 1 payments. Most states rely on the Tier 2 payments to provide the funds for administration of the PAP, since as for audits and studies such as this one. A continued decrease in Tier 2 payments could leave insufficient funds for PAP administration. Because the purpose of the PAP is to help incent wholesale performance rather than provide funds to the states, Liberty believes that an alternative means should be considered for funding PAP administration activities in addition to the Tier 2 payments. For example, the CPAP has provisions that in certain cases if the Special Fund created to hold the Tier 2 payments are insufficient to pay for certain PAP administration activities, Qwest would be assessed for the cost. Liberty believes that a more general provision of this sort would be advisable in all the PAPs.
[Qwest Comment: Please see Qwest's responses in the main body of its comments.]

Liberty also examined other aspects of the PAP structure for possible changes. Liberty's analysis and review confirmed that, with some exceptions in Colorado, performance has a similar impact on payments throughout the 11 states as discussed in Section III.D. However, the 11 state QPAPs have many differences, and there is some value in eliminating these differences because the differences add to the complexity of Qwest's PAP administration and tend to make it difficult for a CLEC operating in several states to understand the different PAP rules. Nevertheless, Liberty does not recommend moving to a single uniform PAP across the Qwest operating region. The differences evolved through specific proceedings in each state and were justified by the evidence provided in those proceedings. In addition, the changes would require work on Qwest's part. The PAPs are working well as they are, and because moving to a uniform PAP would not have a major impact on results, Liberty believes the cost of making such a change outweigh its benefits.

Liberty examined other methods to simplify the PAPs, and also concluded that the costs of making the changes outweighed the benefits.

V. Summary of Conclusions and Recommendations

Liberty concludes that the PAPs are still serving a useful purpose in all the participating states. There continues to be a significant group of CLECs in the states that rely heavily on Qwest's wholesale services to conduct their business and with few realistic alternatives. These CLECs continue to provide significant competition for Qwest, particularly in such important parts of the market as broadband and business services. In addition, as Integra has pointed out, with the merger of AT&T and MCI with Regional Bell Operating Companies, their traditional strong advocacy for the interests of the CLEC community has significantly diminished. This enhances the need for strong PAPs to protect the interests of the CLECs.

Although Liberty concludes that the PAPs should be maintained, some changes should be made in the existing PAPs to simplify them and make them more targeted to the continuing and evolving needs of the competitive marketplace. Most of these changes continue a process of evolution of the PAPs since their inception to continue to tailor them to current needs. Liberty considered a number of different possible changes, including additional ways to simplify the PAPs. Some approaches, such as eliminating certain measure disaggregations could not be justified because they would tend to mask poor performance or might have the unwanted results of increasing the PAP complexity. Some simplification approaches were rejected because the potential benefits were minimal and would not justify the potential cost of their implementation. After considering the alternatives, Liberty developed the recommendations for PAP changes outlined below. The detailed applicability of these proposals in each of the 11 participating states is provided in Appendix C.

<u>The following recommendations apply to all the participating state PAPs.</u>
[Qwest Overall Comment: For all of these recommendations, please see Qwest's responses, both in the main body of its comments and in the interlineated comments above in the Executive Summary.]
<u>Recommendation 1.</u> The Commissions should introduce a new aggregation mechanism to minimize low-volume tests in determining payments. Specifically, transactions for CLECs with low volumes should be aggregated with those of other CLECs, and, as necessary, aggregated over up to a three month period, for the purpose of determining non-conformance and calculating payments.

Liberty's analysis reveals that a large number of the tests performed to determine PAP penalty payments are based on CLEC transaction sample sizes which are very small. Such low-volume tests can introduce statistical errors, either biasing the results against Qwest or against the CLECs depending on the circumstances. Furthermore, the relative biases are not likely to be balanced. Liberty considered several structural changes to the PAPs which could have reduced the number of low-volume tests, but concluded that aggregation primarily over CLECs and secondarily over time would be the best way to avoid unnecessary complexity in the PAP mechanism.

In Liberty's proposal, payments with low-volume CLEC transactions would be determined through the following steps:

1. Aggregate transactions for all CLECs that have less than ten transactions in a month for any given sub-measure disaggregation.
2. If the outcome of this CLEC aggregation equals or exceeds ten transactions, use the aggregate result for these CLECs to calculate whether penalty payments are required.
3. Distribute any penalty payments to the aggregated CLECs based on each CLEC's relative share of the total number of misses.
4. If the aggregate total does not exceed ten transactions, then carry forward the aggregate result to the following two months until either the threshold of ten aggregate transactions is met or three months of results data have been used in an attempt to meet the minimum volume threshold.[124]
5. Start the process again after either of these criteria has been met.

A more complete description of the analysis behind this recommendation is in Section IV.B.

[124] Liberty recommends treating aggregation across months as if it were a single month for payment escalation purposes.

<u>Recommendation 2</u>. The Commissions should eliminate the following PID measures (in addition to those included in the 2007 Stipulation recommendations) from consideration for PAP payments for those states that use them, and place them on the list of measures subject to the Reinstatement/Removal Process:

- *PO-9 Timely Jeopardy Notices*
- *PO-19 SATE Accuracy*
- *PO-20 Manual Service Order Accuracy*
- *CP-1 Collocation Completion interval*
- *CP-2 Collocations Completed within Scheduled Intervals*
- *CP-4 Collocation Feasibility Study Commitments Met.*

This recommendation continues a process started with the CPAP Three-Year Review and 2007 Stipulation recommendations of simplifying the PAPs and focusing them on the measures which continue to assess those Qwest wholesale functions with the highest importance to a large class of CLECs. A precondition for this recommendation is the introduction of the Reinstatement/Removal Process into the PAP, as recommended in the 2007 Stipulation. Liberty also reviewed the measures recommended in the 2007 Stipulation for removal from the PAP but subject to the Reinstatement/Removal Process, and found that the rationale for this treatment is still valid. Because Montana has not yet adopted these recommendations, Liberty believes Montana should adopt the 2007 Stipulation recommendations, as noted below in a separate recommendation.

Liberty chose the additional measures for PAP removal (PO-9, PO-19, PO-20, CP-1, CP-2, and CP-4) based on the relatively small contribution to the PAP payments in all the states, the small measured CLEC volumes, and the limited impact their removal would have on the CLECs' ability to serve their end-user customers. Liberty considered other measures for removal based on relatively low recent payments but rejected their inclusion in the list of measure for removal, largely because of the potential negative impact on the CLECs and their customers.

A more complete description of the analysis behind this recommendation is in Section IV.C.

<u>Recommendation 3.</u> The Commissions should make the following additional changes to certain PID measures in the PAPs:

- *For OP-5 (New Service Quality), use sub-measure OP-5T instead of sub-measures OP-5A and OP-5B.*
- *Replace the current retail analog of "retail ISDN-BRI designed" with some other retail product or with a benchmark.*

The change for OP-5 has the advantage of avoiding unnecessarily disaggregating the orders examined for new service quality into two classifications, whether troubles were repair center trouble reports (OP-5A) or provisioning trouble reports (OP-5B). Combining these two classifications in OP-5T helps minimize the low-volume tests mentioned in Recommendation 1. The standard for OP-5T would be the same parity standards that are used for the OP-5A measures, as explained in Section IV-C-4.

Liberty observed that a number of wholesale products use retail ISDN-BRI designed as the retail analogue. This occurs in the following measures:

- OP-3 – "Installation Commitments Met"
  ISDN Capable Loop
- OP-4 – "Installation Interval"
  ISDN Capable Loop
- OP-5A – "New Service Quality"
  Non-Loaded 2-Wire Loop
  ADSL Qualified Loop
  ISDN Capable Loop
- OP-6 – "Delayed Days"
  Non-Loaded 2-Wire Loop
  XDSLI Capable Loop
  ADSL Capable Loop
  ISDN Capable Loop
- OP-15 – "Interval for Pending Orders Delayed Past Due Date"
  Non-Loaded 2-Wire Loop
  ADSL Qualified Loop
  ISDN Capable Loop

However, retail ISDN-BRI designed frequently has an insufficient number of order transactions to use in the conformance tests to determine payments. As a result, for the wholesale products using this retail analogue, it is often impossible for the tests to fail and a payment to be made. Liberty recommends that a Qwest-CLEC collaborative determine the appropriate alternative standard to retail ISDN-BRI designed for the measures and wholesale products listed above.

A more complete description of the analysis behind this recommendation is in Section IV.C.

<u>*Recommendation 4*</u>. *The Commissions should eliminate the following low-volume products from the OP and MR measures in the PAPs:*

- *Unbundled Digital Signaling Level 3 (DS-3) Loops*
- *Unbundled Dedicated Interoffice Transport (UDIT) – Above DS1*
- *Unbundled 4-Wire Non-Loaded Loops*
- *Loops with Conditioning (applies only to OP measures)*
- *Unbundled ISDN Capable Loops (applies to all states and measures except for MR measures in Arizona and Colorado)*
- *Line Sharing (already removed in Colorado).*

In addition to the low-volume products eliminated in the CPAP Three-Year Review and through the 2007 Stipulation recommendations, Liberty has identified these other products with transaction volumes that are too small to warrant continued inclusion in the PAP payments tests. These products would still continue to be monitored through the PID reports. As with Recommendation 2, this recommendation assumes that the products recommended for removal in the 2007 Stipulation have also been removed. Liberty reviewed the products in the 2007 Stipulation recommendation and agrees they should be removed. Because Montana has not yet adopted these 2007 Stipulation recommendations, Liberty believes Montana should adopt the 2007 Stipulation recommendations, as noted below in a separate recommendation.

The analysis supporting this proposal is described more fully in Section IV.D.

<u>Recommendation 5.</u> *The Commissions should make the following additional changes to certain PID measures:*

- *Limit MR-4 (All Troubles Cleared within 48 Hours) to service-affecting troubles*
- *Add a diagnostic sub-measure to OP-4 (Installation Interval) to measure performance on expedited orders*
- *Add a diagnostic sub-measure to MR-7 (Installation Interval) to measure chronic troubles*
- *Add a diagnostic sub-measure to OP-3 (Installation Appointments Met) to the percentage of coordinated appointments met.*

Some of these changes will make the reported results more meaningful. Others add sub-measures to monitor Qwest's service quality for activities that CLECs indicate are important to their business and are not monitored today. These new sub-measures would be diagnostic and allow evidence to be developed as to whether Qwest's performance for these activities warrants inclusion of the sub-measures in the PAP.

This recommendation is described more fully in Section IV.E.

<u>Recommendation 6.</u> *The Commissions should adopt provisions to assess Qwest for the cost of PAP administration functions, including independent auditor and audit costs and payment of other expenses incurred by the participating Commissions in the regional administration of the PAP, if the Special Funds created by the Tier 2 payments are insufficient for fund these functions.*

In order for the PAPs to be effective, the Commissions need to have resources for administering them. This includes funds for such activities as audits and special studies to support the regular reviews of the PAPs. Most, but not all, of the PAPs call for the Tier 2 Special Funds to be used for this purpose.[125] With the decline of Tier 2 payments, there is a possibility that the Special Funds established to fund these activities could soon be exhausted. The approach of assessing Qwest directly for such costs is already part of the CPAP provisions in certain circumstances. This approach should be applied more broadly. In cases where there are no provisions for PAP administration funding, Liberty recommends adopting the necessary provisions.

<u>The following recommendation applies to all participating states except Colorado and Utah.</u>

<u>Recommendation 7.</u> *The Commissions should adopt changes in the PAPs and PID to recognize Qwest's replacement of the Electronic Data Interchange (EDI) interface by the Extensible Mark-up Language (XML) interface.*

[125] This is usually specified in paragraph 11.3 of the PAP.

Most state PAPs still involve monitoring and PAP payments based on use of the EDI interface for ordering and pre-ordering. Qwest has now phased out use of this interface and replaced it with an XML interface. This means that the PAPs no longer have the ability to generate payments based on failures of Qwest to provide ordering and pre-ordering through an e-bonded interface. This involves replacement of the language in PID document Version 9.0 related to these interfaces with the language introduced in Version 9.1. In PID Version 9.1, GA-2, which measured the availability of EDI, has been dropped and replaced with GA-8, which measures the availability of the XML database. Version 9.1 also replaces the EDI interface with the XML interface in the following measures:

- PO-1 – "Pre-Order/Order Response Time"
- PO-2 – "Electronic Flow-through"
- PO-3 – "LSR Rejection Notice Interval"
- PO-4 – "LSRs Rejected"
- PO-5 – "FOCs On Time"
- PO-6 – "Work Completion Notification Timeliness"
- PO-7 – "Billing Completion Notification Timeliness"
- PO-16 – "Timely Release Notifications"
- PO-19 – "SATE Accuracy"
- PO-20 – "Manual Service Order Accuracy"

In addition, references to GA-2 need to be replaced by GA-8 and other references to EDI need to be changed in the PAP.

The Colorado and Utah Commissions have already adopted these changes.

<u>The following two recommendations apply only to Colorado.</u>

<u>Recommendation 8.</u> The Colorado Public Utilities Commission should restore the Tier 1B, Tier 1C, and Tier 2 mechanisms to the CPAP, subject to the changes required by Liberty's other recommendations.

The current version of the CPAP has implemented a sunset provision which automatically eliminates the Tier 1B, Tier 1C, and Tier 2 mechanisms after six years. Although there are a number of aspects of this change which are consistent with Liberty's generally applicable recommendations above, there are some products and measures eliminated through this change which Liberty still considers to be important for inclusion in the CPAP. In particular, many of the Tier 1B and 1C measures have been removed from the Colorado Reinstatement Process list. The list went from 16 measures that could be reinstated if Qwest's performance was not in conformance with the established standard for three consecutive months to only five remaining measures. Eleven measures have essentially been removed from the PAP forever by this change. Additionally, all billing measures and all regionally measured measurements (*e.g.,* all GA measures, PO-1, etc) have been removed from the PAP.

<u>*Recommendation 9.*</u> *The Colorado Public Utilities Commission should make the following additional changes to the CPAP:*

- *Restore the Unbundled ADSL-Capable Loop product*
- *Eliminate the UNE-P products.*

After the Three-Year Review, the Colorado Commission eliminated Unbundled ADSL-Capable Loop as a product. At the time of the Three-Year Review, the order volume for this product was very small. However, since that time, there has been a significant increase in the volumes for this product. It has become an important product for certain CLECs to provide broadband service. Therefore, Liberty recommends restoring this product to the CPAP.

UNE-P was delisted as a UNE by the FCC in the TRO and TRRO decisions. The UNE-P products (UNE-P POTS, UNE-P Centrex, and UNE-P Centrex 21) were eliminated in those QPAPs that have adopted the 2007 Stipulation recommendations. However, they were not eliminated in the CPAP. Because these products are now obsolete for PAP purposes, Liberty recommends that they be removed from the CPAP.

<u>The following recommendation applies to Montana only.</u>

<u>*Recommendation 10.*</u> *The Montana Public Service Commission should adopt the recommendations of the 2007 Stipulation.*

Liberty has reviewed the recommendations of the 2007 Stipulation and finds them to be appropriate. All participating Commissions except Montana's have adopted most of these recommendations. Of particular relevance are the following recommendations:

- Introduction of the Reinstatement/Removal Process with application to the following measures (for Montana):
    - GA-3 Gateway Availability EB-TA
    - GA-4 System Availability EXACT
    - GA-7 Timely Outage Resolution Following Software Releases
    - PO-3 LSR Rejection Notice Interval
    - PO-5D FOCs On Time (ASRs for LIS Trunks)
    - PO-7 Billing Completion Notification Timeliness
    - PO-8 Jeopardy Notice Interval
    - PO-16 Timely Release Notifications
    - OP-17 Timeliness of Disconnects Associated with LNP Orders
    - MR-11 LNP Trouble Reports Cleared within25 Hours
    - BI-4 Billing Completeness
    - NI-1 Trunk Blocking
    - NP-1 NXX Code Activation
- Elimination of the following low-volume products from consideration in determining PAP payments but continue to report them in the PID reports:
    - Resale Centrex

- Resale Centrex 21
- Resale Frame Relay
- Resale Private Branch eXchange (PBX) (non-designed and designed)
- Resale ISDN-BRI (non-designed and designed)
- Resale ISDN Primary Rate Interface (PRI) (non-designed and designed)
- Resale Digital Signaling Level 0 (DS0) (non-designed and designed)
- Resale DSL (designed)
- Sub-Loop Unbundling (except in Colorado)
- UNE-P POTS
- UNE-P Centrex
- UNE-P Centrex 21
- E911/911 Trunks

- Introduction of the One Allowable Miss Mechanism for low-volume benchmark and non-interval parity measures

ATTACHMENT 3 – Root Cause Analyses

ATTACHMENT 3 – Root Cause Analyses (RCAs) Ordered by the CPAP Independent Monitor

Date	PID	Root Cause	Adher-ence to Process	Metric Flaw	Non-Qwest	CLEC Comments	Findings
Dec-03	MR-8 UBL DS-I	Mistakes made earlier in the ordering process were manifested as trouble reports down the line	✓			MCI & Eschelon: - Retain PO-2 in CPAP - Correct MR8 performance	No discrimination
	MR-8 UNE_P_CTR21 MR-8 UNE_P_CTX MR-8 UBL ISDN	Low number of occurrences (small sample) for these measures account for the wider variation of results			✓		
	PO-2B LNP	Flow-through functionality enabling certain LSRs to flow-through without manual intervention.	✓				Retain PO-2
Aug-04	OP-4A Line Sharing / Line Splitting	Failure to follow the documented order writing process in the Interconnect Service Center; a Network missed commitment; company workload limitations	✓			Covad: - Further analysis	No discrimination
Mar-05	PO -2A & B	Manual processing of a single CLEC's large batch of local service requests should not have been considered flow-through eligible. This scenario was not anticipated in the Flow Through Exceptions Matrix.	✓		✓	No comments	No discrimination No further action
Sep-06	BI-1A UNE RESALE	Order for measured service generated usage record for a flat rated product when it should not have been issued	✓			No comments	No discrimination No further action
	MR-5 UBL DS1 MR-6 UBL DS1	Seasonal variation not taken into account in Eschelon's trending assertions. Qwest explained the proper trending model.			✓		
	MR-7 EEL DS1	More non-Qwest caused troubles and a higher percentage impact on the repeat report rate for retail service than for wholesale service		✓			

Date	PID	Root Cause	Adherence to Process	Metric Flaw	Non-Qwest	CLEC Comments	Findings
May-07	BI-1A UNE RESALE	Guide conflicts, human error, and issues associated with conversion from flat rated to measured products.	✓			No comments	No discrimination No further action
	MR-5A UBL DS1	Interpretation of the PID and the CPAP included an additional statistical test that unnecessarily increased the payments made to CLECs.		✓	✓		
	MR-5X UBL DS1			✓	✓		
	MR-6D UBL ISDN	A cable cut and one CLEC's non-conforming product use. Test OK/No Trouble Found (TOK/NTF) tickets of less than one hour duration not properly excluded from the calculation of MR-6 penalties		✓	✓		
	OP-4E EEL DS1	Difference between the agreed upon measured average interval of six days and a published standard interval of eight days		✓			
Oct-08	MR-5A UBL DS1	Inconsistent handling of after-hours dispatch tickets in dispatch centers	✓		✓	No comments	No discrimination No further action
	MR-6E UBL DS1						
Mar-09	MR-6A UBL SUBLCO	Correct statistical test as called for in the CPAP Section 6.4 was not applied and tickets incorrectly issued by the CLEC were for no dial tone (NDT).		✓	✓	No comments	No discrimination No further action

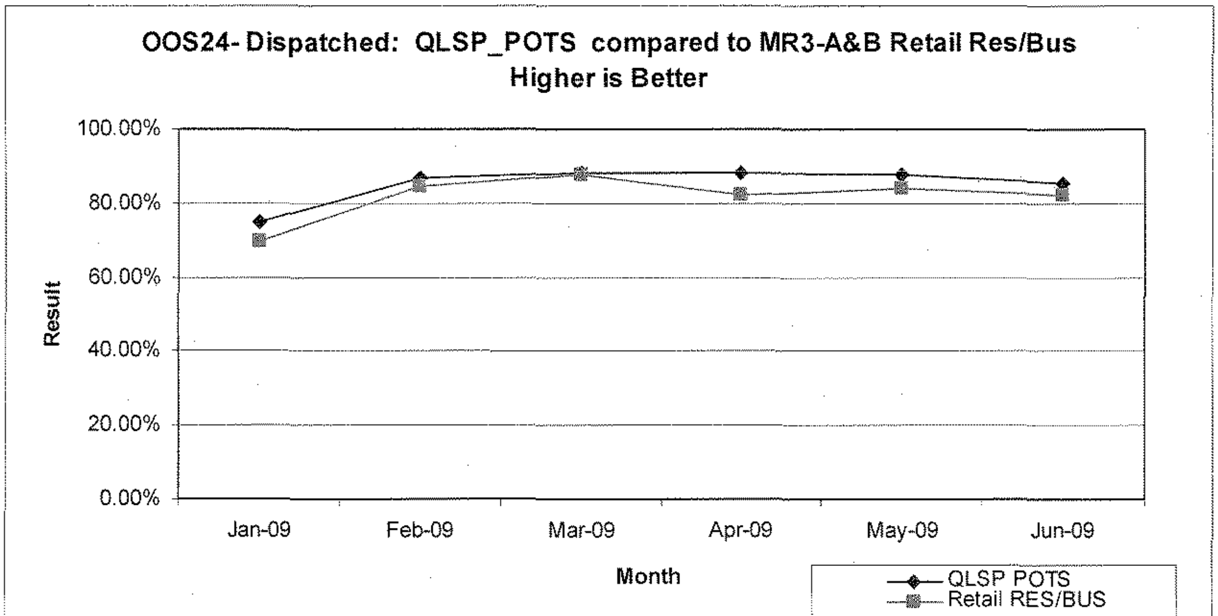
ATTACHMENT 4 – Commercial Agreement Performance

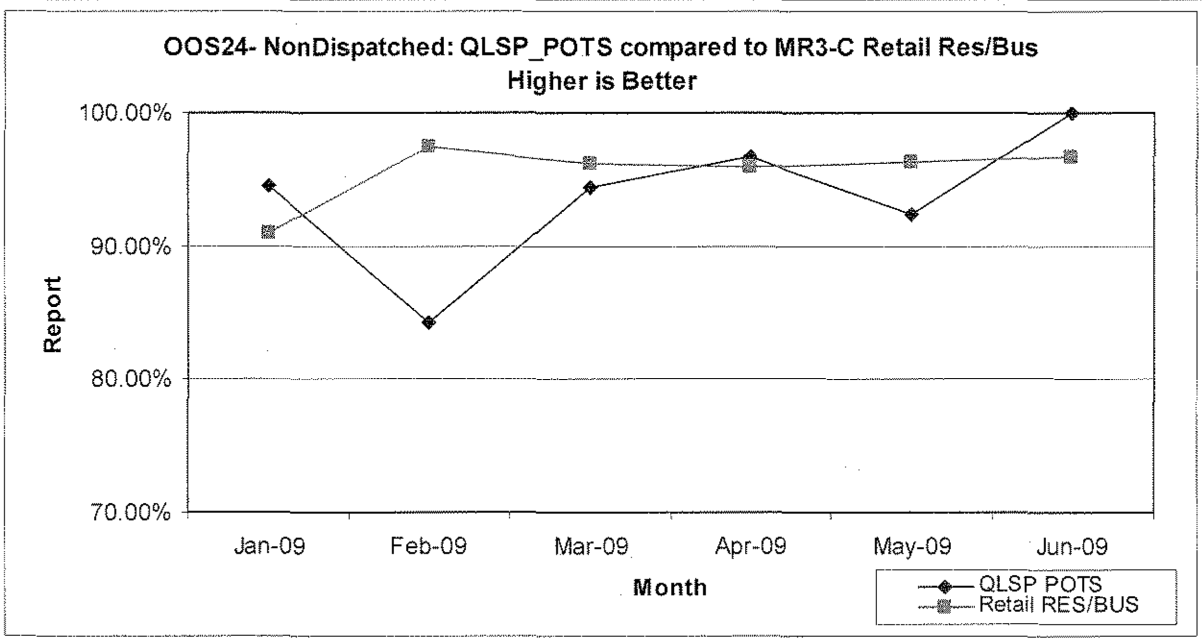
ATTACHMENT 4 – Performance Results from Commercial Agreements

QLSP results for January through June 2009 clearly show that wholesale customers in commercial agreements are receiving higher quality service than comparable retail services.

QLSP Metric Results vs Retail Res/Bus Results – 14-State Regionwide
Jan – June 2009

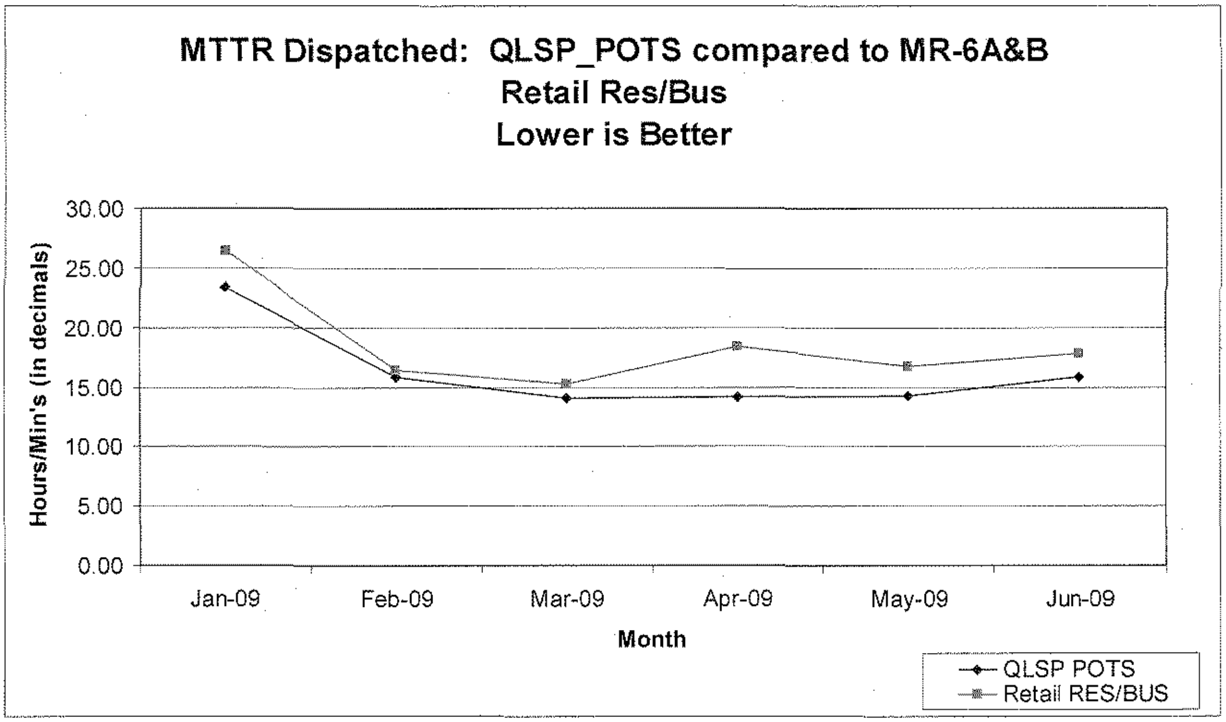
Out of Service Cleared within 24 Hours (OOS<24)

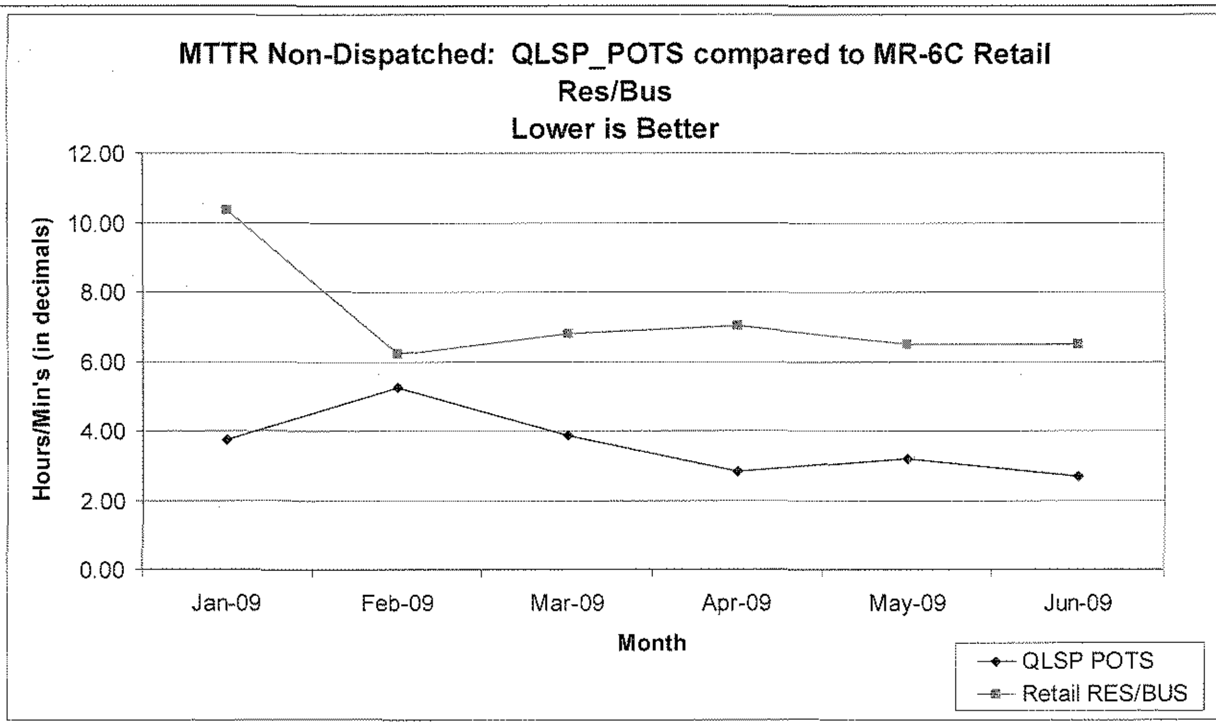




QLSP results for dispatched POTS services are better than the comparable combined MR-3A and MR-3B retail Res/Bus results. The same is true for the QLSP non-dispatched POTS results when compared to MR-3C results each month Jan – Jun 2009 – better or equal when the result is 100%

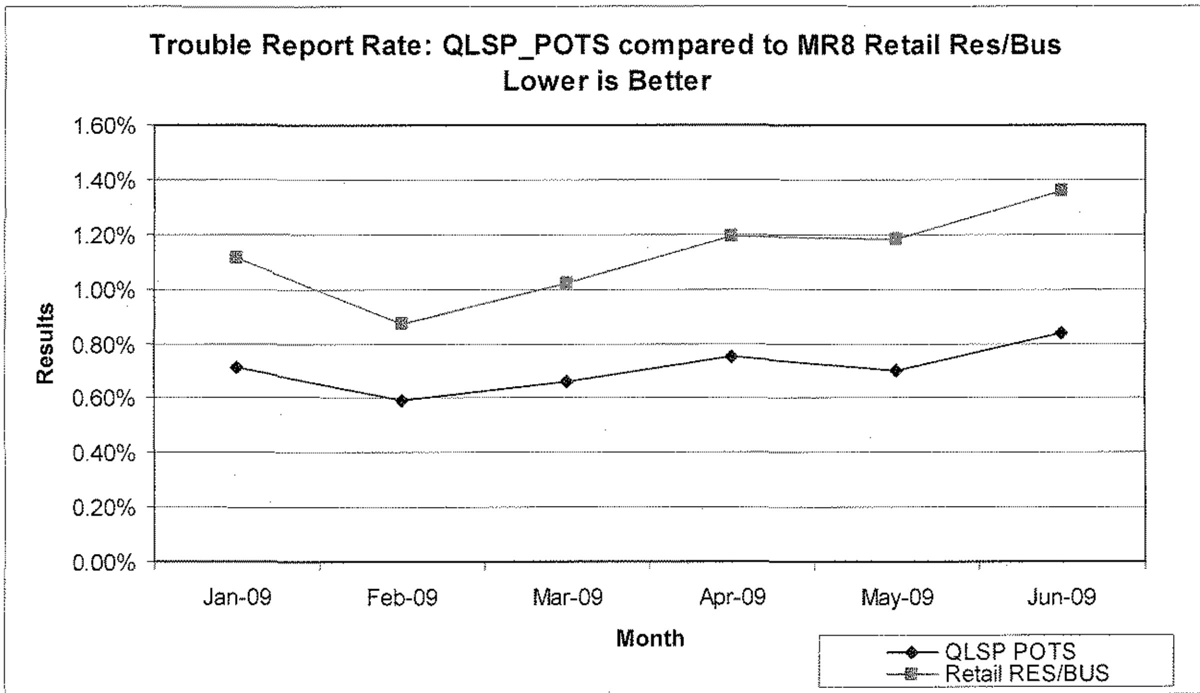
Mean Time to Restore (MTTR)





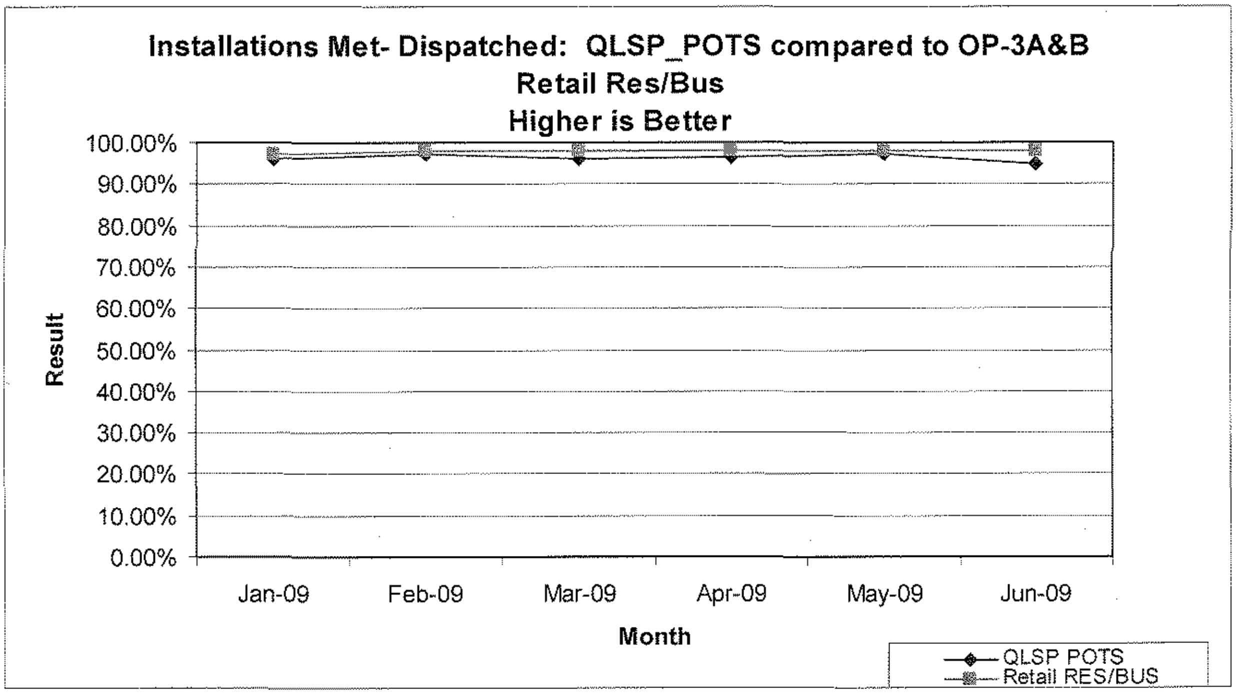
Dispatched QLSP-POTS MTTR results consistently range from two hours to six hours better when compared to the combined MR-6A & B retail Res/Bus results. Non-dispatched QLSP-POTS MTTR results range from four to eight hours better than MR-6C retail Res/Bus results.

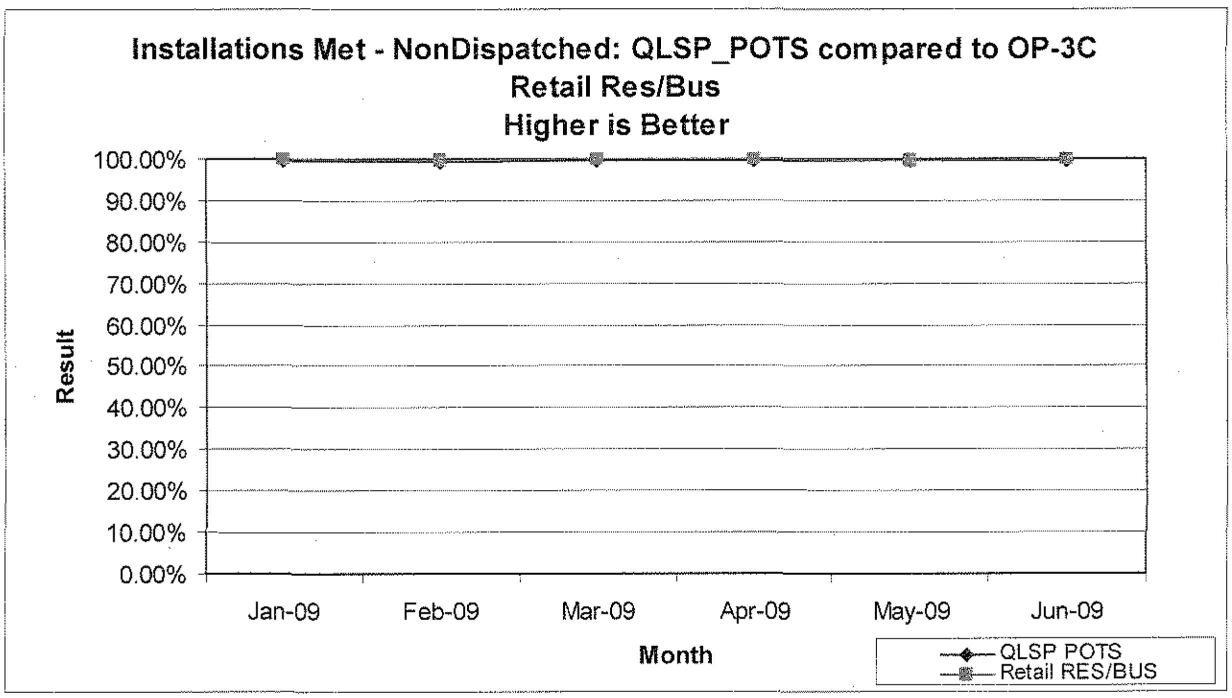
Trouble Report Rate



There were far fewer QLSP POTS trouble reports as a percent of total products than the comparable MR-8 retail Res/Bus result during the first six months of 2009

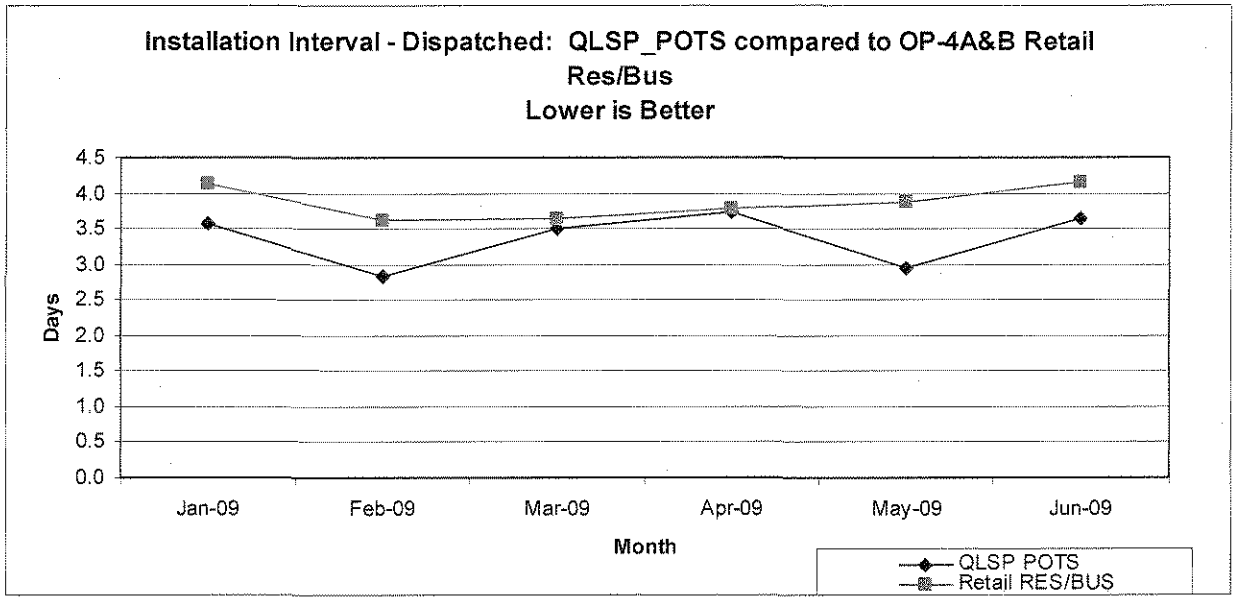
Installation Commitments Met

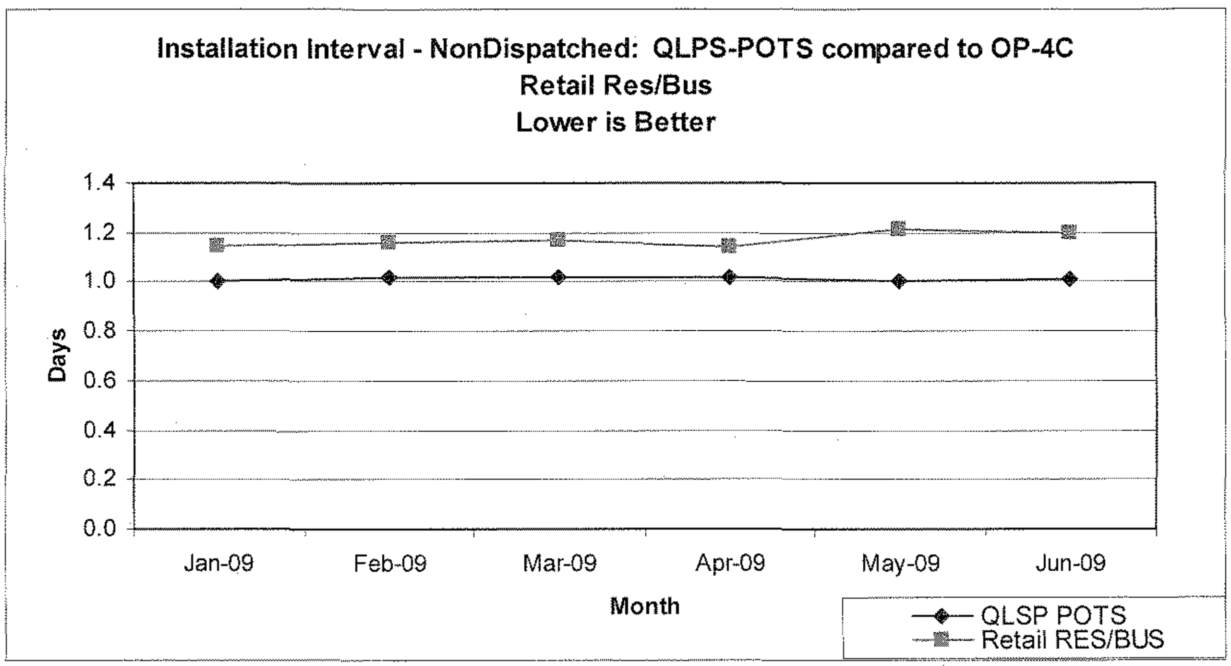




While the difference between the percent of dispatched QLSP POTS installation commitments met results and the OP-3A & B results are nearly equivalent for the first half of the year, the non-dispatched results for QLSP POTS and OP-3C are equivalent – at 100%.

Installation Interval





The QLSP POTS dispatched installation results range from a half day to nearly two days better when compared to the combined OP-4A & B retail Res/Bus results. Non-dispatched QLSP-POTS installation interval results are consistently about 20% faster than OP-4C retail Res/Bus results.

ATTACHMENT 5A – PID VOLUMES

Attachment 5A – South Dakota *PID* Volumes vs Liberty Low Volume-based Metric Recommendations (Nov 08 through Mar 09)

		Volumes						Liberty Recommendation				
PID	5-mo PAP $	Mar-09	Feb-09	Jan-09	Dec-08	Nov-08	Vol. Ref.	Keep	R/R [3]	Rem [4]	Liberty Quotes / Qwest Comments	Location in Report
PO-2B	$0	484	567	567	629	560	Orders: Den [1]		✔		Liberty Quote: "…only UNE-L and LNP continue to have substantial ordering volumes…..BWG supported the removal of this measure during the CPAP Three-Year Review because Qwest's performance had recently improved …. Liberty believes that this logic is still sound."	Under Table IV-C-1
PO-9	$0	4	1	2	1	1	Orders: Den		✔		Liberty Quote: Liberty chose the additional measures for PAP removal (PO-9, PO-19, PO-20, CP-1, CP-2, and CP-4) based on … small contribution to the PAP payments in all the states, the small measured CLEC volumes	Recommend #2
PO-19	$0	NA	NA	NA	NA	NA	Orders: Den		✔		Liberty Quote: Liberty chose the additional measures for PAP removal (PO-9, PO-19, PO-20, CP-1, CP-2, and CP-4) based on … small contribution to the PAP payments in all the states, the small measured CLEC volumes	Recommend #2
PO-20	$0	28	22	10	16	9	Orders: Den		✔		Liberty Quote: Liberty chose the additional measures for PAP removal (PO-9, PO-19, PO-20, CP-1, CP-2, and CP-4) based on … small contribution to the PAP payments in all the states, the small measured CLEC volumes	Recommend #2
CP-1	$0	0	0	0	0	0	Orders: Den		✔		Liberty Quote: Liberty chose the additional measures for PAP removal (PO-9, PO-19, PO-20, CP-1, CP-2, and CP-4) based on … small contribution to the PAP payments in all the states, the small measured CLEC volumes	Recommend #2
CP-2	$0	0	1	0	0	0	Orders: Den		✔		Liberty Quote: Liberty chose the additional measures for PAP removal (PO-9, PO-19, PO-20, CP-1, CP-2, and CP-4) based on … small contribution to the PAP payments in all the states, the small measured CLEC volumes	Recommend #2
CP-4	$0	0	0	0	0	1	Orders: Den		✔		Liberty Quote: Liberty chose the additional measures for PAP removal (PO-9, PO-19, PO-20, CP-1, CP-2, and CP-4) based on … small contribution to the PAP payments in all the states, the small measured CLEC volumes	Recommend #2
OP-5B	$0	0	0	0	0	0	Tickets: Num [2]	✔			Liberty Quote: "…It also creates a low volume problem for the calculation of OP-5B payments, because the number of call center provisioning trouble reports created by Qwest that count toward this sub-measure is very small. Qwest Comment: Liberty appears to apply its low volume criteria inconsistently. OP-5B data clearly meets any low volume criteria Liberty uses, yet Liberty's recommendation is to include these small volumes into an aggregation with OP-5A (despite problems Qwest highlights in its comments).	P. 75, Item #4. (Additional PID change proposals that would affect the PAP)

PID	5-mo PAP $	Volumes: Mar-09	Feb-09	Jan-09	Dec-08	Nov-08	Vol. Ref.	Liberty Recommendation: Keep	R/R [3]	Rem [4]	Liberty Quotes / Qwest Comments	Location in Report
OP-5B	$0	43	40	16	31	12	Orders: Den	✓			Qwest Comment: The order volume for OP-5B should also be considered low when compared to the order volume in Liberty's PO-2B recommendation, which is in the "R/R[3]" column. This metric fits criteria for reinstatement/removal process or complete removal.	
OP-13A	$0	3	3	4	1	0	Orders: Den	✓			Liberty Quote: "The payments have been relatively small, but consistent across the Study Period. Despite, the relatively low payments, Liberty does not recommend removal of OP-13A from the PAPs." Qwest Comment: Liberty appears to apply its low volume criteria inconsistently. This is another example of clear low volumes with only very, very small PAP payments. This metric fits well into Liberty's criteria for either the reinstatement/removal process or complete removal.	P. 72, Item #3. (Other Measures Considered for the R/R[3] Process)
CP-3	$0	0	0	0	0	1	Orders: Den	Not Considered			Qwest Comment: This metric fits Liberty's criteria for either the reinstatement/removal process or complete removal. This metric was Not Considered in any review documentation and perhaps was an oversight in light of recommendations for other CP metrics.	na
OP-3	$0	43	40	15	32	11	Orders: Den	Not Considered			Qwest Comment: The OP-3 volumes are significantly lower than the order volume in PO-2B where Liberty recommends moving the metric into the reinstatement/removal process. This metric fits Liberty's criteria for either the reinstatement/removal process or complete removal. This metric was not considered by Liberty.	na

Overall Qwest Comment: Per Qwest's proposal in QPAP-2, the most important PIDs and products should be the focus, with an emphasis on resolving problems, rather than penalizing Qwest.

Endnotes, Attachment 5A:

1. "Den" refers to "Denominator."
2. "Num" refers to "Numerator." (Tickets in OP-5B refers to the number of orders that generated a trouble ticket.)
3. "R/R" refers to a recommendation to place remove the PID, subject to the "Reinstatement/Removal" process.
4. "Rem" refers to a recommendation to "Remove" the PID from the PAPs.

ATTACHMENT 5B – PRODUCT VOLUMES

Attachment 5B – South Dakota *PRODUCT* Volumes vs Liberty Low Volume-based Metric Recommendations (Nov 08 through Mar 09)

		Volumes						Liberty Recommendation			
PRODUCT – PID	5-mo PAP $	Mar-09	Feb-09	Jan-09	Dec-08	Nov-08	Volume Reference	Keep	R/R[3]	Rem[4]	Liberty Quotes / Qwest Comments
Unb DS3 – OP3	$0	0	0	0	0	0	Orders: Den[1]			✓	
Unb DS3 – MR8		0	0	0	0	0	Tickets: Num[2]			✓	
UDIT-Abv DS1 – OP3	$0	0	0	0	0	0	Orders: Den			✓	
UDIT-Abv DS1 – MR8		0	0	0	0	0	Tickets: Num			✓	
Unb 4W NL – OP3	$0	0	0	0	0	0	Orders: Den			✓	
Unb 4W NL – MR8		0	0	0	0	0	Tickets: Num			✓	
Loops w/Cond – OP3	$0	0	0	0	0	0	Orders: Den			✓	
Loops w/Cond – MR8		NA	NA	NA	NA	NA	Not Meas'd			✓	
LineSharing – OP3	$0	0	0	0	0	0	Orders: Den			✓	
LineSharing – MR8		0	0	0	0	0	Tickets: Num			✓	
Unb Subloop – OP3	$0	0	0	0	0	0	Orders: Den			✓	Liberty Quote: Footnote 70 – "Sub-loop unbundling averaged 14.4 orders per month in Colorado from January 2007 through October 2008, but had little to no order activity in the other ten participating states during this same time period." Qwest Comment: Liberty recommendation is inconsistent with their low-volume criterion
Unb Subloop – MR8		0	0	0	0	0	Tickets: Num			✓	
Unb ISDN – OP3	$0	1	0	0	0	1	Orders: Den			✓	
Unb ISDN – MR8		0	0	0	0	0	Tickets: Num	✓			Liberty Quote: Footnote 73 – "in the interest of enhancing simplicity, Liberty chose not to introduce the extra complexity of including both the numerator and denominator of MR8 to decide volumes issues." Liberty goes on to say regarding Appendix B, "As shown in these tables, in Arizona and Colorado there were low monthly ordering volumes...but a significant number of trouble reports each month. This is because of the substantial embedded base of such loops in Arizona and Colorado (1,356 and 1,000, respectively, in October 2008). Thus, Liberty recommends making the exception for these two states in removing this product from the MR measures." Qwest Comment: The Volume Tables in Exhibit B show small volumes in the later months. Liberty had more recent data, 11/08-03/09 that were used in other recommendations. The last 7 months of data provided
Unb ISDN – MR8		32	31	31	33	34	Lines in service: Den	✓			

		Volumes						Liberty Recommendation			
PRODUCT – PID	5-mo PAP $	Mar-09	Feb-09	Jan-09	Dec-08	Nov-08	Volume Reference	Keep	R/R [3]	Rem [4]	Liberty Quotes / Qwest Comments
											to Liberty, meet their definition of low volume. Although Liberty claimed in Footnote 73 that they would not complicate the volume decisions by bring in the MR8 denominator, that is precisely what they did to form their recommendation.
Line Splitting – OP3	$0	0	0	0	0	0	Orders: Den	Not Considered			Qwest Comment: Product fits low-volume criterion for removal.
Line Splitting – MR8		0	0	0	0	0	Tickets: Num	Not Considered			Qwest Comment: Product fits low-volume criterion for removal.
Unb XDSLi – OP3	$0	0	0	0	0	0	Orders: Den	Not Considered			Qwest Comment: Product fits low-volume criterion for removal.
Unb XDSLi – MR8		0	0	0	0	0	Tickets: Num	Not Considered			Qwest Comment: Product fits low-volume criterion for removal.
EEL DS0 – In OP5B Only	$0	0	0	0	0	0	Orders: Den	Not Considered			Qwest Comment: Product fits low-volume criterion for removal.
EEL DS3 – In OP5B Only		0	0	0	0	0	Tickets: Num	Not Considered			Qwest Comment: Product fits low-volume criterion for removal.

Endnotes, Attachment 5B:

1. "Den" refers to "Denominator."
2. "Num" refers to "Numerator."
3. "R/R" refers to a recommendation to place remove the PID, subject to the "Reinstatement/Removal" process.
4. "Rem" refers to a recommendation to "Remove" the PID from the PAPs.