

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of QWEST)	<u>DOCKET NO. 00-049-08</u>
CORPORATION, fka US WEST)	
Communications, Inc., for Approval of)	<u>ORDER ON</u>
Compliance with 47 U.S.C. § 271(d)(3)(C))	<u>PERFORMANCE ASSURANCE PLAN</u>

ISSUED: June 18, 2002

By The Commission:

INTRODUCTION

This Order addresses the adequacy of Qwest's proposed performance assurance plan (Qwest's proposed PAP) and provides the findings and changes required before the Commission can accept the plan as adequate. The purpose of a performance assurance plan (PAP) is to provide sufficient economic incentives and constraints such that Qwest will continue to fulfill its obligations (federal and state) to its competitors (CLECs) after receiving in-region interLATA authority.

Under the Telecommunications Act of 1996 (the Act), a Regional Bell Operating Company (RBOC) generally may not provide in-region interLATA service until it has received approval to do so from the Federal Communications Commission (FCC). *See* 47 U.S.C. § 271. Section 271 of the Act requires an RBOC applicant such as Qwest to demonstrate that its entry into the in-region interLATA service market satisfies the public interest, and that it will continue to meet all legal obligations, and provide service to its competitors in a satisfactory manner. The FCC considers PAPs as evidence that the RBOC will continue to satisfy these requirements.

Procedural History

Qwest's proposed PAP was examined and modifications suggested in a collaborative process, which began in August 2000, when the state commissions in 11 of Qwest's 14 in-region states, including Utah, invited interested parties to participate in workshops devoted to the design of the plan.

The collaborative process was unsuccessful in producing a PAP from which a consensus could develop. Qwest withdrew from the collaborative process when it believed that the parties had reached a point where progress was unlikely. A second multi-state collaborative process was undertaken in connection with the Section 271 proceeding that was already underway. In that process eight other states joined with Utah to attempt to develop a PAP that would meet the public interest, or to obtain recommendations regarding what provisions of Qwest's PAP needed to be changed in order to meet the public interest test. Qwest submitted its then-current version of its PAP to this second proceeding along with supporting comments. The CLECs also participated by comments and suggested revisions to Qwest's proposed PAP. Hearings before John Antonuk, the Facilitator selected by the state commissions to conduct the multi-state PAP proceeding (Facilitator), were held during the weeks of August 13 and August 27, 2001.

Following two rounds of briefing after the hearings the facilitator submitted a draft report to the Commissions' advisory staffs for their consideration. The Utah staff filed the Final Staff Report from the collaborative process on October 25, 2001 (Report). The staff concluded that Qwest's proposed PAP as submitted had several serious flaws. The staff also provided alternative language in the Staff Report to correct these flaws. From November 2 through 6, 2001, the parties filed comments on the Staff Report. Qwest's comments to the Staff Report indicate that though it had agreed to many of the revisions suggested in the facilitator's draft report (with limited clarifications⁽¹⁾) it opposed the inclusion of the Utah specific changes proposed by Staff.⁽²⁾ AT&T and Covad agreed with many of the recommendations made by the Staff, but proposed additional changes.⁽³⁾ Similarly, in their comments on the Staff's Report, WorldCom and XO/ELI

indicated that they primarily agreed with the modifications in the Report but also suggested some additional changes.⁽⁴⁾

The Commission held a technical conference on November 19, 2001, in an effort to both understand the remaining disputed issues and to identify whether the parties were willing to compromise in an effort to reach agreement on the remaining disputed issues. On December 6, 2001, the Commission directed the parties to undertake discussions to see if agreement could be reached concerning modifications to the staff's recommendations. The Commission designated a staff member to act as an advocate for the purposes of these discussions. The Commission further Ordered that any of the resulting agreements, which diverged from the staff's initial proposals, would need to be justified from a public interest perspective. The Commission directed the parties to conclude their negotiations by December 18, 2001.

Qwest and the advocate filed numerous requests for extensions as the negotiations progressed. AT&T filed numerous protests that Qwest refused to allow any of the CLECs to be part of their discussions with the advocate. The result of these negotiations was a stipulation between Qwest and the staff advocate that did not include any other parties to this docket. Qwest and the advocate filed this stipulation on March 27, 2002. Neither Qwest nor the advocate provided the Commission with the specific public interest justifications for the stipulation's proposed changes to the original Staff Report's recommendations.

The Commission has now reviewed the record with respect to the Qwest's proposed PAP, the Staff Report's suggested modifications, the Stipulated PAP, and interested parties' comments on the report and stipulation. The Commission adopts the original staff recommendations as contained in the Staff Report with some modifications and clarification. These clarifications and modifications, as well as the justifications for accepting the staff's other changes to Qwest's proposed PAP are provided in the Discussion Section of this Order.

Legal Standard

A performance assurance plan is designed to ensure that, after the RBOC enters the interLATA market, there is a mechanism in place to ensure that it does not backslide from the level of performance found to be satisfactory by the FCC in approving the checklist demonstration provided in the 271 application. No party to this docket has challenged the need for a PAP to be in place once Qwest receives interLATA authority. Therefore the Commission only briefly reviews the legal standards that the FCC has applied in its previous evaluations on this issue.

Under the precedent established by the FCC in its prior section 271 orders, the ultimate question in reviewing performance assurance plans proposed in support of an application for in-region interLATA authority is whether the plan lies within a "zone of reasonableness." The FCC sets forth five general characteristics as part of its "zone of reasonableness" test for evaluating a section 271-performance assurance plan⁽⁵⁾:

- Meaningful and significant incentive to comply with designated performance standards.
- Clearly articulated and pre-determined measurements and standards encompassing a range of carrier-to-carrier performance.
- Reasonable structure designed to detect and sanction poor performance when and if it occurs.
- Self-executing mechanism that does not open the door unreasonably to litigation and appeal.
- Reasonable assurance that the reported data are accurate.

The Commission finds that the Utah Staff's proposed PAP, as detailed in the Staff Report, and modified by the changes contained in this Order, provides adequate assurance that Qwest will continue to meet its Section 271 obligations once the plan is in place. We find that the Utah PAP, as described in this Order, lies within the zone of reasonableness established by past FCC decisions on this subject.

DISCUSSION

Changing the PAP and General 6-Month Plan Review Procedures

In the Draft Report the Facilitator recommended adding a provision to address disputes regarding the addition of new measurements during the six-month review.⁽⁶⁾ Qwest modified its proposed PAP to add an arbitration provision to settle disputes in adding new measurements during the six-month review process.⁽⁷⁾ The Facilitator also recommended establishing a multi-state structure to fund and administer the six-month review.⁽⁸⁾ Qwest adopted this recommendation also. In general the Staff agreed with the Facilitator's recommendations, but also recommended that the Commission should be the "ultimate decision maker" in the six-month review process and in all matters regarding final changes to the Utah PAP.⁽⁹⁾ Qwest opposes unilateral modifications to the Utah PAP by the Commission, arguing that the Commission does not have such inherent authority, and the FCC does not require that such authority be conferred on the state.⁽¹⁰⁾ The Commission notes that Qwest repeatedly stresses that the Utah PAP is a voluntary instrument Qwest offers to secure federal section 271 approval, and is not a requirement of state or federal law. However, our acceptance of the Utah PAP's adequacy can only be based on a finding that it is sufficient to protect the public interest. Part of that adequacy is the ability of the Commission to change the Utah PAP over time as needed. Without such authority the Commission cannot find that the proposed Utah PAP is in the public interest. Therefore the Commission directs that Qwest incorporate the Staff's proposed language regarding change authority.

Total Payment Liability (The Cap)

The Staff PAP contains detailed measurements and performance standards (Performance Indicator Definitions or "PIDs") to monitor Qwest's wholesale performance. The staff PAP also provides formulas that calculate the required payments to CLECs (Tier 1 payments) and the State (Tier 2 payments) for Qwest's failure to comply with these standards. It also contains mechanisms that allow the Commission to add new PIDs to the PAP as it becomes apparent that it is necessary to do so to ensure that the telecommunications market in Utah continues to develop towards healthy competition. The staff proposes to set the cap on total liability under the plan at 44 percent of the 1999 ARMIS Net Return for local service in Utah. In addition the staff proposes to allow relatively easy movement of the cap to 48% if the need to do so becomes apparent. These levels are higher than the amounts proposed by Qwest. Qwest points to the FCC's prior decisions as evidence that a 36% cap is sufficient. Various CLEC parties argue that no cap, or a cap such as the one proposed by the staff, is appropriate. The Commission finds that as a starting point a 36 percent cap is reasonable. It is consistent with the caps set by the FCC in previous applications for other RBOCs, and it represents an economically significant number. However, the Commission notes that the very existence of a hard cap is problematic from an incentive perspective. At the very time when Qwest's behavior would be at its worst it would receive a free pass. However, this troublesome aspect of the cap is mitigated by our belief that the cap is unlikely to be reached. In reviewing the estimated payments specified in Qwest's proposed PAP it is apparent that at the current levels of CLEC activity, the cap could not be reached without significant degradation of service on the part of Qwest. Therefore, given the FCC's apparent preference for a 36 percent cap, and our belief that the cap is unlikely to be reached, we accept the 36 percent benchmark as a starting point for the cap. However, we require several modifications to the concept of a hard cap as explained in the following paragraphs.

First with respect to how the cap may be changed over time, we require Qwest to modify the proposed PAP's language to make clear that the Commission may raise the cap to a final level of 48 percent of the previous year's ARMIS net return amount for Utah. The Commission will commence hearings regarding the appropriate cap level whenever the cap is reached as specified later in this section. There shall be no automatic downward revisions of the cap. Qwest, by its own behavior, is capable of lowering the realized cap or the actual level of payments. As stated earlier, it is our belief the cap is not likely to be met; this belief is a large part of the reason why we are willing to set the cap at 36 percent. If actual experience later shows the cap needs to be higher in order to provide the correct incentives to Qwest, then there is no good a priori reason to automatically reduce it.

We further modify the Staff Report by tying the actual dollar amount of the cap to the previous year's ARMIS data. According to data from the past two federal censuses, Utah is one of the fastest growing states in the country. In addition to the effects of inflation this faster than average population growth means that a fixed dollar amount cap would necessarily decrease in economic importance over time. Therefore, the plan year shall start when Qwest receives 271 authority, and the initial cap will be 36 percent of the previous year's ARMIS data. For example, assuming that Qwest

applies for, and receives, 271 authority for the State of Utah in the year 2002, then the 2001 ARMIS data will be used to compute the first year's cap.

A final characteristic of the staff's proposed cap is that it be what we classify as a cash flow cap. That means in any year when Qwest's performance results in penalties exceeding the cap, the penalties that exceeded the cap would be converted into debt instruments that Qwest would have to pay in the next future period when the cap is not binding. The staff believes this provision would solve many administrative difficulties relating to how payments must be made or refunded in any month or year in which the cap is met. In addition, it would solve much of the economic incentive problem created by the very existence of a cap discussed previously. However, it is also a provision to which Qwest strenuously objects in their comments. If we expected the cap to ever be reached it is doubtful that we would support Qwest's application to the FCC for 271 authority. We decline to include this characteristic of the staff's cap in the Utah PAP, but we retain the characteristic as a possible alternative or a companion measure to increasing the baseline amount of the cap in the future.

Having accepted Qwest's position that the unpaid penalties that result from the operation of the cap do not need to be paid by Qwest in future periods, we must now address the issue of what to do in the event the cap is reached. Prior to the cap being met payments will simply be made when the obligation occurs, as specified in the Utah PAP. Once the cap is reached, two processes will automatically begin. First, past Tier 2 payments will be used to make the Tier 1 payments that exceed the cap. Second, an expedited proceeding will automatically be opened to determine if it is in the public interest to raise the cap. If the cap is exceeded to such an extent that the Tier 2 funds available to meet the unpaid penalties are exhausted, then unpaid penalties shall become debt claims upon future Tier 2 funds. Such future payments will be made only if sufficient Tier 2 funds become available, and shall be made to each CLEC in proportion to its percentage of the total payments due to all CLECs. These debt instruments shall pay interest based on the Utah post judgment interest rate, as defined in Utah Code Ann. Section 15-1-4.

Compensation for CLEC Damages

Qwest's proposed PAP incorporates a two tier system of payments based on Qwest's monthly performance results, with Tier 1 payments made to the CLECs to provide compensation, and Tier 2 payments (based on regional level PIDs) made to the individual States to provide additional performance incentives to Qwest. The Staff noted the Texas PAP describes payments to CLECs as "liquidated damages,"⁽¹¹⁾ and that "state public service commissions, the FCC, and other CLECs all recognize the compensatory nature and the liquidated damages elements of performance assurance plans."⁽¹²⁾ The Commission agrees with the staff that it is appropriate for the Utah PAP to provide liquidated damages compensating CLECs in principle.⁽¹³⁾ However, the existence of a hard cap negates the ability of the Utah PAP to completely fulfill this function. In addition, the fact that not all services the CLECs purchase from Qwest are covered by the PIDs contained in the Utah PAP also limits the ability of the PAP to completely provide liquidated damages. We find that the payment levels in the Utah PAP are sufficient to approximate CLEC damages for only the covered services, and when the payments are actually made.

The Staff Report addressed the issue of CLEC compensation for fines that might be levied by the Commission against CLECs that are actually the result of Qwest's performance. The staff recommended that CLECs be entitled to indemnity in these circumstances.⁽¹⁴⁾ The Commission agrees with the staff's proposal and directs Qwest to incorporate it.

Under Qwest's proposed PAP, any awards to CLECs for noncontractual remedies will be subject to an offset for any damages that represent compensatory recovery. The Staff Report alters the Qwest's proposed PAP by providing different treatment for payments under state rules and preventing Qwest from claiming offset. Qwest desires that the Utah PAP payments be the exclusive remedy available to CLECs. Qwest proposes that any payments arising from Commission rules or orders be subject either to total offset or simply not be allowed. The Commission disagrees with Qwest's proposed approach.⁽¹⁵⁾ Rather, the Commission finds staff's argument persuasive. The difficulty lies in the fact that the Utah PAP is based on a relatively small subset of all the PIDs developed for the ROC OSS test. Since the CLECs purchase products that are not currently included in the PAP the need for other remedies for the CLECs is apparent for these measures. We find the balance designed by the staff to be reasonable. CLECs will receive PAP payments for services covered by the PAP, but for services that are not covered in the PAP all other remedies which the

CLECs have available to them may be pursued.

Forecasting Requirements

Qwest's proposed PAP contains a list of circumstances that excuse Qwest from Tier 1 and/or Tier 2 payments when certain listed events occur, which include CLEC failures to forecast. Qwest's proposed PAP includes language providing that a forecast could only excuse performance if the forecast was required in the SGAT. Staff sought a specific acknowledgment in the Utah PAP of the forecast requirements identified in the Commission's Order on Workshop 2. [\(16\)](#)

The Commission concludes that the addition of this language is unnecessary. The SGAT does incorporate the limitation on forecasts provided in the Commission's Order, [\(17\)](#) and therefore the PAP already complies with Staff's recommendation. We note however, that in the case of any disagreement between the Utah Commission's Rules and Orders on the one hand and the SGAT on the other with respect to this issue, the Utah Commission's Rules and Orders shall govern. The SGAT may not require CLECs to submit more detailed forecasts (or forecasts in other formats or intervals) than the Utah Rules require.

Use of Tier 2 Funds

Qwest's proposed PAP contained a provision requiring Tier 2 payments to be used for purposes that relate to the Qwest service territory. The Report recommended removing that geographic restriction, and Qwest complied. The Commission finds this revised provision adequate, and rejects Covad's argument for the inclusion of a caveat that Tier 2 funds cannot be used to benefit Qwest directly or indirectly. [\(18\)](#)

Administrative Costs and Use of Funds

The Staff Report also recommended that a "Special Fund" be established to finance certain administrative activities on a multi-state level. Staff opposed the use of any Tier 1 funds for such purpose. [\(19\)](#) Qwest noted that failing to include Tier 1 funds for Utah would create an imbalance in the common administrative effort because Utah would "not carry the same responsibilities" as the other participating states. [\(20\)](#) The Utah Commission and other States' Commissions are free to participate or not participate based on whether they think the potential benefits outweigh the potential costs. The Commission believes that the Multi-State process used to develop and evaluate the PAP was productive. However, the Commission will not allow funds designed to compensate Utah CLECs for damages they suffer to be used to pay for regulatory expenses. Accordingly, we will allow a portion of the Tier 2 funds to be used for common PAP administrative expenses. No Tier 1 funds shall be used.

Payments: Triggers and Escalation

Qwest's proposed PAP contains language that limits the circumstances in which Qwest would be obligated to make Tier 2 payments. These restrictions were referred to as a trigger. Basically, Qwest could miss a significant number of PIDs for multiple months before being obligated to make a Tier 2 payment. The Commission concurs with and adopts the changes recommended in the Staff Report with respect to the trigger for Tier 2 payments. Tier 2 payments shall have the same trigger as Tier 1 payments.

Under Qwest's proposed PAP, Tier 1 payments could escalate when Qwest repeatedly misses a particular standard. However, Qwest's proposals limit the escalation of Tier 1 payments to six months. The staff and various CLECs recommended against a six-month cut-off on escalation, in favor of unlimited escalation of per occurrence payment amounts. [\(21\)](#) The Commission agrees with Qwest that a completely open-ended escalation is undesirable. However, a six-month escalation may well be inadequate as well. As a starting point we set the escalation period at one year. Escalation payments for the seventh and higher months shall be paid to the CLECs and the Tier 2 fund. The additional escalation amount beyond the six-month level shall be paid to the Tier 2 fund while the amount equal to the six-month escalation shall continue to be paid to the CLECs involved. The escalation payments shall continue until standards are met as detailed in the Report.

Adding Measurements to the Payment Structure

Qwest's proposed PAP includes a detailed set of performance measurements (Performance Indicator Definitions or "PIDs") that measure discrete aspects of Qwest's wholesale performance. The proposed PAP incorporates PIDs that the PEPP collaborative suggested be included, as well as five other PIDs Qwest later agreed to include. [\(22\)](#)

Qwest's proposed PAP does not incorporate additional measurements for cancelled orders, "diagnostic UNE's," cooperative testing, addressing due date changes (PO-15D), preorder inquiry timeouts in Tier 2 (PO-1C), change management, software release quality, test bed, or missing-status-notice, at this time. [\(23\)](#)

The Commission accepts the staff's recommendation not to add the above measurements at this time, but puts the parties on notice that it expects to address each of these possible PIDs in the first administrative review of the Utah PAP.

Measurement Weighting

Under the Qwest's proposed PAP, the designation of a performance measurement as low, medium or high determines the level of Tier 1 payments that accompanies the measurement. The Commission accepts the staff recommendation to accept the current classification and weighting of measurements as contained in Qwest's proposed PAP. [\(24\)](#) We note that like all provisions where there is still dispute, the Commission intends to fine-tune the Utah PAP over time as historical evidence becomes available. If parties bring forward information that shows other weightings or measurements are necessary to provide Qwest with the proper incentives regarding the provisioning of services the Commission will adjust the Utah PAP accordingly.

Including Special Access Circuits

The Commission finds that a need exists to measure Qwest's performance regarding special access circuits. We direct Qwest to include all relevant measures for these circuits in the Utah PAP.

100 Percent Caps for Interval Measurements and Assigning Severity Levels

The Utah PAPs (both Qwest's and the staff's versions) are structured as "per occurrence" plans, which provide payments on the basis of the number of occurrences that fail to meet standards. As in the Texas plan, they provide a 100 percent cap on interval measures in order to ensure that payments cannot be made for more occurrences than actually take place. [\(25\)](#)

The Commission agrees with the Facilitator and Staff that no party has provided evidence to show that the 100% cap on interval measurements should be changed. [\(26\)](#) AT&T argued that the Facilitator misunderstood the CLECs' proposals, and that they were in fact seeking a per-occurrence scheme sensitive to both the monthly volume of CLEC orders and the deviation of Qwest's average monthly performance to a CLEC from its performance to itself. [\(27\)](#) These arguments do not warrant any change to the cap on interval measurements. The Commission concludes that the cap is appropriate.

Payment of Interest

The Commission adopts the interest rate provision of Qwest and the advocate contained in the Stipulation submitted to this Commission. All Utah PAP payments that are delayed for any reason shall earn the Utah post judgment interest rate, as defined in Utah Code Ann. Section 15-1-4, regardless of which party owes money or is owed money.

Effective Date

Qwest's proposed PAP provides that it will become effective on the date the FCC approves Qwest's 271 application for Utah. Staff recommended, and several CLECs agreed, that the effective date of the PAP should be the date that Qwest *submits* its 271 application to the FCC, rather than the date the FCC *approves* it. Staff believed this earlier effective date was desirable to prevent backsliding by Qwest during the 90-day period while the application is pending at the FCC. [\(28\)](#) The Commission finds that the Utah PAP need not be in effect until Qwest receives interLATA authority for the State of

Utah. The date on which Qwest receives 271 authority shall be the beginning of the Utah PAP's plan year.

Form of Payment to CLECs

Qwest's proposed Utah PAP provides for payments to the CLECs to be made by bill credit, rather than by cash or check as CLECs requested.⁽²⁹⁾ The Commission agrees with the staff that it is appropriate for Qwest to make CLEC payments by bill credits since it would be unfair to require Qwest to make cash payments to CLECs where CLECs are not current in paying Qwest for similar services.⁽³⁰⁾ However, in the rare case that a CLEC is owed more than it currently owes Qwest, the excess amount must be paid by cash or check if the CLEC requests it.

Audit Program

Part of the administration of the PAP will require auditing the PIDs. The audits will cover many areas of interest from the implementation to the actual performance of Qwest. In Qwest's proposed PAP there are provisions providing for both CLEC requested audits and audits that are chosen by the administrative body based on their perception of which measure are at great risk of having problems. The Staff Report recommends an integrated audit program to be implemented through multi-state collaboration. In particular, staff suggests provisions establishing a transparent process for changing the measurement regimen, and allowing for pre-planned and as-needed testing of material aspects of the measurements.⁽³¹⁾

Qwest has already revised the audit provisions to implement the Staff's recommendations with clarification or modification that require the independent auditor (chosen by the Commissions involved in a Multi-State collaborative) to coordinate with other audits to avoid duplication; provide a process for contesting aspects of the audits; provide a materiality criterion to data discrepancies; prevent a CLEC proposed audit while dispute resolution is pending; and prevent a CLEC from proposing an audit of data older than three years.⁽³²⁾ The Commission adopts the changes the Staff recommended. Further, it finds that the additional language Qwest proposed to implement the concepts articulated by the Staff is appropriate.

Prohibiting PAP Payment Recovery in Rates

AT&T has requested specific language in the PAP to preclude Qwest from recovering PAP payments, through increased state rates.⁽³³⁾ The Commission agrees with the Staff's recommendation that the Utah PAP need not include language precluding payment recovery. There are two primary reasons for this finding. First, Qwest is under a price index form of regulation in Utah and its rates cannot be adjusted for expenses such as those incurred by the operation of the Utah PAP. Second, the FCC has made it clear that PAP payments may not be recovered in interstate rates in prior 271 orders and in its prescribed pricing methods.⁽³⁴⁾ We note that the expenses associated with the operation of the Utah PAP do not qualify under any of the provisions of the price cap statute that would allow an adjustment of retail level rates. We further note that none of the costs associated with operation or design of the Utah PAP will be allowed in the UNE cost proceedings.

Other Resolved or Unresolved Issues

A number of issues that remained in dispute at the conclusion of the collaborative process are considered resolved in accordance with the staff's recommended solutions. As previously explained with this Order, the Commission adopts the Utah Staff Report subject to the modifications and clarifications contained in the Discussion Section of this Order. All provisions of the Staff Report that have not been explicitly changed are adopted by this Order.

CONCLUSION

Based on the evidence and findings above, the Commission finds that the Utah PAP as proposed by the Utah Staff and as modified in this Order's Discussion Section is a sufficient anti-backsliding mechanism. This finding lends strong support to Qwest's future 271 application.

The Commission concludes that the Utah PAP as proposed by the Utah Staff and modified by this Order falls within the

zone of reasonableness articulated by the FCC and that it provides adequate assurance that Qwest will fulfill its requirements under the public interest standard of 47 U.S.C. § 271(d)(3)(C).

ORDER

1. The Commission directs Qwest to adopt the revisions to the original Utah Staff Report contained in the Discussion Section of this Order.
2. The Commission directs Qwest to file an amended Post-entry Assurance Plan that contains the language necessary to implement this Order's provisions with the Commission in an expeditious manner.

Pursuant to U.C.A. §63-46b-13, an aggrieved party may file, within 20 days after the date of this Report and Order, a written request for rehearing/reconsideration by the Commission. If the Commission fails to issue an order within 20 days after the filing of such request, the request shall be considered denied.

DATED at Salt Lake City, Utah this 18th day of June, 2002.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Richard M. Campbell, Commissioner

Attest:

/s/ Julie Orchard,
Commission Secretary

G#29819

¹ See Qwest's Comments on Facilitator's Report at 2, attached as Ex. 1 to Qwest's Comments on the Utah Staff Report ("Qwest's Comments on Staff Report").

² See Qwest's Comments on Staff Report at 1.

³ See AT&T's Comments on Facilitator's Report at 2, Covad's Comments on Facilitator's Report at 4.

⁴ See WorldCom's Comments on Staff Report at 2, XO/ELI's Comments on Staff Report at 1.

⁵ See Memorandum Opinion and Order, *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd 3953 ¶ 433 (1999) ("*Bell Atlantic New York Order*"), *aff'd sub nom. AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000).

⁶ See Facilitator's Report at 60.

⁷ See Qwest's proposed PAP § 16.1.

⁸ See Facilitator's Report at 60-62.

⁹ See Staff Report at 64, and at 15.

¹⁰ See Qwest's Comments on Staff Report at 18-19.

¹¹ Tex. PAP § 6.1; *see also* Kan. PAP § 6.1, Okla. PAP § 6.1.

¹² See Staff Report at 26.

¹³ See Staff Report at 25-26.

¹⁴ See Staff Report at 32.

¹⁵ See Qwest's Comments on Staff Report at 10-11.

¹⁶ See Staff Report at 43.

¹⁷ See Utah SGAT (Oct. 3, 2001) § 7.2.2.8.1.

¹⁸ See Covad's Comments on Facilitator's Report at 19.

¹⁹ See Staff Report at 44.

²⁰ Qwest's Comments on Staff's Report at 23.

²¹ See Staff Report at 42.

²² See Staff Report at 43.

²³ See Staff Report at 46-48.

²⁴ See Staff Report at 51-52.

²⁵ See Staff Report at 65-67.

²⁶ See Facilitator's draft report at 68-70; Staff Report at 65-67.

²⁷ See AT&T's Comments on Facilitator's Report at 38.

²⁸ See Staff Report at 72.

²⁹ See WorldCom's Comments on Staff Report at 4.

³⁰ See Staff Report at 73-74.

³¹ See Staff Report at 77-78.

³² See Qwest's Comments on Facilitator's Report at 14-15.

³³ See AT&T's Comments on Facilitator's Report at 41-42.

³⁴ See Staff Report at 83.