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BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK
Chairman
JIM IRVIN
Commissioner
WILLIAM A. MUNDELL
Commissioner

IN THE MATTER OF U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH § 271 OF THE TELECOMMUNICATIONS ACT OF 1996	)	Docket No. T-00000B-97-0238 **QWEST'S RESPONSE TO CLEC SUBMITTED PERFORMANCE ASSURANCE PLAN**

INTRODUCTION

On September 25, 2000 WorldCom, Eschelon Telecom, and Electric Lightwave ("WorldCom, et al") filed joint comments and attached a proposed performance assurance plan ("PAP"). Z-Tel Communications ("Z-Tel") made a separate filing attaching an exhibit describing substantially the same plan as proposed by WorldCom, et al. SBC Telecom ("SBC") also filed comments and a proposed plan. No other filings were made.

Exhibit A of the WorldCom, et al filing is a "Joint CLEC" proposed performance assurance plan (PAP). The term "Joint CLECs" is represented in the document as being the "CLECs participating in the Arizona Performance Remedies Collaborative." Thus, it appears that "Joint CLECs" include, at a minimum, WorldCom, et al plus Z-Tel, but does not include SBC Telecom. For purposes of the following Qwest comments, the term "Joint CLECs" refers to WorldCom, et al and Z-Tel. [1]

In the following comments, Qwest addresses the Joint CLECs' zone parity provisions, remedy structure, and other provisions. Qwest also addresses the respective Joint CLEC and SBC proposals that the PAP should include new performance measurement that, heretofore, have

[1] Z-Tel states that the Commission should adopt the PAP submitted as part of "the Joint CLEC Proposal" which is Exhibit A of the WorldCom, et al filing.

not been proposed in the Arizona performance workshops. Finally, Qwest comments on the performance assurance plan proposed by SBC.

QWEST COMMENTS ON THE JOINT CLEC PROPOSED PLAN

I. General Comments

As a threshold matter, the Joint CLECs' proposed plan should be rejected because it lacks the characteristics of reasonableness specified by the FCC. The Joint CLECs' proposal impermissibly relies on benchmarks that impose a standard that is inconsistent with the Act. The Joint CLECs' proposed plan is based upon the unreasonable and illogical principle that the "goal of the remedy is to extract the financial gain from the act of discrimination".[2] This principle has been soundly rejected by the Federal Communications Commission ("FCC"), the New York Public Service Commission, and the Texas Public Utility Commission. Finally, the Joint CLECs' proposal should be rejected because it is only a conceptual outline of measurements and remedies. Key elements of the Joint CLECs' plan are missing. The zone benchmarks are described, but not specified for any of the 600+ sub-measurements. The payment amounts are described with formulae and illustrative payment tables, but are not specified.

II. Zone Parity Benchmarks

A. Regardless of how the zone benchmarks are established, they are unsound and unquestionable inconsistent with the Telecommunications Act of 1996 ("the Act".

The Joint CLECs propose to use "zone benchmarks" in the application of performance measurements. The Joint CLECs' Exhibit A fails to explain how to establish the zone benchmarks; however, Mr. George Ford, a former employee of WorldCom who authored its original proposals, disclosed at the August 22, 2000 Arizona workshop that the zones would be

[2] WorldCom, et al, Exhibit A, p. 6, footnote 7. See also Z-Tel, Attachment 1, p. 1, 14.

based upon **historic** Qwest retail data and applied to ongoing CLEC performance results.[3] The use of historic retail data to set the zone benchmarks and the comparison of current month CLEC service performance to **historic** Qwest retail performance transforms parity measurements into escalating[4] benchmark measurements and leads to a standard that is not supported by the Telecommunications Act.

There should be no question that the purpose of the Joint CLECs' proposed zones is to convert already agreed upon parity standards to benchmark standards. Z-Tel's Attachment 1 is very clear on this point.

> These percentage benchmarks [zones] are *absolute* upper bounds; exceeding the benchmarks in Zone 1 and Zone 2 by any amount is a failure to provide the established level of acceptable service quality. In this sense, the Zone Parity Benchmark is much like the benchmark measure common to existing performance plans.

Z-Tel, Attachment 1, p. 5, emphasis in original, footnote deleted.

It is significant to note that Z-Tel clearly describes the zone benchmarks as "setting an absolute level of quality" and as defining the "acceptable level of ILEC performance.[5] Z-Tel argues that:

> Absolute levels of quality are not new to the performance measurement debate; the concept already exists in benchmarks that account for roughly half of all performance measurements.

Z-Tel, Attachment 1, p. 5.

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[3] In addition, Z-Tel's September 25, 2000 filing discusses setting the zone benchmarks with historical data. (Z-Tel, Attachment 1, p. 5-8)

[4] The Joint CLECs propose that the zone benchmark standards be gradually raised over time. (WorldCom, et al, Exhibit A, footnote 4, p. 5) Z-Tel also describes escalation to account for improvements in service quality and the use of productivity factors to set higher zone benchmarks. (Z-Tel, Attachment 1, p. 10-11) These machinations fail to reflect any evaluation of discrimination, i.e., the difference between the level of service provided to CLEC customers and Qwest customers.

[5] Z-Tel, Attachment 1, p. 5, 6.

The Joint CLECs' attempt to convert parity performance measurements into benchmark measurements for the purposes of calculating PAP payments is a clear departure from the requirements of the Telecommunications Act and is unacceptable. Central to the concept of discrimination is the comparison of service provided to CLECs to service provided to Qwest retail customers during the same time period. For example, in OP-4, Installation Intervals, discrimination presumptively occurs if **in any given month** Qwest were to install resale business single lines ordered by CLECs at an average interval longer than Qwest installed similar business lines for its own retail customers. However, the Joint CLECs would penalize Qwest based upon a comparison between current month CLEC performance results and past Qwest performance results—a reference point that could be two or more years old. In effect, the Joint CLECs propose to use past service performance as the benchmark against which Qwest will be judged. Not only is the concept of benchmarks, rather than parity, inappropriate, the means by which the CLECs arrive at benchmarks is nonsensical.[6]

The Joint CLECs' zone proposal will result in a level of payments that do not relate to the level of discriminatory conduct. If Installation Intervals (OP-6) were to decline in any given month because of productivity,[7] but the effect was greater on CLEC Installation Intervals than on Qwest retail Installation Intervals, payments would be required. However, the level of payments would not be based upon actual differences in CLEC and Qwest performance results. Under Joint CLECs' performance plan, the level of payments would reflect the relationship of current CLEC performance results to historical benchmarks. It is entirely possible that the CLEC current

[6] Joint CLECs are silent as to what historic time period would be used to establish the zone benchmarks. Establishing the zones based on 1 year of data raises concerns about whether the year is representative and whether abnormalities may exist in the data. Seasonality is also an issue. Establishing the zones based on 2 or more years of data may raise concerns about staleness of the data, especially after several years of operations of the PAP.

[7] The mean and distribution of current month performance results may be affected by not only productivity shifts, but also changes in weather and shifts in demand, all of which may or may not equally affect current service performance result for CLECs and Qwest retail operations.

month results could be better than the zone benchmarks.[8] In such a situation, no payment would be required even though discrimination occurred.

It is also possible that the CLEC current month results could be worse than the zone benchmarks by more than current month Qwest retail results. In such a situation, the required payment would be greater than that which would accurately reflect the true level of discrimination.

B. The Joint CLECs proposal should be rejected because the specific zone benchmarks have not been defined.

The Joint CLECs have not provided the concrete details regarding their zone proposal, specifically the zone benchmarks for each performance sub-measurement.[9] Furthermore, the Joint CLECs have not identified the performance sub-measurements that would have escalating benchmarks, the amount of escalation, and the time period over which the escalation would occur.[10] Whether or not their zone proposal can be practically implemented and operated is doubtful.

Moreover, the Joint CLECs have not demonstrated that the zone benchmarks are consistent with their proposed payment tables. Any inconsistency between how the zone benchmarks are established and how the payment tables are applied will introduce systematic bias and unreasonableness. For example, if the zone benchmarks are established with annual data, systematic bias may be introduced because payments are calculated based upon current

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[8] This would happen if Qwest performance results had improved over time. Thus, current month results, while declining from previous months, may not be a decline as compared to the historic benchmarks.

[9] Joint CLECs propose that their plan be applied at a sub-measurement level. (WorldCom, et al, Exhibit A, p. 15) There are 633 performance sub-measurements. Presumably, the Joint CLECs should have provided 633 zone specifications and the supporting data analysis.

[10] The only retail service quality standards in Arizona are those in the Qwest service quality tariff. These standards have little resemblance to the definitions and standards in the PIDs. Joint CLECs fail to demonstrate how specific performance sub-measurements correlate with Qwest's retail service quality tariff, how such correlation exists, and how performance standards are inconsistent with retail standards.

month CLEC performance results. The mismatch of comparing monthly data to an annual average is unfair when fluctuations exist in the data and payment rules are one sided, i.e., only one party pays and no offsets are allowed.

The Joint CLECs' zone proposal adds unnecessary complexity and is not necessary to discourage discrimination. In other states, WorldCom and Z-Tel proposed that the zone benchmarks **replace** the statistical z testing. They advocated that their "**simple**" plan was a preferable replacement to the complexity of z-scores and other statistical applications. Incredibly, in Arizona, WorldCom and Z-Tel proposed that the zone benchmarks be **added** to the statistical testing. The combination of the two different approaches is akin to mixing oil and water. As discussed above, the parity concept that is embedded in z-scoring and the historical benchmarking embedded in zone benchmarks are incompatible and lead to anomalous results.

III. Remedy Structure

A. The proposed remedy structure has been rejected.

The entire remedy structure proposed by Joint CLECs relies upon the premise that the "goal of the remedy is to extract the financial gain from the act of discrimination."[11] This premise has been thoroughly and soundly rejected by the FCC and other state commissions.

The New York Commission wrote:

> Both MCI WorldCom and AT&T attempt to quantify the potential benefit to BA-NY by measuring the profit BA-NY would retain by forestalling market share loss through discrimination. However, **their methodology is flawed**. First, both assume that poor performance in year one will result in ongoing benefits for at least ten years. It has not been demonstrated that poor service in year one that is corrected would cause irreversible and cumulative damage in the following years. Second, both also assume that the Commission will only detect violations of our standards 50% of the time, an unlikely circumstance.

Order Adopting the Amended Performance Assurance Plan and Amended Change of Control Plan, 97-C-0271 and 99-C-0949, November 3, 1999, p.18 (emphasis added).

[11] See WorldCom, et al, Exhibit A, footnote 7, p. 6.

In approving the Bell Atlantic New York plan, the FCC stated:

> Most fundamentally, we disagree with a basic assumption made by several commenters: that liability under the Plan must be sufficient, *standing alone*, to completely counterbalance Bell Atlantic'' incentive to discriminate.

In the Matter of 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, CC Docket, FCC 99-295, para.435. (emphasis in original)

In approving the Texas plan, the FCC again rejected the premise that serves as the foundation for the PAP proposed by Joint CLECs in Arizona.[12] It is puffery for the Joint CLECs to claim that their PAP "embraces the FCC's pillars of an effective remedy plan.[13] Their plan structure, the formulae, and the payment tables fully embody the exact premise that the FCC has already rejected. The Commission should reject the Joint CLECs' PAP purely on the basis that its foundation is flawed. Additionally, the plan is flawed in the following specific respects:

B. Joint CLECs' economic theory is fatally flawed.

The obvious flaw in Joint CLECs' proposal is the mismatch between its theory and derivation of payment amounts and its application to the zone benchmarks. On the one hand, payment is based upon the theory that discrimination would be prevented if payment levels were set equal to the financial benefit of discrimination. On the other hand, the proposed indicators by which payments are to be multiplied have nothing to do with discrimination.

As discussed above, Joint CLECs' zones compare CLEC performance results to historic benchmarks. Failure to achieve a zone benchmark may have nothing to do with delivering discriminatory service when the zone benchmarks relate solely to historic and absolute levels of

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[12] *In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Texas,* CC Docket No. 00-65, , para. 424.

[13] WorldCom, et al, Exhibit A, p. 1.

service quality. Discriminatory service can only be determined by a contemporaneous comparison of CLEC and Qwest service performance.

Another flaw is that discriminatory service impacts CLEC customers, not the Qwest retail customers. There is no evidence, in fact it is illogical to presume that an alleged act of discrimination prompts a Qwest customer to switch to another service provider. The Qwest customer would not even be aware of the alleged act of discrimination. Nevertheless, the Joint CLECs' payment tables are based upon the theory that it is the discounted present worth f future profits of serving the Qwest customer that is protected. Joint CLECs' payment tables are illogically assume that a single service miss for a single sub-measurement, for example – one of 34 submeasures that relate to single line business service - enables Qwest to protect the future earnings of one Qwest customers. It is wild speculation to assume that such a colossal relationship exists.

The Joint CLECs' economic theory is belied by its application. One occurrence of delayed service restoration of a single business use is counted in four separate submeasures: MR-3, Out of Service Cleared within 24 Hours, MR-4, All Troubles Cleared within 48 Hours, MR-5, All Troubles Cleared within 4 Hours, and MR-6, Mean Time to Restore. Applying the logic of the Joint CLECs' theory, the one occurrence of delayed service restoration is assume to protect 4 times the future earnings of an existing Qwest business customer. This result is obviously unreasonable.

C. <u>The Joint CLECs' formulae and theory depend upon undisclosed or hypothetical factors</u>.

Joint CLECs propose that payments be calculated with a "per-occurrence remedy" amount which varies by performance sub-measurement. However, they fail to specify the exact payment amount or to map the payment amounts to performance sub-measurements. Payment amounts have not been calculated because the Joint CLECs have not disclosed all the parameter values. The Joint CLEC plan has no definition of the "services" for which the payment amounts

will be derived. Without specific service definitions, service revenues and profits are not identified, nor are any offsetting wholesale service profits and revenues. It is doubtful that these service definitions follow Qwest's accounting records. The missing details are as controversial as they are critical.

The Joint CLECs fail to provide the formula for deriving the amount of annual revenues and net profit that Qwest would allegedly protect through discriminatory acts. As the Commission is well aware, service profitability and cost are subject to considerable debate with several claimed methods of measurement (e.g., with and without joint costs, with and without common overheads, fully distributed, avoided, and various versions of long run incremental cost). Joint CLECs do not disclose which profit methodology they rely upon. Without question, specification of service profitability can be counted on as a subject upon which few will agree. Also problematic is the situation in which the net profit of a service is negative (i.e., residence service). According to the Joint CLECs' theory, Qwest would have no incentive to discriminate, perhaps preferring instead that CLECs take market share. Joint CLECs' formulae would appear to produce a "negative" payment. Such a situation disproves Joint CLECs' theories.

Other critical and controversial elements missing from the Joint CLEC proposal are: 1) the probability of detection that Qwest believes it would be subject to, 2) the discount rate that Qwest would use in decision making, 3) the number of years Qwest expects to retain each type of customer due to an act of discrimination, 4) the scale value representing the visibility of each performance sub-measurement to the customers, and 5) the number of customers indirectly affected by an act of discrimination.

In each instance, Joint CLECs do not and cannot credibly present any empirical evidence of what the factors could be. It should be noted that the New York Commission rejected WorldCom's assumption that the probability of detection was 50%[14] and observed that they

[14] In this docket, Joint CLECs take no position on the probability of detection, but do replicate the payment tables for 50%, 75%, and 100% probability of detection.

"expect each CLEC will be able to detect violations by comparing the CLEC-specific data supplied...to each CLECs' own recorded performance results."[15]

With respect to the visibility of each performance sub-measurement to customers, it has already been demonstrated above that an alleged act of discrimination relates solely to the CLECs' customers and, therefore, is not visible to existing Qwest customers. Intuitively, visibility is very slight if not non-existent. The number of customers indirectly affected by discrimination relates to the visibility factor. Obviously, if the visibility of discrimination is slight to non-existent, so is the indirect effect on other customers.[16]

The Joint CLECs' formulae rely upon the number of years a customer is retained by Qwest through an act of discrimination. Joint CLECs take no position as to what the number of years is, but provide payment tables where the number of years vary from 1 to 10 years. This factor is flawed to its core by the simple fact that it assumes that customers do not constantly evaluate service provider options. Furthermore, this factor suffers from the same visibility problems described above. In the example of MR-3a, Out of Service Cleared within 24 Hours, the premise that one instance in which CLEC service was restored later than Qwest service would allow Qwest to retain a customer for 1 to 10 year, even though that customer had no visibility to the discriminatory act, is simply not believable.

The Joint CLECs claim that "rough guesses" for the values of the formulae's parameters can be used to calculate the initial payment levels because the plan's self adjusting feature will lead to "effective" payment levels. The Joint CLECs' plan cannot be taken seriously absent workable details and reasonable outcomes. Any reasonableness of a plan which is defined only in

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[15] New York Public Service Commission, Cases 97-C-0271 and 99-C-0949, Order Adopting the Amended Performance Assurance Plan and Amended Change of Control Plan, November 3, 1999, p.18.

[16] Joint CLECs attempt to draw a parallel to slamming and back into a 6.86 factor. Such a parallel falls on the simple fact that a "slammed" customer is directly affected and, therefore, has direct knowledge. That parallel does not exist in the sub-measurements Joint CLEC propose to apply the 6.86 factor. In the example involving MR-3a, Out of Service Cleared within 24 Hours, neither CLEC nor Qwest customers would know discriminatory service was provided, nor to whom it was provided to. The assertion that 6.86 other customers would be aware and, therefore, be affected is simply not credible.

terms of formulas and high level descriptions--and a host of other flaws described above--is further eviscerated by the use of "rough guesses" and the automatic doubling of payments provision. Just as in the real world, the penalty must reasonably fit the event, so it is true that level of payment must reasonably fit the consequence of the service level delivered by Qwest.

IV. Qwest's Estimate of Joint CLECs' Payment Table

The illustrative payment tables provided by Joint CLECs on pages 17-18 of Exhibit A are highly misleading because they are based on Arizona financial results for the entire Qwest operations. Joint CLECs state that the actual calculation of the payment tables will be based on the revenue and profit of specific services.[17] Joint CLECs illustrate their payment structure through an analysis of misses that include profits related to residential services. However, because residential services are purchased by CLECs in low volumes and are priced below cost, the illustrations of "per occurrence" penalties are highly misleading. In actuality, CLEC volumes relate almost entirely to Qwest business services, which have much higher revenue and profit margins.[18]

In order that the Commission may have a clear picture of what the payment table would really look like, Qwest replicated the Joint CLECs' illustrative payment table for business single line local service.[19] In doing so, Qwest does not claim that the derived payment levels are the

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[17] WorldCom, et al, Exhibit A, p. 6, 8.

[18] The illustrative payment tables on pages 17 and 18 of Exhibit A are also systematically understated by the omission of the indirect factor, "w." Even though the Joint CLECs states that the severity/duration payment should be multiplied by the number of customers indirectly affected, and they derive a 6.86 value, they have not included such a value in their payment table. In replicating the Joint CLEC payment table, Qwest has included the "w" factor.

[19] Qwest's estimates do not include the revenue or profit from business features and functions, business intralata toll, or business access, which Joint CLECs may argue are protected along with the access line revenue and net profit.

appropriate levels, or that the parameter values relied upon to derive the payment levels are the appropriate values.[20]

Table 1 is calculated for a single month of non-compliance and for all levels of severity up to 100%. The table is calculated as if it was applicable to OP-4, Installation Intervals, which in June 2000 had 300 CLEC data points. Table 2 is the same as Table 1, but is calculated for duration of two months.

Table 1: One Month Duration

Percent Misses	Number of Misses	Payment to CLEC	Per Occurrence Payment
5%	15	$ 63,994	$ 4,266
10%	30	$ 142,433	$ 4,748
15%	45	$ 235,318	$ 5,229
20%	60	$ 342,649	$ 5,711
25%	75	$ 464,425	$ 6,192
30%	90	$ 600,647	$ 6,674
35%	105	$ 751,314	$ 7,155
40%	120	$ 916,427	$ 7,637
45%	135	$1,095,986	$ 8,118
50%	150	$1,289,990	$ 8,600
55%	165	$1,498,440	$ 9,081
60%	180	$1,721,335	$ 9,563
65%	195	$1,958,676	$ 10,044
70%	210	$2,210,462	$ 10,526
75%	225	$2,476,694	$ 11,008
80%	240	$2,757,372	$ 11,489
85%	255	$3,052,495	$ 11,971
90%	270	$3,362,064	$ 12,452
95%	285	$3,686,078	$ 12,934
100%	300	$4,024,538	$13,415

[20] For the probability of detection and the number of years a customer would be retained, because the Joint CLECs declined to propose values, but instead provided ranges of possible values, Qwest assumed the mid-point of the ranges as a best guess of what the Joint CLECs would advocate.

Table 2: Two Month Duration

Percent Misses	Number of Misses	Payment to CLEC	Per Occurrence Payment
5%	15	$ 71,217	$ 4,748
10%	30	$ 171,325	$ 5,711
15%	45	$ 300,324	$ 6,674
20%	60	$ 458,995	$ 7,637
25%	75	$ 644,995	$ 8,600
30%	90	$ 860,668	$ 9,563
35%	105	$1,105,231	$ 10,526
40%	120	$1,378,686	$ 11,489
45%	135	$1,681,032	$ 12,452
50%	150	$2,012,269	$ 13,415
55%	165	$2,372,397	$ 14,378
60%	180	$2,761,417	$ 15,341
65%	195	$3,179,327	$ 16,304
70%	210	$3,626,129	$ 17,267
75%	225	$4,101,822	$ 18,230
80%	240	$4,606,406	$ 19,193
85%	255	$5,139,881	$ 20,156
90%	270	$5,702,247	$ 21,119
95%	285	$6,293,505	$ 22,082
100%	300	$6,913,653	$23,046

The tables provide very important insight into the Joint CLECs' PAP. The one month duration "per occurrence" payment level is not a fixed amount, but is a varying amount that escalates. For performance sub-measurements that relate to business local service, the payment level starts at approximately $4,266 for the first 5% of CLEC volumes and 1 month duration and escalates from there, depending upon the percent of CLEC volume and months of duration.[21]

The level of the payments is unreasonable. In the example of OP-4, Installation Intervals, a single delayed installation that may be a matters of hours results in a $4,266 payment to CLECs

[21] Joint CLECs did not provide illustrative tables for two, three or months of duration. Application of the "w" factor to severity and duration is unclear in Joint CLECs filing. The Z-Tel Attachment 1 clearly indicates that the "w" factor is applied to severity and duration. For purposes of these comments, Qwest did not apply "w" to severity and duration, subject to further clarification by the Joint CLECs.

the first month it happens, assuming only 5% of all CLEC installations were missed. If there were installation misses the previous month, the payment would be $4,748.

By comparison, the nonrecurring revenue to Qwest for the missed installation would be $46, assuming the installation was a business unbundled loop. The annual profit related to business service is $94.66. The discounted present worth of future profits is $361, given the outrageous assumption that one installation miss in any given month enables Qwest to retain an existing business customer for 5 years. By any measure of comparison, the Joint CLECs' penalty amounts are simply outrageous.

The total amount of payments that would be required by the Joint CLECs' PAP is unreasonable. In the example of OP-4, Installation Intervals, the total payment to CLECs for just 5% of misses would be $63,994, assuming duration of one month. Assuming that this $63,994 is representative of a 5% miss in the other 632 performance sub-measurements[22] proposed by Joint CLECs, the total payment by Qwest for one month would be over $40 million. A second consecutive month of 5% misses would make that month's payment over $45 million, for a two month total of $85 million.

According to Joint CLECs' filing, 36% of Arizona net profit is $93.6 million. Obviously, the amount of payments is unreasonable, especially considering $40 million relates to 5% misses in a single month and $85 million would be for the first occurrence of 2 consecutive months.[23] The Joint CLECs' PAP is designed to be a major profit center for CLEC operations. The fact of the matter is that at the levels of payments proposed by Joint CLECs, the PAP will generate huge revenues and earnings for the CLECs. Forty million for one month's revenues from a single

[22] Joint CLECs propose the addition of new performance measurements. Joint CLECs do not disclose the number of sub-measurements that would result from disaggregation. Consequently, the number of sub-measurements that the Joint CLECs payment structure would be applied against is considerably greater than 633.

[23] It should be noted that under the Joint CLECs proposal, the second occurrence of 2 consecutive months causes the permanent doubling of payment amounts. The doubling continues ad infinitum.

state, without the expenditure of hardly any expense,[24] would be a huge windfall to the CLEC. In analogous situations, the "per occurrence" payment amounts proposed by Joint CLECs far exceed comparable bill credits that are given to retail customers. For a 72 hours out of service condition, a retail business customer receives a bill credit equal to 14/30 of the monthly recurring charge. For the $32.78 business line rate, the amount would be $15.30. The payment to a CLEC would be $4,266 and upward depending upon the duration and severity factors.

For a missed service installation appointment, a retail business customer receives a $19 bill credit. The payment to a CLEC would be $4,266 and upward depending upon the duration and severity factors.

For a one month delay of a primary line service installation, a retail business customer receives a 1 month credit equal to the basic service recurring rate, a $150 cellular voucher, voice messaging, or paging service. The payment to a CLEC would be $4,266 and upward depending upon the duration and severity factors.

At the level of the "per occurrence" payments proposed by Joint CLECs, incentives will be created for CLECs to skew their behavior so as to increase the probability of services misses by Qwest. The payment levels proposed by Joint CLECs create better profit opportunities than the provision of actual services to Arizona customers. The opportunity to receive from Qwest $4,266 or more on the installation of a single business unbundled loops far exceeds the revenue opportunity a CLEC has with retail customers. Thus, the CLEC earnings opportunity lies more with submitting orders to Qwest that have some probability of a miss than it does providing service to Arizona customers. The $4,266 "per occurrence" payment creates incentives for CLECs to bundle orders into large batches, hold orders until the end of the day, and dump orders on Qwest at 5 p.m. on a Friday or the day before a holiday. CLECs would have the incentive to submit incomplete or ambiguous orders and to conduct business in other ways that would

[24] Other than taxes, payments by Qwest to CLECs go directly to their bottom line earnings because virtually no operating expenses are incurred by CLECs to achieve these revenues.

increase the likelihood of Qwest service misses. It is significant that the Joint CLECs' PAP has no provision that would allow Qwest to withhold payments to CLECs in such situations.

The CLECs theorize detrimental effects due to Qwest service quality misses, but present no evidence of such harm. In OP-4, Installation Intervals, there is no evidence that a CLEC suffers financial harm of any magnitude if the CLEC interval is 1 day longer than the Qwest retail interval. In MR-3, Out of Service Restored with 24 Hours, there is no evidence of CLEC financial harm of any magnitude if the CLEC percentage restored is 1% lower than the Qwest retail percentage.[25]

What there is evidence of is that the Qwest customers will not have direct knowledge of any difference in the level of service for any given month. Without such knowledge, Qwest customer decisions as to whether to switch service providers will not be affected, directly contradicting the Joint CLECs' theoretical, formula approach to penalty calculations. As a result, the payment levels proposed by Joint CLECs will be economic windfalls, directly benefiting their bottom lines.

The Joint CLEC admit that any financial harm would be indirect. According to Z-Tel, the three potential sources of economic gain for Qwest and harm to the CLEC's are:

1. Customers view CLECs as offering sub-standard service;
2. Diminished reputation of the CLECs; and
3. Increased Qwest market share in related markets (e.g., toll, DSL).

The gap is huge between the Joint CLECs formulae that assume Qwest reaps a financial benefit equal to the discounted present worth of the future earnings of retaining customers and Joint CLECs nebulous speculation about how customer perceptions of CLEC are affected by Qwest service quality.

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[25] Conversely, Qwest achieves no financial benefit since the affected customers are not Qwest customers. The only instance of direct financial benefit is in the case of a customer cut-over from Qwest to a CLEC. In that instance, Qwest may achieve higher revenues from the delay of a cutover. However, any delay would be on a scale of hours and days, resulting in marginal increased revenues. Not a year of profit retention as theorized by the Joint CLECs.

Joint CLECs present no evidence to validate their theory of a direct relationship between customer perceptions of CLECs and Qwest's service quality. Even more significant, Joint CLECs present no evidence that any relationship that may exist has the effect of harming CLECs by $4,266 per occurrence. There is no evidence that Joint CLECs' proposed PAP is reasonable.

V. Cap on Qwest Payments

The Joint CLECs state that the PAP should not have a cap on payments because "a cap can reduce the effectiveness of the remedy plan with no offsetting benefits."[26] However, of the two 271 performance plans that have been approved, Texas and New York, both have caps equal to 36% of state's net return. These Texas and New York caps were approved on the basis that the potential for penalties to reach 36% of net return "represents a meaningful incentive...to maintain a high level of [service] performance."[27] Potential penalties that could reach 36% of Arizona net return would represent an equally meaningful incentive to Qwest.

The Joint CLECs ignore the fact that a cap is necessary to discourage CLECs from employing tactics intended to increase the probability of Qwest service misses and payments. The absence of a cap and $4,266 "per occurrence" payments will attract CLECs more interested in maximizing payments from Qwest than in providing services to the Arizona public.

A cap is also important to ensure reasonable balancing of Qwest retail and wholesale operations. Unlimited financial liability and $4,266 "per occurrence" payments will cause Qwest to take defensive action to minimize the probability of payments to the CLECs at the cost of directing resources from its retail operations. As is described above, a huge difference would exist between retail and wholesale payment levels. Such differences in payment levels and the unpredictability of unlimited liability will have detrimental effect on retail operations.

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[26] WorldCom, et al, Exhibit A, p. 2.

[27] FCC, CC Docket No. 00-65, Memorandum Opinion and Order, para. 424, June 30,2000.

VI. Testing for Service Equality – Statistical Tests

Joint CLECs propose that a 1.04 z-score be used for Miss Appointments and Average Interval Provisioning performance measurements.[28] While weighting of performance measurements may be reasonable, 1.04 z-score is not an appropriate method of distinguishing measures. Changing the z-score to 1.04 from 1.645 increases the likelihood of Type I errors from 5% to 15%. This means that it is more likely that payments will be required when no actual discrimination occurred. A z-score of 1.645 reflects 95% confidence that a Type 1 error would not be made. Joint CLECs' proposal equates to a confidence level of 85%. A 95% confidence level is generally accepted as an adequate statistical standard.[29]

The proposal to give added weight to Missed Appointments and Average Installation Intervals fails to recognize that added weight is already given by virtue of the overlapping performance measurements proposed by Joint CLECs. The purpose of giving added weight is to cause the payment to be greater for a service miss. If a single service event is counted in multiple performance measurements, a service miss will cause a greater payment by virtue of the overlap. This is exactly the case in Joint CLECs proposal. To lower the z-score hurdle to 1.04 under the guise of placing greater weight on missed appointments and average provisioning interval simply ignores that Joint CLECs' PAP already triples the payment exposure.

VII. Audits/Mini-Audits

The onerous audit provisions proposed by the Joint CLECs are severe and unnecessary. The Joint CLECs suggest that Qwest annually engage in an audit the magnitude of the audit Qwest is currently undergoing to obtain 271 approval. Incurring the cost of the Arizona OSS

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[28] WorldCom, et al, Exhibit A, p. 3. It appears that Joint CLECs refer to OP-3, Installation Commitments Met and OP-4, Installation Intervals. However, the specific measurements are not identified by Joint CLECs. Given the level of disaggregation, these two performance measurements equate to 112 sub-measurements.

[29] Department of Telecommunications and Energy, Order Adopting Performance Assurance Plan, September 5, 2000, p. 26.

audit on an annual basis would be prohibitive. Moreover, the resources necessary to interact and respond to even routine questions and requests for documentation from an auditor strains productivity for client services. Once the audit is concluded and Qwest's systems are deemed sufficient, an annual audit of the same breadth and magnitude would waste money and resources and threaten the common goal—consistent conforming service to CLECs.

The so-called "mini audits" proposed by the Joint CLECs are oppressive. It is unreasonable to invite CLECs to audit, at will and without any demonstration of good cause, multiple measurements up to three times a year, and at Qwest's expense. Such provisions would place Qwest's operations in a constant state of upheaval and, again, waste resources and money.

VIII. Application and Payment

The Joint CLECs propose that PAP payments should made be in addition to remedies available in other agreements. Qwest has proposed a comprehensive performance remedy plan that provides more than adequate liquidated damages for alleged failure to provide CLECs with nondiscriminatory treatment. CLECs should not be allowed to obtain duplicative remedies. Moreover, as Qwest has stated emphatically, there is no authority for the Commission to impose the payments provided in a performance assurance plan prior to section 271 approval for Arizona and outside of a voluntary agreement.

The Joint CLECs continue to make unsupported pleas for direct payments rather than bill credits. For example, without the slightest factual support, the Joint CLECs state, "[p]ayment by check is necessary in order to ensure certain payment and is easier for the CLECs to administer and track...[b]ill credits...are less visible and hence less motivating." As Qwest has pointed out, the New York and Texas Commissions rejected the same naked arguments made in their jurisdictions in favor of established industry custom of applying bill credits.

IX. Mitigation and Dispute Resolution

The Joint CLECs' proposal that Qwest perform a "root-cause" analysis at the CLECs' request demonstrates that the CLECs' objective is to affect Qwest's business rather than to devise a workable and reasonable performance assurance plan. The purpose of a performance assurance plan is to create an incentive to motivate business decisions and operations that maintain conforming performance. Substantial payments to CLECs, along with other potential sanctions, sufficiently create that incentive. A imposed "root cause analysis" serves no legitimate purpose.

X. Proposed Performance Measurements

On August 21, 2000, Qwest filed its proposal to include 21 performance measurements at a level of disaggregation that equated to 94 sub-measurements. The CLECs proposed that 41 performance measurements be included, which equated to 686 sub-measurements. On September 19, 2000, Qwest filed a detailed PAP that boosted the number of performance measurements from 21 to 31 and increased the number of sub-measurements from 94 to 471. On September 25, 2000, Joint CLECs raised the number of measurements from 41 to 42, which equates to 633 sub-measurements.[30]

As the following table illustrates, the differences between Qwest and Joint CLECs fall into two categories: the inclusion of diagnostic and parity by design measurements and duplicative measurements:

[30] The 634 sub-measurements are based upon the disaggregation agreed upon by the CLECs in the performance workshops. As discussed below, Joint CLECs propose different disaggregation.

	Qwest		Joint CLECs	
	Measures	**Sub-Meas**	**Measures**	**Sub-Meas**
Current Proposal	31	471	42[31]	633
Diagnostic/Parity by Design	0	0	(9)	(21)
Duplicative Measurements:				
OP-6a				(56)
MR-4			(1)	(29)
MR-6			(1)	(56)
Net	31	471	31	471

The Joint CLECs inclusion of diagnostic and parity by design performance measurements is unexplained. Diagnostic performance measurements have no agreed upon standard to test parity. Parity by design performance measurements cannot by definition result in a conclusion of discriminatory service. Therefore, diagnostic and parity by design performance measurements will not cause payments to CLECs.

The remaining 3 performance measurements on which Joint CLECs and Qwest disagree are OP-6a (Delayed Days, Non-Facility Reasons), MR-4 (All Troubles Cleared Within 48 Hours), and MR-6 (Mean time to Restore). Joint CLECs do not provide rationale for why they should be included. Qwest has previously stated that these three performance measurements should not be included because they are duplicative of other performance measurements already included.[32] OP-6a is redundant because it reports performance that is already reflected in OP-4, Installation Intervals. MR-4 and MR-6 are redundant because they report performance that is already reflected in MR-3 (Out of Service Cleared within 24 Hours) and MR-5 (All Troubles

[31] Of the 53 performance measurements listed on Joint CLECs Exhibit B (OP-6 is listed twice), 11 are not included in Joint CLECs proposal. Qwest also does not include the same 11 measurements.

[32] Qwest PAP, September 19, 2000, p. 2, footnote 5.

Cleared with 4 Hours). As is discussed above, the inclusion of redundant performance measurements has the illogical effect of causing multiple payments for the same service event.[33]

The Joint CLECs' Exhibit B, which compares Joint CLECs and Qwest's proposed performance measurements inaccurately represents Qwest's position, thus giving the appearance that the difference in the parties' positions is greater than it actually is. The CLECs Exhibit B does not incorporate ten performance measurements listed on Attachment 1 of Qwest's September 19, 2000 filing with the Commission, which was distributed to the Joint CLECs.[34]

XI. Proposed Changes in the Level of Disaggregation

The Joint CLECs propose the disaggregation of performance measurements shown in Exhibit D of their filing. Their proposal is a change from the disaggregation agreed to by the parties, including the Joint CLECs, in the performance workshops.

The existing disaggregation of the performance measurements is that described in the PIDs. It is simply disingenuous for the Joint CLECs to propose that this workshop rewrite the PIDs. The performance measurements, at the disaggregation already agreed to by the parties, which include the Joint CLECs, is being audited as part of the OSS testing. The Joint CLECs fail to identify any new information or legitimate rationale to justify their proposed PID modifications and additions.

XII. Proposed New Performance Measurements

Qwest strenuously objects to the attempt of the Joint CLECs and SBC, at this late date. The performance workshops established the performance measurements that will be reported in

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[33] In the Qwest PAP, OP-4 has already been given added weight by its "high" designation. Inclusion of OP6a would give unreasonably more weighting to installation orders. MR-3 and MR-5 have "medium" designations. However, MR-3 and MR-5 are redundant, causing service restorations to get more weighting.

[34] The ten performance measurements are: PO-3 (Rejection Notice Interval), PO-7 (Billing Completion Notification), PO-8 (Jeopardy Notice Interval), MR-8 (Trouble Rate), MR-9 (Repair Appointments Met), BI-4 (Billing Completeness), and CP-3 through CP-6 (Collocation Feasibility and Quote Intervals and Commitments Met).

Arizona and, as reflected in the PIDs, what will be measured, how it will be measured, what the standard will be to compare CLEC and Qwest service results, and the disaggregation levels and product reporting. In those workshops, extensive consideration was given by the participants, which included the Joint CLEC and SBC, to the performance measurements of other state jurisdictions, including New York and Texas.

QWEST COMMENTS ON THE SBC PLAN

SBC proposes a PAP that "with the exception of some minor numbering changes" is identical to the Texas plan.[35] As the Commission is aware, Qwest adopted the key plan structure, statistical methods, and payment tables from the Texas plan for the Qwest PAP. Therefore, Qwest's and SBC's proposals have many common elements and are generally similar.

It should be noted, however, that SBC's PAP relies entirely upon this Commission adopting the Texas performance measurements. As stated above, Qwest strenuously opposes the adoption of new performance measurements. In the case of SBC, their proposal is more radical. SBC would have the Commission throw out the entirety of the PIDs developed in the Arizona performance workshops and substitute the Texas performance measurements.[36] Obviously, such a proposal is unreasonable.

Finally, SBC's proposal does not include caps on certain "per occurrence" performance measurements. This is contrary to Mr. Dysart August 22, 2000 presentation that where the sample size is large, caps are appropriate.

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[35] SBC Letter, Loehman to Commission, September 25, 2000, p. 2.

[36] In the alternative, the Texas PIDs cannot be pancaked on top of the Arizona PIDs because of obvious overlap and duplication of performance measurements.

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