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2 **QWEST MISREPRESENTS THE RELATIONSHIP BETWEEN THE SECTION**  
3 **6.2.3 AND ITS PERFORMANCE ASSURANCE PLAN**

4 Qwest asks the Arizona Corporation Commission (“ACC”) to depart from the  
5 Order on one issue. If accepted by the ACC, Qwest argues that the Order would allow  
6 CLECs to recover twice for the same service quality incident: once under the SGAT, and  
7 the second time under Qwest’s Performance Assurance Plan (QPAP). This is an  
8 overstatement of the issue.  
9

10 Qwest asserts that it will pay twice for the same conduct under Section 6.2.3 of its  
11 SGAT and under its Performance Assurance Plan (“PAP”). Qwest’s PAP has not been  
12 considered or approved by this Commission and as noted by Qwest in its comments, it is  
13 still finalizing its PAP. Moreover, as presently proposed by Qwest, its PAP precludes  
14 double recovery for the same or analogous conduct. “Analogous” conduct must not be  
15 the “same” conduct since Qwest has separately identified analogous conduct and  
16 precluded double recovery for analogous conduct. Analogous conduct is not defined in  
17 the PAP.  
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20 Here it asserts that under its PAP it will pay twice for the same conduct. However,  
21 because the PAP precludes double recovery for analogous conduct, Qwest’s exposure to  
22 double recovery is more limited under the PAP and will likely be subject to dispute as to  
23 what constitutes analogous conduct. Moreover, Qwest’s proposed language in Section  
24 6.2.3 of the SGAT does not limit double recovery for the “same” conduct as Qwest argues  
25  
26

1 here. The Qwest proposed SGAT provision states “[I]n no case shall Qwest be required to  
2 provide duplicate reimbursement or payment to CLEC for any service quality failure  
3 incident.” There is no reference to the “same” conduct as argued by Qwest and the word  
4 “same” is not found in the proposed section.  
5

6 Even Qwest’s reference to the Facilitator’s comments in the Multi-State proceeding  
7 relate solely to elimination of double recovery for the same conduct. As quoted by Qwest,  
8 the Facilitator stated:  
9

10 Finally, it is proper for Qwest to provide protection in the event that PEPP  
11 payments clearly include payment to CLECs or their customers for state quality  
12 “misses.” There is no sound policy for making Qwest pay twice for the same  
13 thing; nor is it at all clear that PEPP payments will necessarily not include such  
14 items. (emphasis supplied)

15 Accordingly, once Qwest has finalized its PAP and the Commission addresses the  
16 PAP, it can then revisit this issue if it believes Qwest will be subjected to double recovery  
17 for the same conduct under Section 6.2.3. Since the Commission has not reviewed or  
18 approved Qwest’s PAP, it is premature to enter rulings based upon the PAP as proposed,  
19 when it has not been finalized, approved, or become effective. WorldCom, therefore,  
20 requests the Commission accept Staff’s report as proposed on this issue.

21 DATED this 10<sup>h</sup> day of September, 2001.

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