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BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKETED

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DOCKETED BY

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

IN THE MATTER OF U. S. WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH SECTION 271 OF THE TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. T-00000A-97-0238

DECISION NO 64888

ORDER

Open Meeting
May 9, 16, 29 and 30, 2002
Phoenix, Arizona

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. The Federal Telecommunications Act of 1996 ("1996 Act") added Section 271 to the Communications Act of 1934. The purpose of Section 271 is to specify the conditions that must be met in order for the Federal Communications Commission ("FCC") to allow a Bell Operating Company ("BOC"), such as Qwest Corporation ("Qwest" or the "Company"), formerly known as US WEST Communications, Inc. ("US WEST")[1] to provide in-region interLATA services. The conditions described in Section 271 are intended to determine the extent to which local phone service is open to competition.

2. The FCC has emphasized the importance of four key components of any Section 271 application: 1) open participation of all interested parties; 2) independent third party testing of operation support systems ("OSS"); 3) design of performance measurements and standards; and 4) adoption of performance assurance measures which create a financial incentive for post-entry Section 271 compliance.

3. In Arizona, Qwest has proposed a Performance Assurance Plan ("PAP") as a post-271

[1] For purposes of this Order, all references to US WEST have been changed to Qwest.

approval monitoring and enforcement mechanism. The Qwest PAP requires specific levels of wholesale performance as determined by performance measures and assesses financial liability for failure to meet the standards.

4. Section 271 does not contain an express requirement that a BOC implement a Performance Assurance Plan. The FCC does not require such plans and does not impose requirements for their structure if a state adopts one. The FCC has stated that it will review monitoring and enforcement mechanisms developed at the state level "to determine whether they fall within a zone of reasonableness, and are likely to provide incentives that are sufficient to foster post-entry checklist compliance."[2]

5. In its review of monitoring and enforcement mechanisms, the FCC focuses on the following characteristics: 1) potential liability that provides a meaningful and significant incentive to comply with the designated performance standards; 2) clearly articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance; 3) a reasonable structure that is designed to detect and sanction poor performance when it occurs; 4) a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and 5) reasonable assurances the reported data is accurate.[3]

6. A Performance Assurance Plan is an important monitoring and enforcement mechanism for ensuring that the BOC will continue to meet its Section 271 obligations after it receives a grant of such authority.

7. On June 12, 2000, the Commission issued a Procedural Order that established *inter alia* a collaborative workshop process to evaluate backsliding and penalty issues. The June 12, 2000 Procedural Order directed Staff to file proposed findings of fact and conclusions of law after the conclusion of the workshops. The parties were directed to file additional or revised findings and conclusions within ten days of Staff filing its proposed findings. Staff then files a Final Recommended Report. For undisputed items, Staff submits its Report to the Commission for

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[2] *Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, Inter-LATA Service in the State of New York*, Memorandum Opinion and Order, CC Docket 99-295, at para 433 (December 22, 1999) ("Bell Atlantic New York Order").
[3] Id. at para. 433.

consideration at Open Meeting. For disputed items, Staff submits its Report to the Hearing Division, with a procedural recommendation for resolving the dispute.

8. In September 2000, Qwest submitted a modified Performance Assurance Plan ("PAP") that was patterned after the PAP submitted by Southwestern Bell for the State of Texas and approved by the FCC.

9. A total of seven workshops on Qwest's Arizona PAP were held in 2000 and 2001. The first workshop took place on July 13, 2000 at the Commission's offices in Phoenix. Present at the workshop were Commission Staff and Commission consultants Doherty & Company ("DCI"), Qwest, Alltel, GST, WorldCom, Inc. on behalf of its regulated subsidiaries ("WorldCom"), Z-Tel, SBC Telecom, Southwestern Bell Telecom, Eschelon Telecom, Inc., Electric Lightwave, Inc. ("ELI"), Cox Arizona Telecom, Inc. ("Cox"), e-spire Communications ("e-spire") and the Residential Utility Consumer Office ("RUCO").

10. The second workshop on the PAP took place on July 25 and 26, 2000, at the Commission's offices in Phoenix. Present either in person or telephonically were Staff, DCI, Qwest, WorldCom, Z-Tel, Eschalon, ELI, Alltel and RUCO.

11. The third workshop on the PAP took place on August 22 and 23, 2000 at the Commission's offices in Phoenix. Present either in person or telephonically were Staff, DCI, Qwest, Worldcom, Z-Tel, Eschalon, ELI, SBC Telecom, Southwestern Bell Telecom, PacTel, Alltel, RUCO, and Kelley Drye & Warren LLP.

12. The fourth workshop on the PAP took place on October 17 and 18, 2000, at Qwest's offices in Phoenix. Present were Staff, DCI, Qwest, WorldCom, Z-Tel, and SBC Telecom. Cox and e-spire were present telephonically on the first day of the workshop.

13. The fifth Workshop on the PAP took place on December 18 and 19, 2000, at the Commission's offices in Phoenix. Present were Staff, DCI, Qwest, WorldCom, Z-Tel, SBC Telecom, Covad and RUCO.

14. The sixth Workshop on the PAP took place at Hewlett Packard's ("HP") offices in Phoenix on February 5 and 6, 2001. Present were Staff, DCI, Qwest, WorldCom, Z-Tel, SBC Telecom, Sprint Communications Company ("Sprint") and the U. S Department of Justice.

15. The seventh and final Workshop on the PAP took place at HP's offices in Phoenix on April 2 and 3, 2001. Present were Staff, DCI, Qwest, WorldCom, Z-Tel, and SBC. Cox participated telephonically.

16. During the fifth PAP Workshop, the parties agreed that the PAP approved by the FCC in SBC Telecom, Inc.'s 271 Application in Texas would be the foundation for Qwest s PAP in Arizona. Throughout the Workshop process, Qwest revised and modified its proposed PAP. On May 10, 2001, Qwest, and WorldCom and Z-Tel jointly, filed Briefs on the remaining disputed issues. Qwest and WorldCom filed Reply Briefs on May 24, 2001.

17. After the Arizona Workshop process had concluded, Qwest modified its PAP during the Regional Oversight Committee ("ROC") Workshop process. Qwest discussed the changes in Reply Brief and offered to include the ROC changes in the Arizona PAP.

18. On July 6, 2001, Qwest filed a revised Arizona PAP based on changes made in the ROC. A copy of Qwest's proposed July 6, 2001, PAP is attached hereto as Exhibit A, and incorporated herein by reference.

19. WorldCom filed a Response to Qwest's Revised PAP on July 26, 2001.

20. On October 29, 2001, Staff filed its Proposed Staff Report on Qwest's Performance Assurance Plan ("Proposed Findings").

21. WorldCom and Qwest filed Comments on the Proposed Findings on November 2001 and November 9, 2001, respectively.

22. On December 24, 2001, Staff filed its Final Report on Qwest's Performance Assurance Plan ("Final Report"). A copy of the Final Report is attached hereto as Exhibit B, and incorporated herein by reference.

23. On January 8, 2002, Qwest and WorldCom filed Comments on Staff's Final Report.

24. No party requested a hearing on disputed issues. We find the record sufficiently developed to resolve the disputed issues relating to the PAP.

PAP Structure

25. Qwest's proposed July 6, 2001 PAP is a two-tiered self-executing plan. Under the terms as proposed by Qwest:

- CLECs receive Tier I payments if Qwest does not provide parity between the service it provides to the CLECs and that which it provides to its retail customers or if Qwest fails to meet applicable benchmarks.
- Qwest makes additional Tier II payments to a dedicated reserve account at Qwest for expenditures within pre-determined parameters established by the Commission if Qwest fails parity and benchmark standards on an aggregate CLEC basis.
- Performance measurements are given different weightings (high, medium, low) to reflect relative importance.
- Payment is generally on a per occurrence (a set dollar payment times the number of non-conforming service events); for performance measurements which do not lend themselves to per occurrence payment, payment is on a per measurement basis (a set dollar payment).
- The amount of Tier I payment also depends on the number of consecutive months of non-compliant performance (payments escalate the longer the duration of the non-conforming performance).
- Qwest's proposed Tier I dollar payments are set forth in Table 2 of the PAP:

Table 2: Tier I Payments to CLECs

Per Occurrence Measurement Group	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6 and each following
High	$150	$250	$500	$600	$700	$800
Medium	$75	$150	$300	$400	$500	$600
Low	$25	$50	$100	$200	$300	$400

Per Measure/Cap Measurement Group	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6 and each following
High	$25,000	$50,000	$75,000	$100,000	$125,000	$150,000
Medium	$10,000	$20,000	$30,000	$40,000	$50,000	$60,000
Low	$5,000	$10,000	$15,000	$20,000	$25,000	$30,000

- The PAP relies on statistical scoring to determine whether any difference between CLEC and Qwest performance results is significant (not attributable to simple random variation). Qwest proposes using a modified "Z-test" to evaluate the difference between two means (for example, Qwest and CLEC service or repair intervals) or percentages (Qwest and CLEC proportions) to determine if there is parity.

- Performance measurements that have no Qwest retail analogue use benchmarks, which are evaluated using a "stare and compare" method without further statistical analysis; that is, if the benchmark is 95 percent or better, Qwest performance results must be at least 95 percent to meet the benchmark.
- Performance measurements have been given precise definitions, called Performance Indicator Definitions ("PIDs"), that specify the unit of measure, the data to be utilized in the measurement, and the standard. Qwest included 32 measurements in the PAP. The PIDs, their weightings and their classification as Tier I or Tier II are set forth in Attachment 1 to the PAP.
- Payments to CLECs or the dedicated reserve account at Qwest are to be made in the month following the due date of the performance report.
- There is a cap on total payments made during a calendar year equal to 36 percent of Qwest's "net local revenues".
- The PAP does not become effective unless and until Qwest receives Section 271 authority from the FCC for Arizona.

Disputed Issue No. 1 – Additional PIDs

26. CLECs want Qwest to include PIDs PO-6, PO-7, PO-8 and PO-9 in the Arizona PAP. PO-6 measures "Work Completion Notification Timeliness" and is intended to evaluate the timeliness with which Qwest issues electronic notification to CLECs that provisioning work on an order has been completed and that service is available to the customer. PO-7 measures "Billing Completion Notification Timeliness" and is intended to evaluate the timeliness with which electronic billing completion notifications are transmitted to CLECs, by focusing on the percentage of orders that are transmitted to CLECs or posted in the billing system for Qwest retail within five business days. PO-8 measures the "Jeopardy Notice Interval" and evaluates the timeliness of jeopardy notifications, focusing on how far in advance of original due dates jeopardy notifications are provided to CLECs (regardless of whether the due date was actually missed). PO-9 measures "Timely

Jeopardy Notices," measuring the extent to which Qwest notifies customers in advance of jeopardized due dates when original due dates are missed.

27. In its July 2001 Revised PAP, Qwest agreed to treat PO-6 and PO-7 as a "family". PO-6a and PO-7a, PO-6b and PO-7b, and PO-6c and PO-7c would become three families composed of two sub-measures. If Qwest misses both sub-measures in a family, then Qwest would pay a penalty on whichever sub-measure would result in a higher payment. Qwest agreed to include PO-8 and PO-9 individually.

28. The CLECs participating in the ROC agreed to Qwest's proposal. In its Response to Qwest's July 2001 Revised PAP, WorldCom states that it agrees with Qwest's proposal in Arizona.

29. Staff recommends that PO-6 and PO-7 should be included as a family and PO-8 and PO-9 should be included individually.

30. The parties have resolved this dispute reasonably. We approve the negotiated settlement of this issue. Some of these changes appear to be reflected already in the July 6, 2001 PAP. To the extent it has not yet done so, Qwest should revise its PAP to reflect these agreements.

31. In its January 8, 2002, Comments, WorldCom states that measures have been developed for OP-17, MR-11 and MR-12 and that Qwest has agreed to add these measurements to Tier I High and Tier II Medium. WorldCom states these measurements should also be included in the Arizona PAP.

32. It appears Qwest has agreed to import these measures to Arizona, and should revise its PAP to include them.

Disputed Issue No. 2 – Change Management

33. Qwest has proposed two diagnostic Change Management measures for its Arizona PAP: PO-16 ("Timely Change Management Notifications") and GA-7 ("Timely Outage Resolution Following Software Releases"). Diagnostic measures do not incur penalties. Initially, Qwest proposed that these measures be included in the PAP at the six-month review. Subsequently, Qwest agreed to include these measures once the parties adopt standards. Qwest proposes that these measurements be classified as Tier II with a High ranking given to payments.

34. WorldCom and Z-Tel do not believe that Qwest's proposed Change Management

measures are sufficient. These CLECs urged that additional Change Management measures should be included in the Arizona PAP: a PID for "Software Validation" that would measure if the test deck Qwest provides to the CLECs is an accurate reflection of real world scenarios, RQ-3 "Release Quality" that would measure the number of software releases that require changes or retraction within 14 days of their implementation, and PO-19 "Stand Alone Test Environment" ("SATE"). Furthermore, WorldCom argues the GA-7 Change Management measure should not be diagnostic as Qwest proposes, but rather should be a benchmark measure that requires 100 percent compliance.

35. Staff recommends that PO-16 and GA-7 should be included in the PAP prior to the six-month review and prior to Qwest filing its 271 application with the FCC. Staff believes that both of these measures should be included as more than just diagnostic measures, and should have benchmark standards and penalties imposed for non-compliance. The parties have agreed to standards for these measures. The GA-7 standard allows one miss for volumes between 1 and 20, and a 95 percent benchmark for volumes greater than 20. Under PO-16, for volumes between one and ten, Qwest will be allowed one miss, and for volumes greater than ten, the benchmark standard is 92.5 percent. Staff concurs with both measurements and agrees with Qwest that these measures should be classified as Tier II with a High payment ranking.

36. Staff agrees with WorldCom that the PO-19 SATE measurement be included in the PAP, and recommends that if the parties are not able to develop a standard for this measure before the effective date of the PAP, then PO-19 should be diagnostic, and reviewed at the six-month PAP review. On or about April 3, 2002, Staff issued a resolution of the impasse regarding PO-19, and set the standard at 95 percent.

37. We agree with Staff that PO-16 (Timely Change Management Notifications), PO-19 (SATE) and GA-7 (Timely Outage Resolution Following Software Releases) should be included in the PAP with associated penalties for non-compliance. Because the measurement is not yet developed for Worldcom's proposed "Software Validation", RQ-3 (Release Quality), we find that this measure should be evaluated for possible inclusion at the six-month PAP review. In addition, because it is a newly developed PID, PO-19 should be re-evaluated at the six-month review.

Disputed Issue No. 3 – Root Cause Analysis

38. This issue focuses on when Qwest will perform an investigation of the root cause for missing a benchmark.

39. Initially, Qwest stated that it would investigate consecutive two-month failures for measures at the Tier II level. Qwest argued that because CLEC volumes in Arizona are low, root cause analysis at the Tier I level is not warranted.

40. WorldCom and Z-Tel argue that a root cause analysis is warranted when a measure is missed for three consecutive months or for two consecutive months at a mean difference of at least 25 percent. Further, they argue the Commission should have the ability to perform a root cause analysis at any time it deems necessary.

41. Because CLECs are most vulnerable when entering a new market, Staff recommends that Qwest perform root cause analysis on a CLEC aggregate basis for Tier I after two consecutive months of failure on a performance measure. Staff further states that Qwest should investigate consecutive two-month failures for measures at the Tier II level, and when an individual CLEC requests a root cause analysis. Staff also believes the Commission should be able to request root cause analysis at any time it deems necessary. Staff asserts that the root cause analysis should identify the cause of the failure and its proposed solution, and that the results should be provided to the Commission and all CLECs.

42. In its Comments to Staff's Proposed Findings, Qwest agreed to supply root cause conclusions to all CLECs as long as confidential and proprietary information about Qwest and CLECs is not disclosed.

43. Staff agrees with Qwest that it should not be required to disclose confidential or proprietary information in its submission of root cause analysis conclusions, and that reports should be issued in a redacted format when appropriate. In response to WorldCom's request that Qwest file root cause information in this proceeding, serve all parties and post the information at a specified location, Staff declined to specify the method Qwest should use to notify the parties of its analysis conclusions. Staff emphasizes, however, that whatever means Qwest employs, it should be easily accessible to the CLECs. Staff recommends that Qwest include its proposed method for

disseminating the results in its Arizona PAP.

44. We agree with Staff's recommendations. To encourage competition in the state, it is important that Qwest investigate its failures to meet performance standards and benchmarks. At least initially, a two-month failure for a performance measure is a reasonable trigger. Qwest should propose a method for disseminating root cause information so that the Commission and all CLECs can have easy access. Qwest should revise its PAP accordingly.

Disputed Issue No. 4 – K-Table

45. As a means for correcting the statistical error that allegedly exists in the PAP, Qwest had originally proposed utilizing a K-Table. In its July 6, 2001 revised PAP, Qwest eliminated the K-Table and proposed in its place that a 1.04 critical value be used for statistical testing for sub-measures relating to LIS trunks, UDITs, resale and unbundled loops for DS-1 and DS-3 when CLEC volumes are 10 or less. For all other statistical testing, Qwest proposed a 1.645 critical value or higher depending on CLEC volume. Qwest proposes that its Table 1 apply to both Tier I and Tier II payments.

Qwest's Proposed Table 1: Critical Z-Value/ Confidence Level

Sample Size	LIS Trunks, UDITS, Resale, Unbundled Loops – DS-1 and DS-3	All Other Measurements
1-10	1.04/ 0.8505	1.645/ 0.95
11-150	1.645/ 0.95	1.645/ 0.95
151-300	2.0/ 0.97	2.0/ 0.97
301-600	2.7/ 0.9965	2.7/ 0.9965
601-3000	3.7/0.999	3.7/ 0.9999
3001 and above	4.3/ 1	4.3/ 1

46. A z-test determines if differences in sample are statistically significant. A z statistic equal to 1.643 provides a confidence level of 95 percent. This means that approximately 5 percent of observations will be statistically different from a statistical perspective even though in reality they are not different. Thus, using a z-value of 1.645 to evaluate Qwest's performance data, five percent of the time, the statistics would conclude that Qwest is not providing parity service when in reality it is. This is Type I error. The CLECs are concerned about Type II error, that is, falsely concluding parity

when in fact Qwest has failed a performance measure. Type II error is unknown and cannot be controlled without affecting Type I error.

47. In its July 26, 2001 Response, WorldCom asserts that it is more appropriate to use critical values of 1.645 (which gives a 95 percent confidence level) for all sample sizes. Worldcom states it would favor Qwest's proposal if the critical value of 1.04 was extended to all services with sample sizes between one and ten. WorldCom believes that Type I and Type II error should be balanced and there is a high probability of committing a Type II error when sample sizes are small.

48. Staff disagrees with the critical values/confidence levels in Qwest's July 6, 2001 proposed PAP. Staff explains that under Qwest's proposal, Table 1 would apply to both Tier I and Tier II payments. Staff recommends that Staff's modified Table 2 apply to Tier I payments, and that for Tier II payments a critical value of 1.645 be used in all instances.

Table 2 – Staff's Modified Critical Value/ Confidence Level

Sample Size	LIS Trunks, UDITS, Resale, Unbundled Loops – DS-1 and DS-3	All Other Measurements
1-10	1.04/0.8508	1.645/0.95
11-150	1.645/0.95	1.645/0.95
151-300	2.0/0.97	2.0/0.97
301-600	2.0/0.97	2.0/0.97
601-3000	2.0/0.97	2.0/0.97
3001 and above	2.0/0.97	2.0/0.97

Staff believes that critical values greater than 2.0 are inappropriate and that Qwest has not offered an explanation as to why such high critical values are appropriate from a statistical perspective. Staff argues Qwest's proposed Table 1 discriminates against CLECs that focus on selling high volumes of a particular service. Staff believes that WorldCom's proposal to utilize a z-score of 1.04 for all products when volumes are less than ten unduly penalizes Qwest.

49. In its January 8, 2001 Comments, Qwest argues that Staff has not cited any record evidence that justifies its position for lower critical values in certain cases. Qwest asserts higher critical values are appropriate for larger sample sizes because there is more statistical certainty that "false misses" will not occur. Qwest explains that it developed the Critical Value Table in the ROC process and agreed to accept a lower (1.04) critical value on a large number of measures in exchange

for critical values higher than 1.645 in other areas. Qwest believes its compromise proposal is a balanced position and should not be unilaterally modified by Staff.

50. We believe that Staff's proposed Table 1 strikes a good and reasonable balance between the interests of Qwest, the CLECs, and the public. For low volumes of certain important products, there is an approximately 15 percent chance of wrongly concluding that Qwest is not providing parity. On the other hand, as volumes increase, the confidence level increases up to 97 percent. This is a reasonable balance since the Tier I penalties that Qwest might pay under the plan to low volume CLECs would be minor. Qwest's proposal, although favorable to CLECs with small volumes of certain services, is unfair to CLECs at high volumes. To limit the z-score to 2.0 balances the interest of both sides and will better promote competition in the state. We also believe that Staff's proposed z-value of 1.645 should apply to the Tier II payments. Tier II payments add extra incentive for Qwest to correct performance problems. A 95 percent confidence level for all Tier II measures is reasonable.

Disputed Issue No. 5 : Penaltv Cap

51. Other states' PAPs have included a cap on the total percentage of revenues of the local provider which can be paid under the PAP in one year.

52. Qwest's proposed PAP provides for a cap on total payments under the plan of 36 percent of net local revenue. Qwest argues this percentage is adequate incentive to improve wholesale service, and furthermore, that the threat of federal enforcement if it is not complying with Section 271 adds additional incentive to the plan's payments.

53. WorldCom and Z-Tel argued that a procedural cap rather than an absolute cap should be established. Under this proposal when the procedural cap of 44 percent of Qwest's net local revenues is reached, a review of Qwest's performance would be conducted. The CLECs argue that caps on payments undermine the effectiveness of the plan.

54. Qwest agreed in the ROC to remove the per measurement penalty caps on the following PIDs : PO-1 (Pre-Order/Order Response Time) , PO-3 (LSR Rejection Notice Interval), PO-7 (Billing Notification Completion Timeliness) and NI-1 (Trunk Blocking), and offers the same proposal in Arizona as a possible solution.

55. WorldCom agrees to Qwest's proposal and that these changes resolve this issue.

56. Staff believes that the cap of 36 percent of total Arizona net revenues as calculated in Qwest's ARMIS reports is appropriate. Staff states that if the cap appears to be ineffectual, it can be modified during the PAP six-month review.

57. We believe that a penalty cap of 44 percent of Qwest's Arizona net revenues as calculated in Qwest's ARMIS reports is appropriate. If Qwest reaches the Cap within any twelve-month period, a hearing shall be conducted to determine if the Cap needs to be adjusted upward and if other action should be taken. The hearing will proceed only after proper notice has been given to the parties. That annual cap will be determined by Qwest, based on the formula of 44 percent of Net Return as set forth in ¶ 436 and footnote 1332 of the FCC's December 22, 1999 Memorandum Opinion and Order in CC Docket No. 99-295. The annual cap shall be calculated on the first day of the month following the annual anniversary of Commission approval of the Arizona 271 Agreement, using the most recent publicly available ARMIS data. For purposes of applying the cap, the relevant calendar year shall be treated pro rata with Qwest's ARMIS financial statement.

Disputed Issue No. 6: Minimum Per Occurrence Penalty

58. Qwest opposes a minimum penalty amount to be applied to each failure occurrence, while CLECs favor minimum per occurrence penalties.

59. WorldCom proposed a minimum penalty level of $2,500, arguing that small order counts will never produce much in the way of penalty payments. It argues discrimination against CLECs with small order counts may be a potent impediment to competition. In its Comments to Staff's Proposed Findings, WorldCom cites the Liberty Consulting Report on the QPAP dated October 22, 2001, in which Liberty recommends a minimum payment of $2,000 per month for "each month in which Qwest misses any measure applicable to such CLEC." WorldCom also cites the Colorado PAP recommendation that called for a minimum per measure payment of $600 for larger CLECs or $300 for CLECs with less than 100,000 lines in service in Colorado.

60. Qwest states that minimum payments are unreasonable and unfair because they result in payments in excess of the actual harm to the CLECs. Qwest proposed a provision that applies minimum penalties to nascent services. Section 10.0 of the PAP provides that when the aggregate

monthly volume for certain performance measurements[4] for CLECs participating in the PAP is between 10 and 100, and Qwest misses the standard for the qualifying sub-measurement, Qwest will make a Tier I payment to participating CLECs. The payment would be calculated on a CLEC aggregate volume of the measurement and apportioned to the affected CLECs based upon their relative share of the service misses. The payment would be subject to a $5,000 minimum.

61. Staff agrees with Qwest that no minimum penalty should apply except for nascent services. Staff is concerned that the level of disaggregation in the PAP could result in multiple minimum payments for a single occurrence. Staff further believes that the penalties in the PAP, absent minimum payments, are sufficient to encourage Qwest to provide parity OSS service to the CLECs. Staff would like to review this issue at the six month PAP review, believing that knowing Qwest's actual performance under the PAP, and the state of competition, would enable Staff to better evaluate if minimum payments are necessary.

62. We concur with Staff. The proposed $5,000 minimum penalty for nascent services is reasonable at least until we have data concerning Qwest's actual performance. For each CLEC with annual order volumes of no more than 1.200, Qwest shall multiply the number of months in which at least one payment would be required to be made to such CLEC by $2,000. To the extent that the actual CLEC payments for the year are less than the product of the preceding calculation, Qwest shall make annual payments equal to the difference.

Disputed Issue No. 7- Duration Factors

63. Qwest proposes that penalties should escalate month after month if Qwest misses a performance measure several months in a row (such escalation is referred to as a "duration factor"). Qwest proposes that the penalties begin escalating with the second month a measure is missed and continue to escalate until the sixth consecutive month it is missed. After the sixth month, the penalty level will remain constant until the measure is not missed. Qwest argues that after six months the payments should not escalate further because the six-month penalties already exceed the potential financial harm to the CLECs. Qwest believes that with the Tier I PAP payments to the CLECs and

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[4] The qualifying sub-measurements are the UNE-P (POTS), megabit resale, and ADSL qualified loop product disaggregation of OP-3, OP-4, MR-3, MR-5, MR-7 and MR-8.

the inclusion of additional Tier II payments, Qwest will have substantial incentive to fix non-compliant service. Qwest argues that CLECs did not offer evidence of the financial harm they might incur from missed performance standards.

64. The CLECs favor continued escalation beyond the sixth month. They argue the percentage increase in remedy amounts from month to month drops after the fourth month and beyond. They argue continuous duration penalty escalation discourages repeated non-conformance. They assert repeated non-conformance indicates that payment levels are too low and are being treated as a cost of doing business.

65. Staff believes that additional duration factor past the sixth month is not necessary. Staff states that if the penalties are not high enough, they can be revised at the six-month PAP review. Staff agrees with Qwest's proposed payment levels for Tier I escalation as set forth below:

Qwest Tier I Penalty Payment Levels

Per Occurrence

Measurement Group	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6 and each following
High	$150	$250	$500	$600	$700	$800
Medium	$75	$150	$300	$400	$500	$600
Low	$25	$50	$100	$200	$300	$400

Per Measure /Cap

Measurement Group	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6 & each following
High	$25,000	$50,000	$75,000	$100,000	$125,000	$150,000
Medium	$10,000	$20,000	$30,000	$40,000	$50,000	$60,000
Low	$5,000	$10,000	$15,000	$20,000	$25,000	$30,000

Qwest did not propose an escalation of Tier II payments.

Staff recommends an escalation of Tier II penalty payments as follows:

Table 5: Staff's Proposed Tier II Penalty Payment Levels

Per Occurrence

Measurement Group	Month 3	Month 4	Month 6 & each following
High	$500	$600	$700
Medium	$300	$400	$500
Low	$200	$300	$400

Per Measure/Cap

Measurement Group	Month 3	Month 4	Month 6 & each following
High	$75,000	$100,000	$125,000
Medium	$30,000	$40,000	$50,000
Low	$20,000	$25,000	$30,000

66. In response to Staff's Proposed Findings, RUCO urged the Commission to consider the Colorado approach to this issue, under which the total per occurrence payment is multiplied by two starting in the second continuous month missing a performance measurement. The multiplier is three in the third continuous month and escalation continues in this fashion until Qwest meets performance standards.

67. In its January 8, 2002 Comments Qwest opposes applying escalation factors to Tier II payments. Qwest argues the escalation mechanism has not been applied to the Tier II payments in Texas, Kansas or Oklahoma. Qwest believes that because Staff did not include the escalation in its Proposed Findings, it is unfair. Qwest argues that Tier II payments are intended to act as additional financial incentive for Qwest's wholesale performance, not the only financial incentive.

68. It is difficult to set penalties that will encourage Qwest to cure service problems without having actual experience as a guide. In the initial period of the Arizona PAP, Qwest's proposed escalation of Tier I payments appears reasonable. We believe that the penalties for a measurement miss that persists for 3 months and beyond, indicates a serious problem that Qwest should address immediately. Thus, we favor an escalation to the Tier II payments to add an extra incentive to cure the problem. Consequently, we adopt Staff's proposed schedule for Tier I and Tier II payments, except we believe Staff's proposal of Tier II should include an escalation factor for 5th month of missed performance and that the penalty for the 6th month should be increased commensurately.

69. Given the amount of the payments, the escalation of Tier II payments and sticky[5] duration, the six month cap on escalation payments appears reasonable at this time. We believe the penalties and other PAP provisions must be viewed as a whole to determine the reasonableness of the plan. Escalating payments with a cap at six months is reasonable, which is not to say some other balance between penalty amounts, escalation amounts and duration factors is not also reasonable. In future reviews we may want to fine-tune various provision of the plan to better achieve the plan's

[5] See Discussion on Disputed Issue No. 13 – Sticky Duration, hereinafter.

goal of encouraging competition in the state.

Disputed Issue No. 8 - Bill Credits Versus Cash Payments

70. Qwest proposes to pay PAP penalties to the CLECs in the form of bill credits. Qwest agreed to supply detailed statements showing the PAP payment calculations and agreed to accept input from the CLECs regarding the design of these statements.

71. WorldCom advocates cash payments made by the end of the month following the data report.

72. Staff believes that bill credits are an adequate means of administering payments under the PAP, and that if in any given month Qwest owes the CLEC more in penalties than the CLEC's monthly bill to Qwest, the balance should be paid by check. Staff further recommends that each CLEC should receive a statement from Qwest detailing the source of the PAP payments the CLEC received. Staff concurs with the CLECs that Qwest should remit payment by the end of the month following the data report and that if Qwest does not remit payment in a timely fashion (after a 5-day grace period) then Qwest should be liable for interest on the past due amount at twice the one-year treasury rate.

73. We agree with Staff that bill credits are a reasonable remittance procedure. If Qwest owes a particular CLEC more in penalties than the CLEC owes Qwest, then Qwest shall remit the excess penalties by check. Qwest must provide, however, a comprehensive statement detailing how the penalties are calculated. Qwest should issue the credit by the end of the month (with a five day grace period) following the data report and shall be responsible for interest, at twice the one-year treasury rate, if the credit or other remittance exceed the grace period. Qwest should revise its PAP accordingly.

Disputed Issue No. 9- Penalty Classification

74. Qwest originally proposed that all measures be classified as Tier I measures unless the measures are diagnostic, the measures are parity by design or individual CLEC results are not reported for those measures. Qwest states that CLECs did not request that AG-3, GA-4, MR-4, MR-10 and OP-7 be included for Tier 1 classification. Qwest states the ranking (or weighting) of the performance measurements is based on the importance of the measures, and is consistent with SBC's

PAP in Texas.

75. Qwest makes the same offer in Arizona as it did in the ROC concerning penalty classification. Qwest changed the following Tier I measures to "High": OP-8, OP-13, MR-3, MR-5, and MR-6. Purportedly, CLECs accepted those changes in the ROC. Qwest proposed to change the rank of the following Tier II measures to "Medium": OP-3, OP-4, OP-5, MR-7 and MR-8. The change in ranking was in response to staff members of the public utility commissions from states represented in the ROC to increase Tier I payments and lower Tier II payments. CLECs did not accept these changes, but stated they would agree if MR-5 were added to the list of Tier II measurements. Qwest agreed. For Tier II payments, Qwest proposes that three month consecutive failures are not necessary for the following measurements : GA-1, GA-2, GA-3, GA-4, GA-6, OP MR-2 and PO-1.

76. WorldCom argues that all Tier I measures should also be classified as Tier II, except for GA measures. WorldCom also believes that all performance measurements should be given the same rank, as any classifying and ranking procedure is subjective. WorldCom argues measurement ranking is difficult as the importance of various measures may change over time and it is difficult to assign one rank to a measurement with sub-measurements of varying importance.

77. Staff does not agree with Qwest's ROC proposal to shift penalty amounts from Tier II to Tier I, which would be the result of shifting measurements from a High to a Medium ranking. Staff believes that measurements OP-3, OP-4, OP-5, OP-6, MR-7 and MR-8 should continue to have a High ranking. Staff asserts that Tier II payments are important incentives to promote the goals of Section 271 when CLEC volumes are too low to generate significant Tier I payments.

78. In its January 8, 2002 Comments, Qwest explains that its offer to reclassify certain Tier I and Tier II measures was in response to Staff preferences for higher Tier I payments and was conditional. Qwest notes that Staff's recommendation merely accepts the first half of the offer and rejects the second. Qwest states this cherry-picking is unfair.

79. Qwest's argument appears based on its position that because it is voluntarily entering in the PAP it can determine its terms. We believe that the PAP is an important component in our decision whether to recommend Qwest's Section 271 approval to the FCC. Our goal is to establish

performance measures and financial incentives to encourage Qwest's compliance with the 1996 Act. Consequently, we believe that the Commission should have the final word on the Plan's structure and terms. We find that Staff's recommendation to strengthen both the Tier I and Tier II incentives by classifying certain measurements to High is reasonable, and should be adopted.

Disputed Issue No. 10 – Severity Factors

80. CLECs advocate including a severity factor in the PAP, whereby Qwest would pay more based on the severity of the miss (for example, the penalty would be greater if Qwest missed provisioning a service by ten days than if it missed by only one day). Qwest opposes including severity factors.

81. Qwest believes that the Tier I penalties are sufficient to compensate CLECs, and there is no evidence of harm to CLECs specifically due to missed standards.

82. The CLECs believe that Qwest's plan does not adequately take into account the severity of poor performance.

83. As a compromise, Qwest proposes that as Qwest's performance further deviates from the standard set in the PAP, Qwest would make Tier II penalty payments. Qwest claims the CLECs in the ROC proceeding agreed to this solution.

Table 6:Qwest's Severity Factor ROC Proposal

Measure	Performance Relative to Benchmark or Parity	Tier II Payment per Month
GA-1,2,3,4,6	1% or lower	$1,000
	> 1% to 3%	$10,000
	>3% to 5%	$20,000
	>5%	$30,000
PO-1	2 seconds or less	$1,000
	>2 seconds to 5 seconds	$5,000
	>5 seconds to 10 seconds	$10,000
	>10 seconds	$15,000
PO-2/MR-2	1% or lower	$1,000
	>1% to 3%	$5,000
	>3% to 5%	$10,000
	>5%	$15,000

84. WorldCom agreed to Qwest's ROC proposal, and clarifies that Qwest has agreed to

provide Tier II payments for these measures each month, rather than after three months.

85. Staff agrees that Qwest's ROC proposal for severity factors is appropriate. Staff recommends that the PAP should explicitly state that these performance measures will be weighted according to their number of occurrences. Staff did not believe that additional severity factors are necessary, and could result in undue CLEC reliance on penalty payments. Staff notes that if penalty payments are not sufficient, they can be revisited at the six-month review of the PAP. Staff further recommends that the Tier II severity payments contain an escalation factor. Staff's proposed Tier II Penalty Payments as follows:

Staff's Proposed Table 7 - Tier II Penalty Payment Levels for Measurements in Table 6

Measure	Performance Relative to Benchmark or Parity	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6 & each following
GA-1,2,3,4,6	1% or lower	$1,000	$1,500	$2,000	$2,500	$3,000	$3,500
	> 1% to 3%	$10,000	$15,000	$20,000	$25,000	$30,000	$35,000
	> 3% to 5%	$20,000	$25,000	$30,000	$35,000	$40,000	$45,000
	> 5%	$30,000	$35,000	$40,000	$45,000	$50,000	$55,000
PO-1	2 seconds or less	$1,000	$1,500	$2,000	$2,500	$3,000	$3,500
	> 2 seconds to 5 seconds	$5,000	$10,000	$15,000	$20,000	$25,000	$30,000
	> 5 seconds to 10 seconds	$10,000	$15,000	$20,000	$25,000	$30,000	$35,000
	> 10 seconds	$15,000	$20,000	$25,000	$30,000	$35,000	$40,000
OP-2/MR-2	1% or lower	$1,000	$1,500	$2,000	$2,500	$3,000	$3,500
	>1% to 3%	$5,000	$10,000	$15,000	$20,000	$25,000	$30,000
	>3% to 5%	$10,000	$15,000	$20,000	$25,000	$30,000	$35,000
	>5%	$15,000	$20,000	$25,000	$30,000	$35,000	$40,000

86. In its January 8, 2002 Comments, Qwest criticizes Staff's proposed Table 7. Qwest generally opposes escalation factors of Tier II payments. Qwest asserts that Staff's proposal for escalation is complex and presented for the first time in its Final Report. Qwest claims there are inconsistencies with Staff's proposal, such as using GA series PIDs, which are regional and not state-specific to subject Qwest to additional penalties in Arizona.

87. Staff introduced its recommended escalated severity payments for the first time in its Final Report. Although we are not opposed to the concept, we are not able to evaluate Qwest's criticisms concerning specific PIDs without further comments from the parties, and therefore will not

adopt it now. Staff's proposal is complex and we believe should be evaluated further for possible inclusion in the Plan at the six month review.

Disputed Issue No. 11 - Audits

88. Qwest proposes that an on-going monitoring program of the PIDs be adopted in lieu of a comprehensive annual audit. Under Qwest's proposal, an audit of Qwest's financial systems would be initiated after one year of operation under the PAP, and another financial audit would commence no later than 18 months following the initiation of the first audit. Qwest would choose the auditor or the Commission could conduct the audit. Qwest would cover the costs of the audit.

89. Under Qwest's proposal, an independent audit may be conducted for reporting or payment disagreements between Qwest and CLECs. Any under- or over-payments would be corrected following the audits, with interest payable at the one year U. S. Treasury rate. The party found responsible for the deficiency would cover the cost of the audit. The issue must be less than 12 months old when the audit begins. Each CLEC can request a maximum of two PIDs be investigated per audit and CLECs are limited to two audits per year. Additional monitoring would focus on key areas identified in the initial audit as requiring additional monitoring.

90. WorldCom and Z-Tel refer to the five step process established in the Colorado Draft PAP Report, and propose a sixth step. Qwest would be responsible for the first three steps of the following audit process:

(a) Qwest should store all performance measurement data in easy to access electronic format for three years, and in archive format for three additional years. Qwest may not change its performance measurement and reporting system unless the Commission approves it in advance.

(b) During the first two years of the PAP, Qwest should be subject to periodic specialized audits that focus on performance identified in the initial audit. All issues must be corrected before the audit is closed.

(c) At annual audits for the first three years of the PAP, and at intervals to be determined by the Commission thereafter, the audit should evaluate the accuracy of the measures, the measures responsible for producing 80 percent of the penalties paid by Qwest over the prior interval, and evaluate whether Qwest is accurately evaluating which, if any, requests for performance can be properly excluded from its wholesale performance requirements.

(d) CLECs can request a third-party "mini-audit" of Qwest's wholesale measurement systems. Qwest would pay for half the cost and the remaining costs would be split among the CLECs requesting the mini-audit, unless Qwest is found to have materially misrepresented data, in which case Qwest would pay for the entire cost. Each CLEC would be limited to auditing three single measures/sub-measures or one domain area (preorder, ordering, provisioning, maintenance, or billing) during an audit year.

(e) The Commission retains the right to perform an audit, with the assistance of an outside auditor, if the Commission chooses to examine any aspect of Qwest's wholesale performance at any time it deems warranted, such audit to be paid for with Tier II penalties maintained in a st fund.

(f) CLECs add that Qwest should adopt a change management process with input from CLECs to ensure that metrics can be replicated by the auditor. The CLECs advocate that if the auditor is unable to replicate a metric due to poor change control or missing data, Qwest should be subject to the same penalty as if the metric had been missed (including duration remedies if multiple months cannot be replicated).

91. Staff believes that Qwest's monitoring proposal is sufficient in light of the six-month review of the PAP, and that the CLECs' proposal would be too onerous. Staff further believes that rather than Qwest should select the auditor/monitor, and that the Commission should be able to conduct an audit at any time.

92. Qwest argued that it would be beneficial for Arizona to be involved in a multi-state audit effort. Qwest also opposes Staff's recommendation that the Commission be able to conduct, or order, an audit at any time, because this would undermine the purpose of participating in the multi-state audit program which is to reduce costs and the burdens of responding to multiple audits.

93. Staff does not oppose participating in a multi-state audit effort if the terms of the auditing procedure are favorable to the Commission, however, Staff believes the Commission should be able to withdraw from such program if the procedures do not meet Arizona's needs and to conduct its own audit at any time.

94. Staff's position is reasonable. Qwest's proposed audit procedures appear sufficiently rigorous to ensure Qwest is providing valid data and complying with the terms of the PAP. CLECs are able to initiate audits. We believe, however, that Arizona must be able to initiate its own audit of Qwest's performance whenever it believes such undertaking is in the public interest. There are times when the interests of Arizona may be different from those of the CLECs or the interests of other states. We further agree with Staff that the Commission should retain the ability to choose, or at least approve, the auditor. Staff states that it will review the PAP auditing provisions in its six-month review. In the meantime, we believe that Section 15.0 of the PAP relating to audit procedures should provide that the auditor will be subject to Arizona Corporation Commission approval, and paid for by Qwest. The Commission should also retain the ability to conduct its own audit or engage the services of a third-party auditor if Staff determines that it would be in the public interest. Although we believe the audit procedures as currently proposed by Qwest and Staff are adequate, we believe that the CLECs' position that Qwest not be able to change the performance measurements and reporting system unless the Commission approves it in advance is also important and should be explicitly stated in the PAP.

Disputed Issue No. 12 - Tier II Payments

95. In its Opening Brief, Qwest states that Tier II payments should revert to it and be used to extend telephone service in Qwest's territory and to extend Qwest's service territory into new areas.

96. The CLECs argue that Qwest should not receive Tier II payments or benefit from these payments. CLECs argue the Tier II payments can be used for administering the PAP and to audit PAP processes. WorldCom states that all measurements (except GA measurements) should be classified as Tier II.

97. Staff believes that Tier II payments should not revert solely to Qwest, but should be used to further the aim of increased competition in Arizona. Staff recommends that Qwest's payments under Tier II should be used to: 1) cover the Commission's additional costs of auditing performance under the PAP; 2) hire consultants to monitor post-entry compliance; and 3) cover Commission costs arising from dispute resolution and to encourage improvements in Qwest's

wholesale service quality tariff in both federal and state proceedings. Staff states that if the Tier II payments exceed what is necessary to cover the above costs, Qwest shall deposit the balance to the Arizona State Government's general fund. Qwest and Staff shall work cooperatively to develop an auditing/accounting mechanism to ensure the proper use of these Tier II payments.

98. We agree with Staff and the CLECs that the Tier II payments should not benefit Qwest, but rather should be used to offset the costs of administering the PAP and furthering the goal of increased competition in Arizona. Returning the payments to Qwest diminishes the incentive they are intended to promote.

99. We also agree with Staff that the three month trigger for Tier II payments is reasonable. We are reserving judgment on Staff's proposed Table 7 at this time, however, we beli the payment amounts we approve herein are reasonable when reviewed in their entirety. We note that we may alter this provision at the six-month review.

Disputed Issue No. 13 – Sticky Duration.

100. The term "sticky duration" refers to escalated penalty levels "sticking" in place until a certain time at which Qwest is deemed to merit penalty level reductions to initial levels. Initially, Qwest opposed sticky duration while the CLECs favored it.

101. Qwest argued that it has not been proven in the telecommunications industry that repeated failures demonstrate a need for higher penalty levels, and stated that no FCC-approved P includes such a provision.

102. The CLECs argued that severity and duration factors provide necessary incentives to improve performance. They believe that two or three months of compliant performance is necessary before allowing the payment level to return to initial levels.

103. In the ROC process Qwest agreed to a specific concept of "sticky duration" and proposes that the same concept be adopted in Arizona. Under this proposal, if Qwest meets a measurement, then the penalty payment reverts downward one month after compliance for one month. Thus, if Qwest has four months of failures for one measure, Qwest is responsible for the payments at the month four level in Table 8. If Qwest meets the measurement standard in the fifth month, the penalty payment would be zero. If the next month Qwest again missed the performance

standard, the penalty payment would be at the month three level.

Qwest Tier I Penalty Payment Levels

Per Occurrence Measurement Group	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6 & each following
High	$150	$250	$500	$600	$700	$800
Medium	$75	$150	$300	$400	$500	$600
Low	$25	$50	$100	$200	$300	$400

Per measure/Cap Measurement Group	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6 & each following
High	$25,000	$50,000	$75,000	$100,000	$125,000	$150,000
Medium	$10,000	$20,000	$30,000	$40,000	$50,000	$60,000
Low	$5,000	$10,000	$15,000	$20,000	$25,000	$30,000

104. WorldCom agrees with Qwest's proposal to have payment levels adjusted downward one month after compliance for one month, but does not agree to the proposed payment levels. WorldCom opposes the limit of six month on payment escalation.

105. Staff supports Qwest's sticky duration proposal. Staff further recommends that Qwest's proposed concept of sticky duration apply to Tier II payments.

106. We agree that the proposed sticky duration concept is reasonable. We also believe that the sticky duration concept should apply to Tier II payments. To have penalties step down gradually adds incentive to Qwest to make long-term solutions to performance misses. We adopt Staff's recommendation concerning the six-month limit on penalty increases at this time because the penalty provisions at that level are significant and because we retain the ability to adjust the penalty payment amounts at the six-month review and thereafter.

Disputed Issue No 14 – Plan Limitations

107. Section 13 of Qwest's proposed PAP contains several legal limitations.

108. Section 13.1 states that the PAP will not go into effect until after Qwest receives approval of its 271 application with the FCC. The CLECs oppose this provision and want the PAP to go into effect at the time the Commission approves it regardless of the status of the FCC application. They assert having the PAP go into effect prior to Section 271 approval will allow the Commission to evaluate its effectiveness.

109. Qwest asserts that the FCC has stated clearly that the purpose of a performance

assurance plan is to prevent backsliding once the RBOC obtains approval.

110. Staff concurs with Qwest's position on Section 13.1 and recommends that the effective date of the PAP should follow FCC approval.

111. We concur with Qwest and Staff. The purpose of the PAP is to prevent backsliding once Qwest obtains Section 271 approval.

112. Section 13.2 states that Qwest will not be liable for Tier I damages to a specific CLEC until the Commission approves an interconnection agreement that incorporates the PAP.

113. The CLECs believe that they should be able to opt into the PAP as soon as the Commission approves the PAP and do not want to go through the process of amending their interconnection agreements.

114. Qwest states that CLEC opposition is unfounded as the FCC orders for Kansas, Oklahoma and Texas indicate that the PAP is part of standard interconnection agreements in those states.

115. Staff disagrees with Qwest's position on Section 13.2, and supports the CLECs' desire to opt into the PAP as soon as it goes into effect, without having to amend the CLECs' current interconnection agreement. Staff states that the Arizona OSS test has demonstrated that obtaining an amendment to an interconnection agreement can be a lengthy process. Staff recommends that interconnection agreements need only be filed with the Commission and do not need to be approv in order for the CLECs to opt into the PAP.

116. We agree with Staff's recommendation. To avoid delay and encourage Qwest's adherence to performance standards, CLECs that have filed interconnection agreements should be able to opt into the PAP by filing written intent to do so without waiting for further Commission action.

117. Section 13.3 indicates PAP penalties will not be paid if measurements were missed due to force majeure events. The CLECs initially believed Qwest's definition of force majeure was too vague and that existing SGAT language (Section 5.7) defining force majeure should be used in the PAP, or at least cross-referenced. WorldCom also argues that the force majeure language should not apply to parity measures and that the language from the Colorado final PAP report is more

appropriate.

118. Qwest proposes a definition of force majeure that is similar to, but not identical to the one WorldCom proposed in its Opening Brief.

119. Staff recommends Qwest's inclusion of Section 13.3 force majeure language that corresponds to the SGAT language for benchmark standards. However, Staff believes that Qwest should not be forgiven for parity misses. Staff further recommends that the PAP clarify that the plan will resume in the month following the force majeure event.

120. We find that the force majeure language in the PAP should more closely mirror that in the SGAT in that it should specify that inability to secure products or services of other persons or transportation facilities or act or omissions of transportation carriers should be force majeure events to the extent any delay or failure in performance caused by these circumstances is beyond Qwest's control and without Qwest's fault or negligence. We concur with Staff that force majeure language is appropriate for benchmark standards, but that force majeure events should not excuse parity failures. Any qualifying event should affect Qwest and CLECs equally, otherwise, there would be great potential for unfair discrimination. Qwest should revise its PAP accordingly.

121. Section 13.4 states that the fact that Qwest made payments under the PAP cannot be used by CLECs as evidence in other proceedings relating to the same performance. The CLECs argue the PAP payments are not "liquidated damages" and thus want the reference to liquidated damages in Section 13.4 and 13.5 deleted. They argue that Qwest's conduct underlying its performance, including its performance results, is discoverable and may be admissible as evidence. They also assert Section 13.4 is too vague.

122. Qwest argues that it is appropriate to prohibit the use of performance results or payments under the plan as an admission of discrimination or of Qwest's liability for claims brought outside the PAP. Qwest states that Section 13.4 does not limit the introduction of performance results into evidence in another proceeding, if appropriate. Qwest claims this provision is based on language from the SBC Texas PAP approved by the FCC for Texas, Oklahoma and Kansas.

123. Staff supports Qwest's position on admission of liability stated in Section 13.4 and notes this is the same language approved in the SBC Texas PAP.

124. We concur with the CLEC's that Section 13.4 is vague and ambiguous, and that the reference to "liquidated damages" should be deleted. The purpose of the payments under the Plan is to encourage Qwest's compliance with the 1996 Act. While we do not oppose the statement that the mere existence of the PAP, or that Qwest pays assessments, is not an admission of liability, we do not believe that the PAP should foreclose CLECs from attempting to prove actual damages in excess of the assessments under the Plan.

125. Section 13.5 states that actual damages from missed performance measures would be difficult to ascertain, thus, the payments made under the plan are a reasonable approximation for contractual damages. Section 13.5 also states that payments under the PAP are not intended to be a penalty. The Plan states the payments do not foreclose any non-contractual legal or regulatory clai and remedies that may be available to CLECs.

126. The CLECs assert that the PAP payments are not "liquidated damages" and thus, reference to that term should be deleted.

127. Qwest argues Section 13.5 merely states the payments made under the PAP are "liquidated damages" and a means by which the parties, in advance of a breach, fix the amount of damages that will result therefrom and agree upon its payment. Qwest believes the CLECs' desire to reserve the right to sue for actual damages renders the liquidated damages unenforceable.

128. Staff supports Qwest's position on liquidated damages in Section 13.5. Staff no this is the same language adopted in the Texas PAP.

129. We agree with WorldCom's argument that the payments under the Plan are not "liquidated damages," but rather assessments for poor performance. The reference to "liquidated damages" should be removed. Consequently, the first two sentences of PAP Section 13.5 should be deleted. We concur with the statement contained in the Draft Colorado PAP report: "This report rejects any suggestion that Qwest's implementation of a PAP is an option insofar as Section 271 compliance is concerned."

130. Section 13.6 states that CLECs are not entitled to receive payments from both the PAP and any other rules, orders, or other contracts (such as interconnection agreements) that cover payments for the same or analogous performance as the PAP. If CLECs have alternatives to the PAP

available, they must choose between the PAP and the available alternatives.

131. The CLECs claim the language referring to analogous performance is too broad. They object to Sections 13.6 and 13.7 because they do not believe a court would allow for double recovery, and that payments made under the plan should be netted out of any other damage claims they could receive. They assert that restrictions on double recovery should only apply to double recovery for the same acts and that the restriction against double recovery for "analogous" wholesale performance is too vague and will lead to future disputes.

132. Qwest argues that Section 13.6 simply precludes Qwest from paying two penalties for the same performance miss.

133. Staff supports the CLEC position on payment entitlements stated in Section 13.6. Staff opposed including Section 13.6 in the PAP and notes that the Texas PAP does not include such provision. Staff states it is especially opposed to the vague reference to "same or analogous" performance.

134. Section 13.6 is overly broad, vague and ambiguous. We find that it should be deleted. However, we believe that if an existing interconnection agreement requires payments for damages for a performance miss, and the CLEC opts into the PAP, Qwest should not have to pay twice for the same performance miss--once under the pre-existing interconnection agreement and again under the PAP. Qwest should revise PAP Section 13.6 to reflect this more narrow prohibition. Qwest shall have the burden of proof of demonstrating that it is paying twice for the same performance miss, and may use the dispute resolution procedure in Section 5.18 of the SGAT to address such an issue.

135. Section 13.7 states that Qwest will not be liable for both Tier II payments and other assessments or sanctions by the Commission that cover the same or analogous performance. The CLECs claim the language referring to analogous performance is too broad. Qwest argues that this Section simply precludes Qwest from paying two penalties for the same performance miss.

136. Staff believes the reference in Section 13.7 to "analogous performance" is too broad. Staff notes that Qwest's proposed Section 13.7 reads:

> Qwest shall not be liable for both Tier 2 payments and assessments or sanctions made for the *same or analogous performance* pursuant to any Commission order or service quality rules. (emphasis added)

And that the comparable SBC Texas PAP provides:

> SWBT shall not be liable for both Tier 2 "assessments" and any other assessments or sanctions under PURA or the Commission's service quality rules relating to the *same performance*."

137. Qwest offers to utilize the term "same underlying activity or omission" be used instead of Staff's proposed (and Texas' adopted) "same performance".

138. Staff rejects Qwest's proposed modification of Section 13.7. Staff believes there is a valid distinction between PAP penalty payments and Commission performance standards. Staff explains that for most measurements under the PAP, Qwest is required to deliver parity performance or face penalties. However, Commission performance standards set retail/wholesale levels of performance. These retail/wholesale levels may be above Qwest's current level of performance (utilized in computing parity performance). Staff believes that if Qwest does not meet Commission performance standards it should be liable for penalties under both the PAP and any Commission performance standards.

139. We believe the term "or analogous" is too vague and should be deleted from Section 13.7.

140. Tier II payments are designed to deter Qwest from backsliding on its Section 271 obligations. The purpose of Commission assessments or sanctions pursuant to separate subsequent orders or service quality rules would be designed for purposes other than promoting Section 2 compliance. It is inappropriate to limit our ability to address service quality issues for non-271 purposes. Thus, we believe Section 13.7 of the PAP is overly broad and should be deleted. Qwest should revise its PAP accordingly.

141. Section 13.8 provides:

> Whenever a Qwest Tier I payment to an individual CLEC exceeds $3 million in a month, or when all CLEC Tier I payments in any given month exceed the monthly cap (section 11.0), Qwest may commence a show cause proceeding. Upon timely commencement of the show cause proceeding, Qwest must pay the balance of payments owed in excess of the threshold amount into escrow, to be held by a third-party pending the outcome of the show cause proceeding. To invoke these escrow provisions, Qwest must file with the Commission no later than the due date of the Tier-1 payments, an application to show cause why it should not be required to pay any amount in excess of the procedural threshold.

> Qwest will have the burden of proof to demonstrate why, under the circumstances, it would be unjust to require it to make the payments in excess of the applicable threshold amount. If Qwest reports nonconforming performance to a CLEC for three consecutive month on 20 percent or more of the measurements reported to the CLEC and has incurred no more than $1 million in liability to the CLEC, the CLEC may commence a similar show cause proceeding. In any such proceeding the CLEC will have the burden of proof to demonstrate why, under the circumstances, justice requires Qwest to make payments in excess of the amount calculated pursuant to the terms of the PAP.

142. WorldCom had previously objected to the inclusion of Section 13.8, however, it is not clear if the objection relates to Section 13.8 of the July 6, 2001 revised PAP. In its January 8, 2002, Comments, WorldCom proposed the following language be added to Section 13:

> If Qwest desires a waiver of its obligation to pay any penalties it must file an application with the Commission. Any waiver request must, by a preponderance of the evidence, establish the circumstances that justify the waiver, stating any and all relevant documentation to support the request. CLECs and other interested parties would have a full opportunity to respond to any such waiver request prior to the Commission ruling. Qwest shall be required to pay any disputed amounts or place the disputed amount of money into an interest-bearing escrow account until the matter is resolved. In addition, any such waiver should only apply to a narrow period of time when the activity occurred, not months after the activity has ended.

143. Staff did not make a recommendation concerning Section 13.8 or WorldCom's proposal. We direct Staff to determine if a dispute exists concerning these two proposals and to make a recommendation at the first six-month review of the PAP. In the meantime, we will leave Section 13.8 as proposed by Qwest.

144. Section 16.0 provides for reviews of the PAP every six months to review the performance measurements. It further provides that any changes to existing performance measurements shall not be made without Qwest's consent.

145. WorldCom opposed Section 16.0 changes proposed by Qwest which indicate that Qwest may be able to have the final say on PAP changes. WorldCom requests that the following sentence be added to the PAP: "[t]he Commission can modify the PAP without Qwest approval."

146. Staff states that it will seek mutual consent on changes to the PAP, but that when mutual consent is not possible, the Commission should be able to make the final recommendation. Thus, Staff recommends the addition of the following language at the end of the first paragraph of

Section 16.0 of the PAP:

> **The Commission can modify the PAP without Qwest approval. However, the Commission will first seek mutual consent of the parties. In the event that mutual consent is not possible, the Commission will make the final recommendation on PAP changes.**

Staff recommends that Qwest change the final sentence of the first paragraph in Section 16.0 to read: "any changes to existing performance measurements and this PAP shall be by mutual agreement of the parties." Staff states this was the original sentence and Qwest had changed it in its latest PAP submission. Staff recommends that the Commission should also be able to make changes to the PAP without Qwest's approval.

147. Qwest argues that federal law does not support Staff's position that changes to the PAP can be made without Qwest's consent. Qwest suggests that the following language developed in the multi-state proceeding be added to Section 16.0:

> Changes shall not be made without Qwest's agreement, except that disputes as to whether new performance measurements should be added shall be resolved by one arbitration proceeding conducted pursuant to Section 5.18.3 of the SGAT, which shall bind CLEC and Qwest and all parties to the arbitration and determine what new measures, if any, should be included in Exhibit K to the SGAT . . ."

148. Section 16.0 provides that at the six month review the Commission shall review the performance measurements to determine whether measurements should be added, deleted or modified; whether the applicable benchmark standards should be modified or replaced by parity standards; and whether to move a classification of a measure to High, Medium or Low or to Tier I or Tier II. We believe that the current language may be interpreted too restrictively. At the six month review the Commission should have the ability to review and modify all the terms of the PAP, and not be limited to performance measures; this would include, but not be limited to penalty amounts, escalation factors, audit procedures and re-evaluation of confidence levels. Furthermore, we agree that Staff should seek the mutual consent of the parties to any proposed changes, however, the Commission should be able to modify the PAP after notice and opportunity for a hearing. Qwest should revise the PAP accordingly.

149. Qwest proposes that it begin supplying performance data to the Commission once the FCC has issued Section 271 approval, rather than starting in March 2001 since that date has already passed. WorldCom requests that the Commission require Qwest to begin supplying performance

data, and notes that the multi-state Qwest Performance Assurance Plan provides: "[t]he QPAP should therefore require Qwest to provide monthly reports as if the QPAP had become effective on October 1, 2001." In Colorado, the Hearing Commissioner asked Qwest to provide monthly reports within 60 days of the Colorado Commission's approval of the CPAP.

150. Staff recommends that Qwest supply monthly performance data to the parties prior to PAP approval. Staff states that Qwest already supplies monthly performance data to the Commission. Staff asks that Qwest supply to the Commission and CLECs the performance data results for all PIDs beginning with data from March 2001 within 30 days of Commission approval of the PAP. Staff states that Qwest should supply the data in accordance with its reporting requirements as currently listed in Section 14.0 in the PAP. Staff believes the historical data will enhance the effectiveness of the six-month review.

151. We concur with Staff. However, in lieu of Staff's proposed language, we believe the following language should be inserted instead:

> Qwest acknowledges that the Commission reserves the right to modify the PAP at any time it deems necessary upon Commission Order, after notice and hearing.

Disputed Issue No. 15 – Data Timeliness

152. The PAP penalties are calculated based on data Qwest collects and analyzes. At regular intervals "performance reports" are made available to the CLECs by Qwest. Each CLEC receives reports that detail Qwest's performance relative to that CLEC and a report detailing Qwest's performance for the CLEC community as a whole.

153. Qwest states that late reporting of monthly CLEC results will not cause CLECs harm, however, Qwest has agreed to pay $500 to the State of Arizona, for each business day for which a report is past due. Qwest suggests that data should be available by the last day of the month which follows the month for which data is available. Qwest also requests a five day grace period.

154. WorldCom suggests that Qwest be liable for a $5,000 payment to the State of Arizona for each day the report is late, and that if the reports provided to the CLECs are incomplete or inaccurate, Qwest would be liable for a $1,000 payment to the state for each day past the initial due date. In the event a CLEC cannot access the data on which reports are based, then Qwest would be

liable for a $1,000 payment to the affected CLEC per day until the data is available. WorldCom asserts that Qwest's proposal is not consistent with the SBC Texas PAP which provides that if no reports are filed, the penalty is $5,000 per day for each day past due and that if reports are incomplete, the penalty is $1,000 per day for each missing performance result. WorldCom noted the Colorado Final PAP recommends that Qwest pay interest at twice the one-year treasury rate if it provides late payments, and that if reports are inaccurate, then Qwest should pay the applicable penalty to the affected CLEC(s) plus a penalty of fifty percent of the amount in question.

155. Staff recommends that the data timeliness payments should comport with those adopted in Texas. Staff argues that the purpose of the PAP payments is to encourage Qwest's timely performance, and are not meant to compensate CLECs for alleged harm.

156. We do not believe that Qwest's proposed $500 payment for late reports is sufficient to encourage Qwest's timely performance. We find Staff's recommendation to adopt the SBC Texas remedy to be reasonable. A $5,000 per day late penalty should be sufficient to encourage Qwest's timely performance. Qwest's proposed five-day grace period is also reasonable. Qwest should revise its PAP accordingly.

Disputed Issue No. 16 – A.R.S. § 40-424

157. A.R.S. § 40-424 provides:

> A. If any corporation or person fails to observe or comply with any order, rule, or requirement of the commission or any commissioner, the corporation or person shall be in contempt of the commission and shall, after notice and hearing before the commission, be fined by the commission in an amount not less than one hundred nor more than five thousand dollars, which shall be recovered as penalties.
>
> B. The remedy prescribed by this article shall be cumulative.

158. Qwest argues that the Commission is not able to award monetary damages due to its non-judicial nature, and that unless Qwest agrees to the imposition of penalty payments, the Commission is unable to enforce payments under the PAP. Further, Qwest argues, any Commission-imposed payments cannot be made payable to the CLECs, but must be made to the State of Arizona.

159. The CLECs argue that the Commission is authorized to enforce PAP penalty payments through the 1996 Act, and that the Commission should be able to impose penalties without an Order unless needed as part of a dispute resolution process.

160. Staff supports the CLEC position. Staff notes that the Commission is adopting the PAP under the 1996 Act as well as State law. The PAP is designed to ensure Qwest's continued compliance with the 1996 Act, therefore, Staff believes the Commission has the authority to institute a PAP that imposes penalties in the event of Qwest's noncompliance, and the Commission may require Qwest to make payments directly to CLECs absent Qwest's consent.

161. We concur with Staff and find that we have authority to approve and enforce the PAP. Furthermore, our ultimate recommendation to the FCC on Qwest's compliance with Section 271 is conditioned upon Qwest's implementation of and compliance with the PAP.

Additional Staff Recommendations

162. Qwest has agreed to allow any and all CLECs operating within Arizona to opt into the PAP, which will become a part of Qwest's SGAT. Qwest claims that its SGAT will be in effect for a period of only three years. Staff recommends that the PAP should not automatically be terminated when/if the Commission approves Qwest withdrawing its Arizona SGAT. Staff further recommends that the PAP's provisions will remain in force regardless of developments in other states unless the Commission rules otherwise.

163. We believe that the PAP should remain in full force and effect until further order of the Commission.

164. We believe a record retention policy will benefit the administration of the PAP, and that Qwest should revise its PAP to incorporate the following:

> Qwest will store performance data used to calculate monthly performance reports in an easy-to-access electronic form for review by the Arizona Corporation Commission and parties who have a legal right to obtain the information, for three years after they have been produced and for an additional three years in an archived format.

165. We find that the PAP should include a severability clause, and that Qwest should revise the PAP to include the following:

> In the event that any one or more of the provisions contained herein shall for any reason be held to be unenforceable or invalid in any respect under law or regulation, the Parties will negotiate in good faith for replacement language as set forth herein. If any part of this Performance Assurance Plan is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will affect only the portion of this Performance Assurance Plan which is invalid or unenforceable. In all other respects,

this Performance Assurance Plan will stand as if such invalid or unenforceable provision had not been a part hereof, and the remainder of this Performance Agreement shall remain in full force and effect.

CONCLUSIONS OF LAW

1. Qwest is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. Sections 40-281 and 40-282 and the Commission has jurisdiction over Qwest.

2. The Commission, having reviewed the Final Report on Qwest's Performance Assurance Plan dated December 24, 2001, concludes that Qwest's Performance Assurance Plan attached hereto as Exhibit A, and as modified herein, is in the public interest and should be approved.

3. Our ultimate recommendation to the FCC regarding Qwest's compliance with Section 271 is conditioned upon Qwest's implementation of, and compliance with, the PAP approved herein.

4. The Performance Assurance Plan approved herein shall remain in full force and effect until further Order of the Commission.

ORDER

IT IS THEREFORE ORDERED that Qwest's Performance Assurance Plan, attached hereto as Exhibit A, and the Final Report on Qwest's Performance Assurance Plan, attached hereto as Exhibit B, are hereby adopted as modified.

IT IS FURTHER ORDERED that Qwest Corporation shall file by June 7, 2002, a revised PAP incorporating the Findings and Conclusions herein.

IT IS FURTHER ORDERED that CLECs and other interested parties shall have seven days following Qwest Corporation's filing of the revised PAP to file written comments concerning the proposed PAP language.

IT IS FURTHER ORDERED that Commission Staff shall file within fourteen days of Qwest Corporation's filing, its recommendation to adopt or reject the proposed PAP language and a procedural recommendation for resolving any remaining dispute.

IT IS FURTHER ORDERED that CLECs with Commission-approved interconnection agreements may opt into the terms of the approved Qwest Performance Assurance Plan by filing written notice of their intent to do so and do not require further Commission approval of interconnection agreement amendments.

IT IS FURTHER ORDERED that Qwest Corporation shall commence to supply performance data from March 2001 to the Commission and all CLECs in accordance with its reporting requirements of Section 14.0 of the Performance Assurance Plan, within 30 days of the effective date of this Order.

IT IS FURTHER ORDERED that our ultimate recommendation to the FCC regarding Qwest's compliance with Section 271 of the Communications Act of 1934 is conditioned upon Qwest's implementation of, and compliance with, the Performance Assurance Plan approved herein.

IT IS FURTHER ORDERED that the Performance Assurance Plan approved herein shall remain in full force and effect until further Order of the Commission.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN	COMMISSIONER	COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 5TH day of JUNE, 2002.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT ______________
JR:dap

DECISION NO. 64888

SERVICE LIST FOR: U S WEST COMMUNICATIONS, INC. (SECTION 271)

DOCKET NO.: T-00000A-97-0238

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THE QWEST ARIZONA PERFORMANCE ASSURANCE PLAN

1.0 Introduction

In conjunction with its application to the Arizona Corporation Commission for recommendation for approval under Section 271 of the Telecommunications Act of 1996 (the "Act") to offer in-region long distance service, Qwest Corporation ("Qwest") proposes the following Performance Assurance Plan ("PAP"). Qwest is committed to continued compliance with its Section 271 obligations. As proof of that commitment, Qwest is prepared to voluntarily enter into this post-271 approval monitoring and enforcement mechanism, as outlined below, as a demonstration of its commitment to continue to satisfy Section 271 of the Act.

The Qwest PAP mirrors the performance assurance plan approved by the Federal Communications Commission ("FCC") for Southwest Bell Telephone Company–Texas.[1] Qwest believes that controversy can be avoided and the resources of the Commission and the Company could best be utilized by avoiding a drawn out process of creating a performance assurance plan from scratch. Therefore, Qwest took the extraordinary step of duplicating key elements of the approved Texas plan.

The FCC has recognized that performance assurance plans may vary widely from state to state, but that the key elements of any plan should fall within a "zone of reasonableness" such that the plans provide incentives sufficient to foster on-going satisfaction of 271 requirements.[2] Rather than "reinvent" key elements, the Qwest PAP adopts the Texas enforcement plan structure, including its statistical tables and payment schedules. Furthermore, the Qwest PAP puts at risk 36% of the Company's "net revenues" derived from local exchange services.

2.0 Plan Structure

The Qwest PAP is a two-tiered, self-executing remedy plan. The plan is developed to provide individual CLECs with Tier-1 payments if Qwest does not provide parity between the service it provides to the CLEC and that which it provides to its retail customers, or if Qwest fails to meet applicable benchmarks. In addition, the PAP provides Qwest with additional incentives to satisfy parity and benchmark standards by requiring Qwest to make Tier-2 payments--

[1] *In the Matter of the Application by SBC Communications, Inc.*, CC Docket No. 00-65, Memorandum Opinion and Order, June 30, 2000. Subsequently, the FCC approved similar enforcement plans as part of 271 approvals granted for SBC-Kansas and Oklahoma. See *In the Matter of the Joint Application of SBC Communications, Inc.*, CC Docket No. 00-217, Memorandum Opinion and Order, January 19, 2001.

[2] *Id.*, para. 423.

payments to State Funds established by the State Commissions--if Qwest fails to meet parity and benchmark standards on an aggregate CLEC basis. Tier-2 payments are over and above the Tier-1 payments made to individual CLECs. [3]

In the Qwest PAP, performance measurements are given different weightings to reflect relative importance by the designations of High, Medium, and Low. Payment is generally on a per occurrence basis, i.e., a set dollar payment times the number of non-conforming service events. For the performance measurements which do not lend themselves to per occurrence payment, payment is on a per measurement basis, i.e., a set dollar payment. The level of payment also depends upon the number of consecutive months of non-conforming performance, i.e., an escalating payment the longer the duration of non-conforming performance.

The parity standard is met when the service Qwest provides to CLECs is equivalent to that which it provides to its retail customers. Statistically, parity exists when performance results for the CLEC and for the Qwest retail analogue result in a Z-value that is no greater than the Critical Z-values listed in the Critical Z-Statistical Table in section 5.0.[4] The Qwest PAP relies upon statistical scoring to determine whether any difference between CLEC and Qwest performance results is significant, that is, not attributable to simple random variation.

For performance measurements that have no Qwest retail analogue, agreed upon benchmarks are used. Benchmarks are evaluated using a "stare and compare" method. For example, if the benchmark is 95% or better, Qwest performance results must be at least 95% to meet the benchmark. ~~When sample sizes are less than 100, percentage benchmark values will be adjusted to round the allowable number of misses to the next higher integer. For example, in the event of a 95% benchmark, the number of misses is 5% times the sample size, rounded up to the nearest integer.~~ <u>Percentage benchmarks will be adjusted to round the allowable number of misses up or down to the closest integer, except when the sample size is 5 or less, in which case the rounding will be up to the nearest integer. For example, for a 90% benchmark, the number of allowable misses is 10% times the sample size, rounded to the nearest integer. If the sample size is eight observations, (10% * 8 = 0.8) is rounded to 1, one miss would be permitted, and the effective benchmark would be 88% (1-1/8).</u>

3.0 Performance Measurements

[3] It is anticipated that each state fund will be established concurrently with the FCC's approval of the respective State's 271 application.

[4] The standard Z-test is based on normal statistical theory. If the sample size is large enough, the sample mean will follow a known normal distribution that is dependent on the variance of the data and on the sample size. A sample size of 30 is generally considered sufficient, although the required minimum sample size is dependent on the statistical skewness of the data being sampled. The assumption of a normal distribution is what allows the Z-test. When the sample size becomes too small, the distribution of the sample mean is no longer normal and the Z-test may not be reliable. In that event, other methods, as described below, may be appropriate.

The Qwest PAP incorporates performance measurements that will ensure Qwest's service performance to competitors can be measured and monitored so that any degradation of the agreed upon level of service is detected and corrected. CLECs operating in Qwest's region offer services through several modes, including resale, interconnection, and the purchase of unbundled network elements. The performance measurements incorporated into the Qwest PAP are broad based enough to cover all the modes of entry.

Performance measurements have been developed in the 271 collaborative workshops. Each of the measurements have been given a precise definition, called a Performance Indicator Definition ("PID"), that includes specification of the unit of measure, the data to be utilized in the measurement, and the standard. The standard may be a parity comparison of CLEC service performance with the Qwest retail analogue. When no retail analogue exists, the standard is a benchmark. The PIDs have been agreed to among Qwest, the CLECs, and participating State Commission staff members.

The performance measurements incorporated into the Qwest PAP are shown in Attachment 1. Similar to the approved Texas plan, the measurements are designated as Tier-1, Tier-2, or both Tier-1 and Tier-2. The measurements are also given a High, Medium, or Low designation, reflective of relative importance. Of the 46 measurements that the parties have agreed to in the Arizona PID workshops, Qwest incorporates 32 of the measurements into the PAP.[5]

4.0 Statistical Measurement

Qwest proposes the use of a statistical test, namely the modified "Z-test," for evaluating the difference between two means (i.e., Qwest and CLEC service or repair intervals) or two percentages (e.g., Qwest and CLEC proportions), to determine whether a parity condition exists between the results for Qwest and the CLEC(s). The modified Z-tests are applicable if the number of data points are greater than 30 for a given measurement. For testing measurements for which the number of data points are 30 or less, Qwest may use a permutation test to determine the statistical significance of the difference between Qwest and CLEC(s).

Qwest will be in conformance when the monthly performance results for parity measurements (whether in the form of means, percents, or proportions and at the equivalent level of disaggregation) are such that the calculated Z test statistics are not greater than the Critical Z-values. Critical Z-values are listed in Table 1, section 5.0. Qwest will be in conformance with benchmark measurements when the monthly performance result equals or exceeds the benchmark if a higher value means better performance, and when the monthly performance result equals or is less than the benchmark if a lower value means better performance.

The following is the formula for determining parity using the Z test:

[5] Of the 14 PIDs not included in Qwest's PAP, 10 are diagnostic or parity by design. As such, it is not appropriate to include them in a performance assurance plan.

$z = DIFF / \sigma_{DIFF}$

Where:

$DIFF = M_{Qwest} - M_{CLEC}$

M_{QWEST} = Qwest average or proportion

M_{CLEC} = CLEC average or proportion

$\sigma_{DIFF} = SQRT\ [\sigma^2 Qwest\ (1/\ n_{CLEC} + 1/\ n_{Qwest})]$

σ^2_{Qwest} = Calculated variance for Qwest

n_{Qwest} = number of observations or samples used in Qwest measurement

n_{CLEC} = number of observations or samples used in CLEC measurement

The Z tests will be applied to reported parity measurements that contain more than 30 data points.

In calculating the difference between Qwest and CLEC performance, the above formulae apply when a larger Qwest value indicates a better level of performance. In cases where a smaller Qwest value indicates a higher level of performance, the order is reversed, i.e., $M_{CLEC} - M_{QWEST}$.

For parity measurements where the performance delivered to CLEC(s) is compared to Qwest performance and for which the number of data points is 30 or less, Qwest will apply a permutation test to test for statistical significance. Permutation analysis will be applied to calculate the z statistic using the following logic:

Calculate the z statistic for the actual arrangement of the data
Pool and mix the CLEC and Qwest data sets
Perform the following 1000 times:
  Randomly subdivide the pooled data sets into two pools, one the same size as the original CLEC data set (n_{CLEC}) and one reflecting the remaining data points, and one reflecting the remaining data points, (which is equal to the size of the original Qwest data set or n_{QWEST}).
  Compute and store the Z-test score (Z_S) for this sample.
Count the number of times the Z statistic for a permutation of the data is greater than the actual Z statistic
Compute the fraction of permutations for which the statistic for the rearranged data is greater than the statistic for the actual samples

If the fraction is greater than α, the significance level of the test, the hypothesis of no difference is not rejected, and the test is passed.

5.0 Critical Z-value ~~and K value~~

The Critical Z-value ~~and K value table~~ seeks to account for statistical error arising from the natural variation in the performance results and is~~. Together, the Critical Z-value and K value result in~~ an adjustment for these statistical errors. The following table will be used to determine the Critical Z-value ~~and the K value~~ that is referred to in section 6.0. In each instance, it is ~~hey are~~ based on the monthly business of the CLEC for the particular ~~total number of~~ performance measurements for which statistical testing is being performed~~that are applicable to a CLEC in a particular month~~.

TABLE 1: CRITICAL Z-VALUE ~~AND K VALUE~~

CLEC volume (Sample size)	LIS Trunks, UDITs, Resale, UBL-DS1 and DS-3	All Other
1-10	1.04*	1.645
11-150	1.645	1.645
151-300	2.0	2.0
301-600	2.7	2.7
601-3000	3.7	3.7
3001 and above	4.3	4.3

* The 1.04 applies for individual month testing for performance measurements[6] involving LIS trunks and DS1 and DS3 that are UDITs, Resale, or Unbundled Loops. For purposes of determining consecutive month misses, 1.645 shall be used. Where performance measurements disaggregate to zone 1 and zone 2, the zones shall be combined for purposes of statistical testing.

~~Total Number of CLEC Performance Measurements~~	~~K Values~~	~~Critical Z-Value~~
~~1~~	~~0~~	~~1.645~~
~~2~~	~~0~~	~~1.955~~
~~3~~	~~0~~	~~2.122~~
~~4~~	~~0~~	~~2.235~~
~~5~~	~~0~~	~~2.319~~
~~6~~	~~0~~	~~2.387~~
~~7~~	~~0~~	~~2.442~~
~~8~~	~~1~~	~~1.682~~
~~9~~	~~1~~	~~1.739~~
~~10-19~~	~~1~~	~~1.974~~
~~20-29~~	~~2~~	~~1.832~~
~~30-39~~	~~3~~	~~1.752~~
~~40-49~~	~~4~~	~~1.698~~

[6] [6] The performance measurements are OP-3d/e, OP-4d/e, OP-5, OP-6-4/5, MR-5a/b, MR-7d/e, and MR-8.

~~50-59~~	~~5~~	~~1.66~~
~~60-69~~	~~5~~	~~1.74~~
~~70-79~~	~~6~~	~~1.7~~
~~80-89~~	~~7~~	~~1.669~~
~~90-99~~	~~7~~	~~1.722~~
~~100-109~~	~~8~~	~~1.691~~
~~110-119~~	~~9~~	~~1.666~~
~~120-139~~	~~10~~	~~1.664~~
~~140-159~~	~~11~~	~~1.677~~
~~160-179~~	~~12~~	~~1.687~~
~~180-199~~	~~14~~	~~1.653~~
~~200-249~~	~~15~~	~~1.662~~
~~250-299~~	~~19~~	~~1.658~~
~~300-399~~	~~23~~	~~1.668~~
~~400-499~~	~~29~~	~~1.662~~
~~500-599~~	~~35~~	~~1.656~~
~~600-699~~	~~41~~	~~1.651~~
~~700-799~~	~~47~~	~~1.646~~
~~800-899~~	~~52~~	~~1.653~~
~~900-999~~	~~58~~	~~1.648~~
~~1000 and above~~	~~Calculated for Type 1 Error Probability of 5%~~	~~Calculated for Type 1 Error Probability of 5%~~

6.0 Tier-1 Payments to CLECs

Tier-1 payments to CLECs relate solely to the performance measurements designated as Tier-1 on Attachment 1. The payment amount for non-conforming service varies depending upon the designation of performance measurements as High, Medium, and Low and the duration of the non-conforming service condition as described below.~~For purposes of calculating the amount of payments, the Tier 1 performance measurements are categorized as High, Medium, and Low. The amount of payments for non-conforming service varies depending upon the High, Medium, and Low designations and upon the duration of the non-conforming condition, as described below.~~ "Non-conforming" service is defined in section 4.0.

6.1 Determination of Non-conforming Measurements: The number of performance measurements that are determined to be "non-conforming" and, therefore, eligible for Tier-1 payments, are limited according to the ~~K value and~~ Critical Z-value shown in Table 1, section 5.0. The Critical Z-values are~~becomes~~ the statistical standard that determines for each CLEC performance measurement whether Qwest has met parity. ~~The K value determines the number of measurements that are excluded from the payment calculation described in section 8.0.~~ The ~~K value and~~ Critical Z-value is selected~~are determined~~ from Table 1 according to the monthly CLEC volume for ~~by totaling the number of~~ performance measurements ~~applicable to a CLEC during a month where the sample size is 10 or greater~~. For instance, if the CLEC sample size for that month is 100, the critical Z value is 1.645 for the statistical testing of that parity performance measurement.~~total number of measurements that capture the service provided by Qwest to a CLEC in a particular month was 100, the K value would be 8 and the Critical Z-value would be 1.68.~~

6.2 Determination of the Amount of Payment: Tier-1 payments to CLECs, except as provided for in section 10.0, are calculated and paid monthly based on the number of performance measurements exceeding the Critical Z-value~~ and the K-value~~. Payments will be made on either a per occurrence or per measurement basis, depending upon the performance measurement, using the dollar amounts specified in Table 2 below. The dollar amounts vary depending upon whether the performance measurement is designated High, Medium, or Low and escalate depending upon the number of consecutive months for which Qwest has not met the standard for the particular measurement.

The escalation of payments for consecutive months of non-compliant service will be matched month for month with de-escalation of payments. For example, if Qwest has 4 consecutive monthly "misses" it will make payments that escalate from month 1 to month 4 as shown in Table 2. If, in the next month, service meets the standard, Qwest makes no payment. A payment "indicator" de-escalates down from month 4 to month 3. If Qwest misses the following month, it will make payment at the month 3 level of Table 2 because that is where the payment "indicator" presently sits. If Qwest misses again the following month, it will make a payment that escalates back to the month 4 level. The payment level will de-escalate back to the original month 1 level only upon compliant service sufficient to move the payment "indicator" back to the month 1 level.

For those performance measurements listed on Attachment 2 as "Performance Measurements Subject to Per Occurrence Payments With a Cap," payment to a CLEC in a single month shall not exceed the amount listed in Table 2 below for the "Per Measurement" category. For those performance measurements listed on Attachment 2 as "Performance Measurements Subject to Per Measure Payments," payment to a CLEC will be the amount set forth in Table 2 below under the section labeled "per measure."

~~6.3 The performance measurements listed below will not be excluded from the CLEC payment calculation in the application of k-values as provided in section 8.0, if Qwest performance results have been non-conforming in the previous two consecutive months. K-values will again apply when Qwest achieves two consecutive months of conformance performance results.~~
~~PO-5 (FOCs on time), unbundled loops~~
~~OP-3 (Installation Commitments Met), analog unbundled loops, LIS trunks~~
~~OP-4 (Installation Interval), ADSL qualified loops~~
~~OP-5 (New Service Installation Quality), UNE-P (POTS), analog unbundled loops~~
~~MR-7 (Repair Repeat Report Rate), analog unbundled loops~~
~~MR-8 (Trouble Rate), analog unbundled loops~~
~~NI-1 (Trunk Blocking), LIS trunks~~
~~CP-2A-1 (Installation Commitments Met), virtual, physical caged, shared collocation~~

TABLE 2: TIER-1 PAYMENTS TO CLECs

Per occurrence						
Measurement Group	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6 and each following

						month
High	$150	$250	$500	$600	$700	$800
Medium	$ 75	$150	$300	$400	$500	$600
Low	$ 25	$ 50	$100	$200	$300	$400

Per Measure/Cap						
Measurement Group	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6 and each following month
High	$25,000	$50,000	$75,000	$100,000	$125,000	$150,000
Medium	$10,000	$20,000	$30,000	$ 40,000	$ 50,000	$ 60,000
Low	$ 5,000	$10,000	$15,000	$ 20,000	$ 25,000	$ 30,000

7.0 Tier-2 Payments to State Funds

Payments to State Funds established by the State Regulatory Commissions under Tier-2 of the Qwest PAP provide additional incentive to correct on-going non-conformance. The payments are limited to the performance measurements designated in section 7.3 for Tier 2 per measure payments and on Attachment 1 for per occurrence measurements~~as Tier 2 on Attachment 1~~ and which have at least 10 data points each month for the period payments are being calculated. Similar to the Tier-1 structure, Tier-2 measurements are categorized as High, Medium, and Low and the amount of payments for non-conformance varies according to this categorization.

7.1 Determination of Non-conforming Measurements: The determination of non-conformance will be based upon the aggregate of all CLEC data for each Tier-2 performance measurement. "Non-conforming" service is defined in section 4.0. The number of performance measurements determined to be "non-conforming" and, therefore, eligible for Tier-2 payments, is limited according to the Critical Z-value shown in Table 1, section 5.0. ~~The Critical Z-value is determined from Table 1 by totaling the number of performance measurements applicable to any CLEC during a month where the sample size is 10 or greater.~~ The Critical Z-value becomes the statistical standard that determines for each performance measurement whether Qwest has met parity.

7.2 Determination of the Amount of Payment: Except as provided in section 7.3, Tier-2 payments are calculated and paid monthly based on the number of performance measurements exceeding the Critical Z-value for three consecutive months. Payment will be made on either a per occurrence or per measurement basis, whichever is applicable to the performance measurement, using the dollar amounts specified in Table 3 or Table 4 below. Except as provided in section 7.3, t~~T~~he dollar amounts vary depending upon whether the performance measurement is designated High, Medium, or Low.

For those Tier-2 measurements listed on Attachment 2 as "Performance Measurements Subject to Per Occurrence Payments With a Cap," payment to a State Fund in a single month shall not exceed the amount listed in Table 3 for the "Per Measurement" category.

For those Tier-2 measurements listed in Attachment 2 as "Performance Measurements Subject to Per Measurement Payment," payment to a State Fund will be the amount set forth in Table 3 under the section labeled "per measure".

TABLE 3: TIER-2 PAYMENTS TO STATE FUNDS

Per occurrence

Measurement Group	
High	$500
Medium	$300
Low	$200

Per Measurement/Cap

Measurement Group	
High	$75,000
Medium	$30,000
Low	$20,000

7.3 Performance Measurements Subject to Per Measurement Payment: The following Tier-2 performance measurements have their performance results measured on a region wide (14 state) basis. Failure to meet the performance standard, therefore, will result in a per measure payment in each of the Qwest in-region 14 states adopting this PAP. The performance measurements are:

GA-1: Gateway Availability - IMA-GUI
GA-2: Gateway Availability - IMA-EDI
GA-3: Gateway Availability – EB-TA
GA-4: System Availability – EXACT
GA-6: Gateway Availability – GUI-Repair
PO-1: Pre-Order/Order Response Times
OP-2: Call Answered within Twenty Seconds – Interconnect Provisioning Center
MR-2: Calls Answered within Twenty Seconds – Interconnect Repair Center

GA-1 has three sub-measurements: GA-1A, GA-1B, and GA-1C. PO-1 shall have two sub-measurements: PO-1A and PO-1B. PO-1A and PO-1B shall have their transaction types aggregated together.

For these measures, Qwest will make a Tier-2 payment based upon monthly performance results according to Table 4: Tier-2 Per Measure Payments to State Funds.

TABLE 4: TIER-2 PER MEASURE PAYMENTS TO STATE FUNDS

Measure	Performance	State Payment	14 State Payment
GA-1,2,3,4,6	1% or lower	$1,000	$14,000
	>1% to 3%	$10,000	$140,000
	>3% to 5%	$20,000	$280,000
	>5%	$30,000	$420,000
PO-1	2 sec. or less	$1,000	$14,000
	>2 sec.to 5 sec.	$5,000	$70,000

	>5 sec. to 10 sec.	$10,000	$140,000
	>10 sec.	$15,000	$210,000
OP-2/MR-2	1% or lower	$1,000	$14,000
	>1% to 3%	$5,000	$70,000
	>3% to 5%	$10,000	$140,000
	>5%	$15,000	$210,000

7.4 Use of Tier-2 Funds: Qwest payments to the State Funds will be used for any purpose that relates to the Qwest service territory that may be determined by the State Commission.

~~7.3 Use of the Funds: Qwest payments to the State Funds shall be used to reimburse customers' share of fees to extend telephone service within Qwest's service territory, to extend Qwest telephone service into adjacent, unassigned service territory, and for any other purposes that relates to the Qwest service territory that may be determined by the State Commission.~~

~~TABLE 3: TIER-2 PAYMENTS TO STATE FUNDS~~

~~Per occurrence~~

~~Measurement Group~~	
~~High~~	~~$500~~
~~Medium~~	~~$300~~
~~Low~~	~~$200~~

~~Per Measurement/Cap~~

~~Measurement Group~~	
~~High~~	~~$75,000~~
~~Medium~~	~~$30,000~~
~~Low~~	~~$20,000~~

8.0 Step by Step Calculation of Tier-1 Payments to CLECs

The following describes step-by-step the calculation of Tier-1 payments. The calculation will be performed monthly for each CLEC.

8.1 Application of the Critical Z~~K~~ Values~~Exclusions~~:

For each CLEC, identify the~~determine the total number of~~ Tier-1 parity performance measurements that measure the service provided by Qwest for the month in question and the Critical Z-value from Table 1 in section 5.0 that shall be used for purposes of statistical testing for each particular performance measurement.[7] Apply the statistical testing procedures

[7] For the purpose of determining the ~~K-value and~~ Critical Z-values, each disaggregated category of a performance measurement is treated as a separate sub-measurement. The Critical Z value to be applied is determined by the CLEC volume at each level of disaggregation or sub-measurement.~~with a minimum sample~~

described in section 4.0. ~~that measure the service provided by Qwest for the month in question. From Table 1 in section 5.0, determine for each CLEC the K value and Critical Z-value to be used below.~~

~~For each CLEC, identify the Tier-1 performance measurements with a minimum sample size of 10 that Qwest's service performance is "non-conforming" for the month in question, using the Critical Z-value.~~

~~For the performance measurements that are identified as non-conforming, group the measurements according to the High, Medium, and Low categories shown on Attachment 1.~~

~~Within each High, Medium, and Low group, sort the performance measurements in ascending order based on the number of data points or transactions used to develop the performance measurement result (e.g., service orders, collocation requests, installations, trouble reports).~~

~~Exclude the first "K" measurements designated as Low, starting with the performance measurement that has the fewest number of underlying data points. If the number of performance measurements in the Low category is less than "K," repeat the process next with the Medium category and then the High category until a total of "K" performance measurements have been excluded. If all Low, Medium and High measurements are excluded by this process, then those measurements with sample sizes less than 10 may be excluded until "K" measurements are reached. (For example, if the K value is 6 and there are 7 Low measurements, 1 Medium, and 1 High, the 6 Low measurements with the smallest sample sizes are excluded from the calculation of payments to the CLEC.) The remaining "non-conforming" performance measurements, if any, are used to calculate Tier-1 payments to each CLEC.~~

~~The following qualifications apply to the general rule of excluding performance measurements as described above. A performance measurement, for which the payment is on a per measure basis, will not be excluded unless the amount of that measure's payment is less than the payment that would result for each remaining measure. A performance measurement, whose payment is on a per occurrence basis subject to a cap, will be excluded whenever the cap is reached and the payments for the remaining measurements are greater than the amount of the cap.~~

8.2 Performance Measurements for which Payment is Per Occurrence:

The following describes the calculation of Tier-1 payments to CLECs in which payment is based upon a per occurrence dollar amount.

8.2.1 Performance Measurements that are Averages or Means:

~~size of 10 counts as "one" measure. For instance, a performance measurement that is disaggregated into 10 products, each further disaggregated into two geographic areas would count as "20" measurements.~~

Step 1: For each performance measurement, calculate the average or the mean that would yield the Critical Z-value. Use the same denominator as the one used in calculating the Z-statistic for the measure. (For benchmark measurements, use the benchmark value.)

Step 2: Calculate the percentage differences between the actual averages and the calculated averages. The calculation is % diff = (CLEC result – Calculated Value)/Calculated Value. The percent difference will be capped at a maximum of 100%.[8]

Step 3: For each performance measurement, multiply the total number of data points by the percentage calculated in the previous step and the per occurrence dollar amounts taken from the Tier-1 Payment Table to determine the payment to the CLEC for each non-conforming performance measurement.

8.2.2 Performance Measurements that are Percentages:

Step 1: For each performance measurement, calculate the percentage that would yield the Critical Z-value. Use the same denominator as the one used in calculating the Z statistic for the measure. (For benchmark measurements, use the benchmark value.)

Step 2: Calculate the difference between the actual percentages for the CLEC and the calculated percentages.

Step 3: For each performance measurement, multiply the total number of data points by the difference in percentage calculated in the previous step and the per occurrence dollar amount taken from the Tier-1 Payment Table to determine the payment to the CLEC for each non-conforming performance measurement.

8.2.3 Performance Measurements that are Ratios or Proportions:

Step 1: For each performance measurement, calculate the ratio that would yield the Critical Z-value. Use the same denominator as the one used in calculating the Z-statistic for the measure. (For benchmark measurements, use the benchmark value.)

Step 2: Calculate the absolute difference between the actual rate for the CLEC and the calculated rate.

Step 3: For each performance measurement, multiply the total number of data points by the difference calculated in the previous step and the per occurrence dollar amount taken from the Tier-1 Payment Table to determine the payment to the CLEC for each non-conforming performance measurement.

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[8] In all calculations of percent differences in sections 8.0 and 9.0, the calculated percent differences is capped at 100%.

8.3 Performance Measurements for which Payment is Per Measure: For each performance measurement that Qwest fails to meet the standard, the payment to the CLEC is the dollar amount shown on the "per measure" portion of the Tier-1 Payment Table.

9.0 Step by Step Calculation of Tier-2 Payments

The following describes step by step the calculation of Tier-2 payments. The calculation will be performed monthly using the aggregate CLEC performance results. All Tier-2 payments will be made to a designated state fund.

Determine the total number of Tier-2 performance measurements[9] that measure the service provided by Qwest to all CLECs for the month in question. ~~From Table 1 in section 5.0, determine the Critical Z value to be used below.~~

Identify the Tier-2 performance measurement for which Qwest's service performance is non-conforming for the month in question, using the Critical Z-values from Table 1 in Section 5.0.

For each performance measurement that is identified as non-conforming, determine if the non-conformance has continued for three consecutive months and if there are at least 10 data points each month. If it has, a Tier-2 payment will be calculated as described below and will continue in each succeeding month until Qwest's performance meets the applicable standard. For example, Tier-2 payments will continue on a "rolling three month" basis, one payment for the average number of occurrences for months 1-3, one payment for the average number of occurrences for months 2-4, one payment for the average number of occurrences for months 3-5, and so forth, until satisfactory performance is established.

9.1 Performance Measurements for which Payment is Per Occurrence:

The following describes the calculation of Tier-2 payments to the State Fund in which payment is based upon a per occurrence dollar amount.

9.1.1 Performance Measurements that are Averages or Means:

Step 1: Calculate the monthly average or the mean for each performance measurement that would yield the Critical Z-value for each month. Use the same denominator as the one used in calculating the Z-statistic for the measure. (For benchmark measurements, use the benchmark value.)

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[9] For the purpose of determining the Critical Z-values, each disaggregated category of a performance measurement is treated as a separate sub-measurement. The Critical Z-value to be applied is determined by the CLEC volume at each level of disaggregation or sub-measurement. ~~For the purpose of determining the Critical Z-value, each disaggregated category of a performance measurement with a minimum sample size of 10 counts as "one" measure. For instance, a performance measurement that is disaggregated into 10 products, each further disaggregated into two geographic areas would count as "20" measurements.~~

Step 2: Calculate the percentage difference between the actual averages and the calculated averages for each month. The calculation for parity measurements is % diff = (actual average – calculated average)/calculated average. The percent difference will be capped at a maximum of 100%.

Step 3: For each performance measurement, multiply the total number of data points each month by the percentage calculated in the previous step. Calculate the average for three months (rounded to the nearest integer) and multiply the result by the per occurrence dollar amount taken from the Tier-2 Payment Table to determine the payment to the State Fund for each non-conforming performance measurement.

9.1.2 Performance Measurements that are Percentages:

Step 1: For each performance measurement, calculate the monthly percentage that would yield the Critical Z-value for each month. Use the same denominator as the one used in calculating the Z-statistic for the measure. (For benchmark measurements, use the benchmark value.)

Step 2: Calculate the difference between the actual percentages and the calculated percentages for each of the three non-conforming months. The calculation for parity measurement is diff = CLEC result – calculated percentage. This formula is applicable where a high value is indicative of poor performance. The formula is reversed where high performance is indicative of good performance.

Step 3: For each performance measurement, multiply the total number of data points for each month by the difference in percentage calculated in the previous step. Calculate the average for three months (rounded to the nearest integer) and multiply the result by the per occurrence dollar amounts taken from the Tier-2 Payment Table to determine the payment to the State Fund for each non-conforming performance measurement.

9.1.3 Performance Measurements that are Ratios or Proportions:

Step 1: For each performance measurement, calculate the ratio that would yield the Critical Z-value for each month. Use the same denominator as the one used in calculating the Z-statistic for the measure. (For benchmark measurements, use the benchmark value.)

Step 2: Calculate the difference between the actual rate for the CLEC and the calculated rate for each month of the non-conforming three-month period. The calculation is diff = (CLEC rate – calculated rate). This formula is applicable where a high value is indicative of poor performance. The formula is reversed where high performance is indicative of good performance.

Step 3: For each performance measurement, multiply the total number of data points by the difference calculated in the previous step for each month. Calculate the average for three months (rounded to the nearest integer) and multiply the result by the per occurrence dollar

amounts taken from the Tier-2 Payment Table to determine the payment to the State Fund for each non-conforming performance measurement.

9.2 Performance Measurements that Payment is Per Measure:

For each performance measurement that Qwest fails to meet the standard, the payment to the State Fund is the dollar amount shown on the "per measure" portion of the Tier-2 Payment Table.

10.0 Low Volume, Developing Markets

In the event aggregate monthly volumes of CLECs participating in the PAP are more than 10, but less than 100, Qwest will make Tier-1 payments to CLECs if during a month Qwest fails to meet the parity or benchmark standard for the qualifying performance sub-measurements listed below. The qualifying sub-measurements are the UNE-P (POTS), megabit resale, and ADSL qualified loop product disaggregation of OP-3, OP-4, OP-5, MR-3, MR-5, MR-7, and MR-8.

The determination of whether Qwest has met the parity or benchmark standards will be made using aggregate volumes of CLECs participating in the PAP. In the event Qwest does not meet the applicable performance standards, a total payment to affected CLECs will be determined in accordance with the high, medium, low designation for each performance measurement (see Attachment 1) and as described in section 8.0, except that CLEC aggregate volumes will be used. In the event the calculated total payment amount to CLECs is less than $5,000, a minimum payment of $5,000 shall be made. The resulting total payment amount to CLECs will be apportioned to the individual affected CLECs based upon each CLEC's relative share of the number of total service misses.

At the 6-month reviews, Qwest will consider adding to the above list of performance sub-measurements new product disaggregation that represents new modes of CLEC entry into developing markets.

~~K value exclusions will not be applied to the performance sub-measurements covered by this section. However, the sub-measurements covered by this section will be included in the determination of the k-values and critical Z-values.~~

If the aggregate monthly CLEC volume is greater than 100, the provisions of this section shall not apply to the qualifying performance sub-measurement.

11.0 Payment

Payments to CLECs or the State Fund shall be made one month following the due date of the performance measurement report for the month for which payment is being made.

Payment to CLECs will be made via bill credits. To the extent that a monthly payment owed to a CLEC under this PAP exceeds the amount owed to Qwest by the CLEC on a monthly bill, Qwest will issue a check or wire transfer to the CLEC in the amount of the overage. Payment to the State Fund will be made via check or wire transfer.

12.0 Cap on Tier-1 and Tier-2 Payments

There shall be a cap on the total payments by Qwest during a calendar year. The cap amount for Arizona shall be 36% of the "net revenues" as defined in the FCC's order approving the Bell Atlantic-New York 271 application and affirmed in the FCC order approving the Southwest Bell Telephone-Texas 271 application.[10] The cap shall be recalculated each year based upon the prior year's Arizona ARMIS results, adjusted to reflect the most current depreciation rates approved by the Arizona Corporation Commission. Qwest shall submit to the Commission the calculation of each year's cap no later than 30 days after submission of ARMIS results to the FCC. CLEC agrees that this amount constitutes a maximum annual cap which will apply to the aggregate total of Tier –1 liquidated damages (including any such damages paid pursuant to this Agreement, any other Arizona interconnection agreement, or any other payments made for the same or analogous performance under any other contract, order or rule) and Tier-2 assessments or payments made by Qwest for the same or analogous performance under another contract, order or rule.

The cap applies to the aggregate of Tier-1 payments to CLECs, including payments made pursuant to any other alternative performance obligations pursuant to an interconnection agreement with a CLEC, Tier-2 payments to State Funds, and any other payments required by State Commissions pursuant to service quality rules, orders or other agreements that relate to the same or analogous service.

A monthly cap will be determined by dividing the amount of the annual cap by twelve. The monthly cap shall be calculated by applying all payments or credits made by Qwest under this PAP as well as all payments made or credits applied for wholesale service performance pursuant to interconnection agreements, state rules or orders. To the extent in any given month the monthly cap (i.e., the annual cap divided by 12) is not reached, the subsequent month's cap will be increased by an amount equal to the unpaid portion of the previous month's cap.

In the event the annual cap is reached within a calendar year and Qwest continues to deliver non-conforming performance during the same year to any CLEC or to all CLECs, the Commission may recommend to the FCC that Qwest should cease offering in-region interLATA services to new customers.

13.0 Limitations

[10] Federal Communications Commission, CC Docket No. 99-404, Memorandum Opinion and Order, December 22, 1999, Para. 436 and footnote 1332; Federal Communications Commission, CC Docket No. 00-65, Memorandum Opinion and Order, June 30, 2000, Para 424.

13.1 Qwest's PAP shall not become available in Arizona unless and until Qwest receives effective section 271 authority from the FCC for the State of Arizona.

13.2 Qwest will not be liable for Tier-1 payments to a specific CLEC in an FCC approved state until the Commission has approved an interconnection agreement between the CLEC and Qwest that adopts the provisions of this PAP.

13.3 Qwest shall not be obligated to make Tier-1 or Tier-2 payments for any measurement if and to the extent that non-conformance for that measurement was the result of any of the following: 1) a Force Majeure event, including but not limited to acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers, ~~periods of emergency, catastophe, natural disaster, severe storms,~~ or other events beyond Qwest's control; 2) an act or omission by a CLEC that is contrary to any of its obligations under its interconnection agreement with Qwest or under the Act or State law; an act or omission by a CLEC that is in bad faith[11]; or 3) non-Qwest problems associated with third-party systems or equipment, which could not have been avoided by Qwest in the exercise of reasonable diligence, provided, however, that this third party exclusion will not be raised more than three times within a calendar year. Qwest will not be excused from Tier-1 or Tier-2 payments on any other grounds, except as described in paragraphs 13.6, 13.7, and 13.8. Qwest will have the burden to demonstrate that its non-conformance with the performance measurement was excused on one of the grounds described in this PAP.

13.4 Qwest's agreement to implement these enforcement terms, and specifically its agreement to pay any "liquidated damages" or "assessments" hereunder, will not be considered as an admission against interest or an admission of liability in any legal, regulatory, or other proceeding relating to the same performance. QWEST and CLEC agree that CLEC may not use: 1) the existence of this enforcement plan; or 2) Qwest's payment of Tier -1 "liquidated damages" or Tier-2 "assessments" as evidence that Qwest has discriminated in the provision of any facilities or services under Sections 251 or 252, or has violated any state or federal law or regulation. Qwest's conduct underlying its performance measures, however are not made inadmissible by its terms. Any CLEC accepting this performance remedy plan agrees that Qwest's performance with respect to this remedy plan may not be used as an admission of liability or culpability for a violation of any state or federal law or regulation. Further, any liquidated damages payment by Qwest under these provisions is not hereby made inadmissible in any proceeding relating to the same conduct were Qwest seeks to offset the payment against any other damages a CLEC might recover.

[11] Examples of bad faith conduct include, but are not limited to: unreasonably holding service orders and/or applications, "dumping" orders or applications in unreasonable large batches, "dumping" orders or applications at or near the close of a business day, on a Friday evening or prior to a holiday, and failing to provide timely forecasts to Qwest for services or facilities when such forecasts are required to reasonably provide services or facilities.

The terms of this paragraph do not apply to any proceeding before the Commission or the FCC to determine whether Qwest has met or continues to meet the requirements of section 271 of the Act.

13.5 By incorporating these liquidated damages terms into the PAP, Qwest and CLECs accepting this PAP agree that proof of damages from any non-conforming performance measurement would be difficult to ascertain and, therefore, liquidated damages are a reasonable approximation of any contractual damages that may result from a non-conforming performance measurement. Qwest and CLEC further agree that payments made pursuant to this PAP are not intended to be a penalty. The application of the assessments and damages provided for herein is not intended to foreclose other noncontractual legal and non-contractual regulatory claims and remedies that may be available to a CLEC.

13.6 CLEC is not entitled to remedies under both the PAP and under rules, orders, or other contracts, including interconnection agreements, arising from the same or analogous wholesale performance. Where alternative remedies for Qwest's wholesale performance are available under rules, orders, or other contracts, including interconnection agreements, CLEC will be limited to either the PAP remedies or the remedies available under rules, orders, or other contracts.

13.6_ This PAP contains a comprehensive set of performance measurements, statistical methodologies, and payment mechanisms that are designed to function together, and only together, as an integrated whole. -In the event that a CLEC agreeing to this PAP is awarded compensation for the same or analogous wholesale performance covered by this PAP, Qwest may offset the award with amounts paid under this PAP.

13.7 Qwest shall not be liable for both Tier-2 payments and assessments or sanctions made for the same or analogous performance pursuant to any Commission order or service quality rules.

13.8 Whenever a Qwest Tier-1 payment to an individual CLEC exceeds $3 million in a month, or when all CLEC Tier-1 payments in any given month exceed the monthly cap (section 11.0), Qwest may commence a show cause proceeding. Upon timely commencement of the show cause proceeding, Qwest must pay the balance of payments owed in excess of the threshold amount into escrow, to be held by a third-party pending the outcome of the show cause proceeding. To invoke these escrow provisions, Qwest must file with the Commission, not later than the due date of the Tier-1 payments, an application to show cause why it should not be required to pay any amount in excess of the procedural threshold. Qwest will have the burden of proof to demonstrate why, under the circumstances, it would be unjust to require it to make the payments in excess of the applicable threshold amount. If Qwest reports non-conforming performance to a CLEC for three consecutive months on 20% or more of the measurements reported to the CLEC and has incurred no more than $1 million in liability to the CLEC, the CLEC may commence a similar show cause proceeding. In any such proceeding the CLEC will have the burden of proof to demonstrate why, under the circumstances, justice requires Qwest to make payments in excess of the amount calculated pursuant to the terms of the PAP.

14.0 Reporting

14.1 Upon FCC 271 approval for a state, Qwest will provide CLECs which have approved interconnection agreements with Qwest a monthly report of Qwest's performance for the measurements identified in the PAP by the last day of the month following the month for which performance results are being reported. However, Qwest shall have a grace period of five business days, so that Qwest shall not be deemed out of compliance with its reporting obligations before the expiration of the five business day grace period. Qwest will collect, analyze, and report performance data for the measurements listed on Attachment 1 in accordance with the most recent version of the Service Performance Indicator Definitions (PID). Upon a CLEC's request, data files of the CLEC's raw data, or any subset thereof, will be transmitted, without charge, to the CLEC in a mutually acceptable format, protocol, and transmission medium.

14.2 Qwest will also provide the Commission a monthly report of aggregate CLEC performance results pursuant to the PAP by the last day of the month following the month for which performance results are being reported. However, Qwest shall have a grace period of five business days, so that Qwest shall not be deemed out of compliance with its reporting obligations before the expiration of the five business day grace period. -Individual CLEC reports will also be available to the Commission upon request. Upon the Commission's request, data files of the CLEC raw data, or any subject thereof, will be transmitted, without charge, to the Commission in a mutually acceptable format, protocol, and transmission form. By accepting this PAP, each CLEC consents to Qwest providing that CLEC's report and raw data to State Commissions upon the Commission's request.

14.3 In the event that Qwest does not provide CLEC and the Commission with a monthly report by the last day of the month following the month for which performance results are being reported, Qwest will pay to the State a total of $500 for each business day for which performance reports are due after the five business day grace period. This amount represents the total for missing any deadline, rather than a payment per report. Prior to the date of a payment for late reports, Qwest may file a request for waiver of the payment, which states the reasons for the waiver.

15.0 Audits/Investigations of Performance Results

15.1: Qwest will create a separate financial system which will take performance results as inputs and calculate payments according to the terms of the PAP. An independent audit of this financial system shall be initiated one year after the effective date of the PAP and a second audit shall be started no later than 18 months thereafter. The auditor will be chosen and paid for by Qwest. Alternatively, the Arizona Commission staff may choose to conduct this audit itself. The necessity of any subsequent audits of the financial system shall be considered in the six-month PAP reviews, based upon the experience of the first two audits.
If as a result of the audit, it is determined that Qwest underpaid, Qwest will add bill credits to CLECs and/or make additional payments to the State to the extent that it underpaid. In the

event Qwest overpaid, future bill credits to CLECs and/or future payments to the State will be offset by the amount of the overage. All under and over payments will be credited with interest at the one year U. S. Treasury rate.

15.2: In the event of a disagreement between Qwest and the CLEC participating in this PAP as to any issue regarding the accuracy or integrity of data collected, generated, and reported pursuant to the PAP, Qwest and the CLEC shall first consult with one another and attempt in good faith to resolve the issue. If an issue is not resolved within 45 days after a request for consultation, the CLEC and Qwest may upon a demonstration of good cause (e.g., evidence of material errors or discrepancies) request an independent audit to be conducted, at the initiating party's expense. The scope of the audit will be limited to performance measurement data collection, data reporting processes, and calculation of performance results and payments for a specific performance measurement. An audit may not be commenced more than 12 months following the month in which the alleged inaccurate results were first reported.

If an audit identifies a material deficiency affecting results, the responsible party shall reimburse the other party for the expense of the third party auditor, assuming the responsible party was not the party initiating the audit. In the event the CLEC is found to be responsible for the deficiency, any overpayment made to the CLEC as a result of the deficiency shall be refunded to Qwest with interest and any affected portion of future payments will be suspended until the CLEC corrects the deficiency. In the event that Qwest is found to be responsible for the deficiency, Qwest will pay the CLEC the amount that would have been due under the PAP if not for the deficiency, including interest.

Neither CLEC nor Qwest may request more than two audits per calendar year for the entire Qwest in-region states. Each audit request shall be limited to no more than two performance measurements per audit. For purposes of these provisions, a performance measurement is a Performance Indicator Definition (PID), e.g., OP-3, Installation Commitments Met. CLEC agrees that Qwest shall not be required to conduct more than 3 audits at one time for its 14 in-region states, nothwithstanding who has initiated the audit, and notwithstanding the provisions in this paragraph. This provision shall exclusively govern audits regarding performance measurements. Qwest agrees to inform Commission Staff and all CLECs of the results of an audit.

15.3: Qwest will investigate any second consecutive Tier-2 miss to determine the cause of the miss and to identify the action needed in order to meet the standard set forth in the performance measurements. To the extent an investigation determines that a CLEC was responsible in whole or in part for the Tier-2 misses, Qwest shall receive credit against future Tier-2 payments in an amount equal to the Tier-2 payments that should not have been made. The relevant portion of subsequent Tier-2 payments will not be owed until any responsible CLEC problems are corrected. For the purposes of this sub-section, Tier-1 performance measurements that have not been designated as Tier-2 will be aggregated and the aggregate results will be investigated pursuant to the terms of this Agreement.

16.0 Reviews

Every six (6) months, Qwest, CLECs, and the Commission shall review the performance measurements to determine whether measurements should be added, deleted, or modified; whether the applicable benchmark standards should be modified or replaced by parity standards; and whether to move a classification of a measure to High, Medium, or Low or Tier-1 to Tier-2. The criterion for reclassification of a measure shall be whether the actual volume of data points was less or greater than anticipated. Criteria for review of performance measurements, other than for possible reclassification, shall be whether there exists an omission or failure to capture intended performance, and whether there is duplication of another measurement. The first six-month period will begin upon the FCC's approval of Qwest's 271 application for that particular state. Any changes to existing performance measurements in this ~~and this~~ PAP shall not be made ~~be~~ without ~~by~~ Qwest's consent. ~~mutual agreement of the parties.~~

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.

17.0 Voluntary Performance Assurance Plan

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

Attachment 1: Tier-1 and Tier-2 Performance Measurements Subject to Per Occurrence Payment

Performance Measurement		Tier-1 Payments			Tier-2 Payments		
		Low	Med	High	Low	Med	High
PRE-ORDER/ORDERS							
LSR Rejection Notice Interval	PO-3[a]	X					
Firm Order Confirmations On Time	PO-5	X				X	
Work Completion Notification Timeliness	PO-6[b]	X					
Billing Completion Notification Timeliness	PO-7[b]	X					
Jeopardy Notice Interval	PO-8	X					
Timely Jeopardy Notices	PO-9	X					
ORDERING AND PROVISIONING							
Installation Commitments Met	OP-3[c]			X		X	
Installation Intervals	OP-4[d]			X		X	
New Service Installation Quality	OP-5			X		X	
Delayed Days	OP-6[e]			X		X	
Number Portability Timeliness	OP-8			X		X	
Coordinated Cuts On Time – Unbundled Loops	OP-13a			X		X	
MAINTENANCE AND REPAIR							
Out of Service Cleared within 24 hours	MR-3			X			
All Troubles Cleared within 4 hours	MR-5			X			
Mean time to Restore	MR-6a,b,c			X			
Repair Repeat Report Rate	MR-7			X		X	
Trouble Rate	MR-8			X		X	
BILLING							
Time to Provide Recorded Usage Records	BI-1	X					X
Billing Accuracy-Adjustments for Errors	BI-3	X					
Billing Completeness	BI-4	X				X	
NETWORK PERFORMANCE							
Trunk Blocking	NI-1			X			X
NXX Code Activation	NP-1			X			X

a. PO-3 is limited to PO-3a-1, PO-3b-1, and PO-3c.

b. PO-6 is included with PO-7 as two "families:" PO-6a/PO-7a and PO-6b/PO-7b. Measurements within each family share a single payment opportunity with only the measurements with the highest payment being paid.

c. OP-3 is included as three "families:" OP-3a/3b, OP-3c, and OP-3d/e. Measurements within each family share a single payment opportunity with only the measurement with the highest payment being paid.

d. OP-4 is included with OP-6 as five "families:" OP-4a/OP-6-1, OP-4b/OP-6-2, OP-4c/OP-6-3, OP-4d/OP-6-4, and OP-4e/OP-6-5. Measurements within each family share a single payment opportunity with only the measurement with the highest payment being paid.

e. For purposes of the PAP, OP-6a and OP-6b will be combined and treated as one. The combined OP-6 breaks down to OP-6-1 (within MSA), OP-6-2 (outside MSA), OP-6-3 (no dispatch), OP-6-4 (zone 1), and OP-6-5 (zone 2).

~~Exhibit 2~~

Attachment 2: Performance Measurements Subject to Per Measure Caps

Billing

Time to Provide Recorded Usage Records – BI-1 (Tier-1/Tier-2)

Billing Accuracy – Adjustments for Errors – BI-3 (Tier-1)

Billing Completeness – BI-4 (Tier-1/Tier-2)

~~Attachment 1: Tier 1 and Tier 2 Performance Measurements~~

~~GATEWAY AVAILABILITY~~							
~~Availability of IMA IMA GUI~~	~~GA-1~~				~~X~~		
~~Gateway Availability IMA EDI~~	~~GA-2~~				~~X~~		
~~Gateway Availability EB TA~~	~~GA-3~~				~~X~~		
~~Gateway Availability EXACT~~	~~GA-4~~				~~X~~		
~~Gateway Availability GUI Repair~~	~~GA-6~~				~~X~~		
~~PRE-ORDER/ORDERS~~							
~~Pre-Order/Order Response Time~~	~~PO-1~~					~~X~~	
~~LSR Rejection Notice Interval~~	~~PO-3~~	~~X~~					
~~Firm Order Confirmations On Time~~	~~PO-5~~	~~X~~				~~X~~	
~~Billing Completion Notification Timeliness~~	~~PO-7~~	~~X~~					
~~Jeopardy Notice Interval~~	~~PO-8~~	~~X~~					
~~ORDERING AND PROVISIONING~~							
~~Calls Answered within Twenty Seconds~~	~~OP-2~~						~~X~~
~~Installation Commitments Met~~	~~OP-3[a]~~			~~X~~			~~X~~
~~Installation Intervals~~	~~OP-4[b]~~			~~X~~			~~X~~
~~New Service Installation Quality~~	~~OP-5~~			~~X~~			~~X~~
~~Delayed Days~~	~~OP-6[c]~~			~~X~~			~~X~~
~~Number Portability Timeliness~~	~~OP-8~~		~~X~~			~~X~~	
~~Coordinated Cuts On Time – Unbundled Loops~~	~~OP-13a~~		~~X~~			~~X~~	
~~MAINTENANCE AND REPAIR~~							
~~Calls Answered within 20 seconds-Interconnect~~	~~MR-2~~						~~X~~
~~Out of Service Cleared within 24 hours~~	~~MR-3~~		~~X~~				
~~All Troubles Cleared within 4 hours~~	~~MR-5~~		~~X~~				
~~Mean time to Restore~~	~~MR-6a,b,c~~		~~X~~				
~~Repair Repeat Report Rate~~	~~MR-7~~			~~X~~			~~X~~
~~Trouble Rate~~	~~MR-8~~			~~X~~			~~X~~
~~BILLING~~							
~~Time to Provide Recorded Usage Records~~	~~BI-1~~	~~X~~					~~X~~
~~Billing Accuracy Adjustments for Errors~~	~~BI-3~~	~~X~~					
~~Billing Completeness~~	~~BI-4~~	~~X~~				~~X~~	
~~NETWORK PERFORMANCE~~							
~~Trunk Blocking~~	~~NI-1~~			~~X~~			~~X~~
~~NXX Code Activation~~	~~NP-1~~			~~X~~			~~X~~
~~COLLOCATION~~							
~~Installation Interval~~	~~CP-1~~	~~X~~					
~~Installation Commitments Met~~	~~CP-2~~			~~X~~			~~X~~
~~Feasibility Study Interval~~	~~CP-3~~	~~X~~					
~~Feasibility Study Commitments Met~~	~~CP-4~~	~~X~~					

~~a. OP-3 is included as three "families:" OP-3a/3b, OP-3c, and OP-3d/e. Measurements within each family share a single payment opportunity with only the measurement with the highest payment being paid.~~

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~~Exhibit 2~~

~~b. OP-4 is included with OP-6 as five "families:" OP-4a/OP-6-1, OP-4b/OP-6-2, OP-4c/OP-6-3, OP-4d/OP-6-4, and OP-4e/OP-6-5. Measurements within each family share a single payment opportunity with only the measurement with the highest payment being paid.~~

~~c. For purposes of the PAP, OP-6a and OP-6b will be combined and treated as one. The combined OP-6 breaks down to OP-6-1 (within MSA), OP-6-2 (outside MSA), OP-6-3 (no dispatch), OP-6-4 (zone 1), and OP-6-5 (zone 2).~~

~~Exhibit 2~~

~~Attachment 2~~

~~Performance Measurements Subject to Per Occurrence Payments With a Cap~~

~~Pre-Order/Orders~~
~~Pre-Order/Order Response Time – PO-1 (Tier-2)~~
~~LSR Rejection Notice Interval – PO-3 (Tier-1)~~
~~Billing Completion Notification Timeliness – PO-7 (Tier-1)~~

~~Billing~~
~~Time to Provide Recorded Usage Records – BI-1 (Tier-1/Tier-2)~~
~~Billing Accuracy – Adjustments for Errors – BI-3 (Tier-1)~~
~~Billing Completeness – BI-4 (Tier-1/Tier-2)~~

~~Network Performance~~
~~Trunk Blocking – NI-1 (Tier-1/Tier-2)~~

~~Performance Measurements Subject to Per Measure Payments~~

~~Gateway Availability~~
~~Availability of IMA – IMA GUI – GA-1 (Tier-2)~~
~~Gateway Availability – IMA-EDI – GA-2 (Tier-2)~~
~~Gateway Availability – EB-TA – GA-3 (Tier-2)~~
~~Gateway Availability – EXACT – GA-4 (Tier-2)~~
~~Gateway Availability – GUI-Repair – GA-6 (Tier-2)~~

~~Ordering & Provisioning~~
~~Calls Answered within Twenty Seconds – OP-2 (Tier-2)~~

~~Maintenance & Repair~~
~~Calls Answered within Twenty Seconds – MR-2 (Tier-2)~~

IN THE MATTER OF QWEST CORPORATION'S SECTION 271 APPLICATION

ACC Docket No. T-00000A-97-0238

STAFF'S FINAL REPORT ON

QWEST'S PERFORMANCE ASSURANCE PLAN

December 14, 2001

DECISION NO. 64888

I. FINDINGS OF FACT

A. INTRODUCTION

1. The Telecommunications Act of 1996 ("1996 Act") provided a method by which Regional Bell Operating Companies may receive Section 271 approval and enter the interLATA long distance market. The 1996 Act conditions such approval on the opening of local markets to competition. The Federal Communications Commission ("FCC") has emphasized the importance of four key components of any Section 271 filing: 1) open participation of all interested parties, 2) independent third party testing of operation support systems ("OSS"), 3) design of performance measurements and standards, and 4) adoption of performance assurance measures which create a financial incentive for post-entry Section 271 compliance.[1] Qwest's Performance Assurance Plan ("PAP") addresses the fourth component of the Section 271 process.

2. The development of a PAP is a serious undertaking. Any incumbent local service carrier has a clear economic incentive to stave off competition.[2] Due to this fact, the FCC encourages the monitoring of a Bell Operating Company's ("BOCs") wholesale performance through the development of a post-entry wholesale performance assurance plan.[3]

3. This Staff Report provides an overview of the PAP process for Qwest Corporation ("Qwest") [4] in Arizona, the positions of Workshop participants, resolutions reached between the parties, a summary of impasse issues including the parties' positions on each, and Staff's impasse resolution proposals.

B. PROCEDURAL HISTORY

4. A total of seven workshops on the Arizona PAP were held in 2000 and 2001. Issues relating to the PAP were discussed and presented at each workshop. All interested parties were invited to participate.

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[1] Application of 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, Memorandum Opinion and Order, CC Docket 99-295, at para 8 (December 22, 1999) (Bell Atlantic New York Order).

[2] See Richard A. Epstein, *A Clear View of The Cathedral: The Dominance of Property Rules*, 106 YALE L.J. 2091, 2119 (1997) ("the blockade position of the local monopolists is such that they would have every incentive to guard access to their networks against would–be competitors").

[3] Bell Atlantic New York Order at paras 429-30; Application of Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Communications Act to Provide Inter-LATA Service in the State of Texas, Memorandum Opinion and Order, CC Docket No. 00-65 at para 420 (2000) (hereinafter, "SBC Texas Order").

[4] For simplicity purposes, this Staff Report's references to "Qwest" shall mean "Qwest and its assignees or successors."

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5. On July 13, 2000, the first Workshop on the PAP took place at the Commission's offices in Phoenix. The Arizona Corporation Commission ("ACC") Staff, Commission consultants - Doherty & Company ("DCI"), and Qwest were present at the Workshop. The following CLECs were in attendance: Alltel, GST, WorldCom, Z-Tel, SBC Telecom, Southwestern Bell Telecom, Eschelon Telecom, Inc., Electric Lightwave, Inc., Cox Arizona Telecom, Inc., and e·spire Communications. The Residential Utility Consumer Office ("RUCO") was also present.

6. On July 25 and 26, 2000, the second Workshop on the PAP took place at the Commission's offices in Phoenix. The ACC Staff, DCI, and Qwest were present at the Workshop. The following CLECs were in attendance: WorldCom, Z-Tel, Eschelon Telecom, Inc., Electric Lightwave, Inc., and Alltel. WorldCom, Z-~~Tel, and~~ Eschelon Telecom, Inc. were present telephonically. RUCO was also present.

7. On August 22 and 23, 2000, the third Workshop on the PAP took place at the Commission's offices in Phoenix. The ACC Staff, DCI, and Qwest were present at the Workshop. The following CLECs were in attendance: WorldCom, Z-Tel, Eschelon Telecom, Inc., Electric Lightwave, Inc., SBC Telecom, Southwestern Bell Telecom, Pac-Tel, and Alltel. Pac-Tel and Eschelon Telecom, Inc. were present telephonically. RUCO was also present. Kelley Drye & Warren LLP were present telephonically.

8. On October 17 and 18, 2000, the fourth Workshop on the PAP took place at Owest's office at 5090 North 40th Street in Phoenix. The ACC Staff, DCI, and Qwest were present at the Workshop. The following CLECs were in attendance: WorldCom, Z-Tel, and SBC Telecom. Cox Arizona Telecom, Inc. ("Cox") and e·spire Communications ("e-spire") were present telephonically for the first day of the workshop.

9. On December 18 and 19, 2000, the fifth Workshop on the PAP took place at the Commission's offices in Phoenix. The ACC Staff, DCI, and Qwest were present at the Workshop. The following CLECs were in attendance: WorldCom, Z-Tel, SBC Telecom, and Covad. RUCO was also present.

10. On February 5 and 6, 2001, the sixth Workshop on the PAP took place at Hewlett Packard's ("HP") offices in Phoenix. The ACC Staff, DCI, and Qwest Corporation ("Qwest") were present at the Workshop. The following CLECs were in attendance: WorldCom, Z-Tel, SBC Telecom, and Sprint Communications Company ("Sprint"). The U.S. Department of Justice ("DOJ") was also present.

11. On April 2 and 3, 2001, the seventh and final Workshop on the PAP took place at HP's offices in Phoenix. The ACC Staff, DCI, and Qwest were present at the Workshop. The following CLECs were in attendance: WorldCom, Z-Tel, and SBC Telecom. Cox participated telephonically.

C. FCC PUBLIC INTEREST ANALYSIS

12. There is no express requirement in Section 271 that a BOC be subject to a Performance Assurance Plan. The FCC does not require such plans and therefore the FCC does not impose requirements for its structure if a State adopts one. Nonetheless, it is a critical consideration in assuring that the local market will remain open after Qwest receives section 271 authorization. The existence of a satisfactory performance monitoring and enforcement mechanism is probative evidence that the BOC will continue to meet its section 271 obligations after a grant of such authority.

13. The FCC has offered the following basic PAP components as guidelines: (1) penalties linked to effective performance measures that can be expanded as necessary; (2) a clear and detailed enforcement structure that mainly relies on self-executing penalties; and (3) a process for validating and auditing the performance results.[5] There is no single PAP which all states must institute.[6] Therefore, each state has at its discretion the crafting of a suitable PAP.[7]

D. POSITION OF QWEST

14. In September, 2000 Qwest submitted a modified PAP which was patterned after the PAP submitted by Southwestern Bell for the State of Texas and approved by the FCC. At the time Qwest stated that it believed that the Commission, CLECs and the Company could avoid unnecessary controversy and depletion of resources in attempting to create a PAP from scratch.

15. The modified Qwest PAP adopted virtually the same payment structure and key statistical and payment schedules as the Southwestern Bell Texas PAP. The Qwest PAP requires specified levels of wholesale performance as determined by the performance measures (Performance Indicator Definitions "PIDs") and assesses financial liability for failure to meet the standards.

16. The modified Qwest PAP included key measurements agreed to in the Arizona Workshops and the Regional Oversight Committee ("ROC") workshops. In its revised PAP, Qwest included thirty-one of the fifty-one ROC Arizona PIDs. Of the twenty not included, Qwest stated that fourteen were diagnostic or parity by design. Qwest stated that as such, they are not appropriate for inclusion in a PAP. Qwest stated that the remaining six measurements were not included because they were not requested by the CLECs in the Arizona 271 workshops or because they were duplicative of other measurements included in the Qwest PAP. Qwest further stated that it had previously responded to the CLECs expressed concerns over the number of sub-measurements by agreeing at the last workshop to add 94 additional sub-measurements. With this filing, Qwest is increasing the number of sub-measurements included in the PAP to 471.

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[5] See Bell Atlantic New York Order at paras 437-444.

[6] Compare, e.g., Bell Atlantic New York Order at paras 431-443 with SBC Texas Order at paras 422-30.

[7] See SBC Texas Order at para. 423 (reviewing under a "zone of reasonableness" standard).

17. Qwest further stated that its revised PAP contained a two-tiered, escalating and self-executing remedy structure. Similar to the Texas plan, the measurements are designated as Tier I, Tier II or both Tier I and Tier II. Tier I payments to CLECs are triggered immediately the first month that Qwest fails to meet a measurement standard and escalate according to the degree to which the parity or benchmark standard for a particular measurement is missed, the duration of non-conforming performance and the weight assigned to the particular measurements. Qwest stated that under its revised Plan, dollar amounts are assigned to Tier I measurement to be paid on a per occurrence basis, or in a few instances on a per measurement basis. The dollar amounts increase with the designation from "low" to "medium" to "high". For the vast majority of Tier I measurements, the assigned dollar amount is multiplied by the number of occurrences needed to bring the measurement result to parity or the agreed to benchmark. Thus, CLEC payments escalate the further away the Qwest performance is from the designated measurement standard. Finally, the payment amount increases each of the first 6 months for which the results are non-conforming.

18. Qwest's revised PAP also includes Tier II remedies payable to a State Fund. Tier II payments are triggered automatically after three consecutive months of non-conforming service results. Dollar amounts are assigned to Tier II measurements on a per occurrence or per measurement basis. The dollar amounts increase with the designation from "low" to "medium" to "high". For the vast majority of Tier II measurements, Qwest stated that the amount of payment increased the further performance is from the designated measurement standard.

19. The parity standard is used when there is a retail analog. The parity standard is met when the service Qwest provides to CLECs is equivalent to that which it provides to its retail customers.[8] Qwest proposed a statistical test, namely the modified "Z-test", for evaluating the difference between two means (i.e., Qwest and CLEC service or repair intervals) or two percentages (e.g., Qwest and CLEC proportions), to determine whether a parity condition exists between the results for Qwest and the CLECs. Qwest stated that the modified "Z-test" would be applicable if the number of data points are 30 or more. For testing measurements for which the number of data points are 30 or less, Qwest proposed using a permutation test to determine the statistical significance of the difference between Qwest and the CLEC. Qwest would be in conformance when the monthly performance results for parity and benchmark measurements are such that the calculated Z test statistics are not greater than the Critical Z-values. Certain measures have no retail analog to make parity comparisons with. These measures have been assigned benchmarks and are evaluated on a stare and compare basis.

20. Qwest's revised PAP puts at risk 36% of the Company's "net revenues" derived from the local exchange services.

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[8] For performance measurements that have no Qwest retail analogue, agreed upon benchmarks are used. Because variation may occur around the benchmark, a statistical test is used to determine whether the variation is within a statistical range.

21. Qwest stated that its revised PAP incorporates performance measurements that will ensure Qwest's service performance to competitors can be measured and monitored so that any degradation of the agreed upon level of service is detected and corrected.

22. Qwest also stated that the performance measurements incorporated into the Qwest PAP are broad based enough to cover all the modes of entry, resale, interconnection and the purchase of unbundled network elements.

E. POSITION OF THE CLECS

23. Z-Tel originally proposed a competing PAP, called the Zone Parity approach. The Zone Parity approach is a non-statistical plan which Z-Tel claimed was easy to understand and implement and its results were easy to interpret.

24. Z-Tel identified the following objectives for any PAP: 1) the PAP should ensure that the quality of services provided to the CLECs by the ILEC is "just, reasonable, and nondiscriminatory" and "...at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party..."; 2) the measurement procedures of the PAP should be easy to understand, calculate and interpret and should minimize administrative cost; 3) the plan should be competition- or customer-focused and promote reasonable expectations about the quality of service the ILEC will provide CLECs; 4) the measurement procedures should be credible, and based on accurate and reliable data; and 5) the plan should be broadly consistent with the plentitude of underlying principles offered by the various participants and State and Federal regulatory agencies.

25. Z-Tel claimed that its Zone Parity proposal was superior to other PAPs because it did not rely on statistical approaches to performance measurement. Statistical procedures, while routine and comprehensible to statisticians, are inordinately complex for the statistical layperson. In addition, Z-Tel states that as long as the ILEC is providing the same level of service quality to itself and the CLECs, performance is deemed adequate under the statistical approach. However, statistically identical service may be neither "just" or "reasonable". According to Z-Tel if the ILEC's service quality is reduced, the statistical approach will not detect it as long as everyone receives the same poor service.

26. Z-Tel argued, therefore that its approach was superior because of the inability of the statistical approach to capture absolute performance. This is a serious shortcoming because CLECs are harmed relatively more than ILECs for a given "parity" reduction in the quality of service. The CLEC business plan relies on convincing customers to switch from the services of the ILEC to those of the CLEC.

27. Benchmarks, according to Z-Tel, do not suffer from this flaw. By setting an absolute level of quality, the ILEC is unable to increase the costs of switching with a "parity' reduction in quality. Z-Tel claimed that its Zone Parity benchmarks, because

they are based on actual performance data, consider both the relative and absolute quality dimensions of performance.

28. SBC also proposed a PAP that was almost identical to the Texas plan.

29. On September 25, 2000, WorldCom, Eschelon Telecom ("Eschelon") and Electric Lightwave filed a separate joint proposed PAP ("Joint CLEC PAP"). The Joint CLEC PAP which also proposed the use of "zone benchmarks" in the application of performance measurements. The zone benchmark standards would be gradually raised over time.

F. QWEST'S RESPONSE

30. Qwest opposed the Zone Parity approach and the Joint CLEC PAP which was also based upon the use of zone benchmarks. Qwest claimed 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. Qwest stated that 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. Qwest argued that the Joint CLECs' zone proposal would result in a level of payment that would not relate to the level of discriminatory conduct.

31. Qwest also argued that the Joint CLEC proposal did not provide the concrete details regarding their zone proposal, specifically the zone benchmarks for each performance sub-measurement.

32. Qwest also claimed that the Joint CLEC zone proposal added unnecessary complexity and was not necessary to discourage discrimination.

33. Qwest claimed that 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 customer, and 5) the number of customers indirectly affected by an act of discrimination.

34. With regard to the SBC Plan, Qwest commented that Qwest had already adopted the key plan structure, statistical methods, and payment tables from the Texas plan for the Qwest PAP. Therefore, Qwest stated that Qwest's and SBC's proposals have many common elements and are generally similar. However, Qwest noted that SBC would have the Commission adopt the Texas performance measurements. Qwest stated that it strenuously opposes the adoption of new performance measurements. Qwest states that SBC would have the Commission throw out the entirety of the PIDs developed in the

Arizona performance workshops and substitute the Texas performance measurements. In this regard, Qwest stated that the SBC proposal is unreasonable.

G. SUMMARY OF QWEST'S PROPOSED PAP[9]

35. The parties involved in this proceeding agreed at the fifth PAP Workshop to use the PAP approved by the FCC in SBC Telecom, Inc.'s 271 application in Texas as a foundation.[10] Qwest's proposed Performance Assurance Plan ("PAP"), which is based on the SBC Texas plan, is summarized below. Throughout the workshop process, Qwest has revised and modified its proposed PAP. In this summary, Staff will describe the PAP using Qwest's most recently submitted proposal filed on July 6, 2001.

Performance Measurements

36. Under Qwest's proposed plan, Qwest's wholesale performance will be evaluated on twenty-two separate performance measures. Each of these measures is divided into several sub-measures to account for differences in product types and/or geography. The pass/fail criteria on some performance measures is whether Qwest's wholesale performance is at parity with its retail performance. For measures which do not have a "retail analog", benchmarks have been established as pass/fail criteria. The development of the performance measures is discussed below in Section H.

37. Penalty payments under Qwest's proposed PAP are divided into two categories or "tiers". The performance measurements which are evaluated in the PAP are placed in either or both of these tiers. Tier I payments are made by Qwest to individual CLECs if a performance measure in this category is missed. Data is reviewed at the individual CLEC level in order to assess Tier I payments. Tier II payments are based on aggregate CLEC results. If a measure is missed at an aggregate CLEC level for three consecutive months, then Qwest would make a Tier II payment. Tier II funds do not go to individual CLEC s. There are differing ideas as to the destination of Tier II payments. These ideas are discussed in Section I, DISPUTED ISSUE NO. 12.

38. Some measures are categorized as only Tier I. Many measurements are categorized as Tier I and Tier II. This indicates that Qwest will be measured for its performance at an individual CLEC basis and at an aggregate level. For these measures, a Qwest failure at meeting both of these standards could result in two types of payments.

39. Each of the evaluated performance measures are given different weights: High, Medium, or Low. These weights indicate the relative importance of the measure in ensuring competitive local services in Arizona. Initially, Qwest utilized the weighting in the Texas PAP and made changes based on comments or concerns raised in the Arizona proceeding. The level of payment that Qwest provides depends on the weight given to

[9] In the initial Staff Report docketed on October 29, 2001, Section G was mislabeled "Resolved Issues." Relabeling Section G should resolve many of WorldCom's issues regarding the initial Staff report paragraphs 38 through 45.

[10] See transcript for PAP Workshop 5 held on December 18, 2000, Volume I pages 119 – 122.

the performance measure. Qwest will be required to pay a greater penalty on missed measures with a High weighting than for Medium or Low. The Medium weighting would then receive the next highest level of payment, with Low weighting receiving the lowest level.

40. Penalty payments are determined in one of two ways: per occurrence or per measurement. Per occurrence payments are calculated using a set dollar payment and multiplying it by the number of occurrences of failure. Per measurement payments are calculated using a set payment level for a measurement at a particular weighting level. Table 3 in this report presents the payment levels associated with these two methods of payment. The payment levels for both of these methods increase as the number of consecutive failures increase.

41. There are two types of standards used in determining whether Qwest failed or passed a performance measurement. The first type of standard is called "parity". If a Qwest performance measure has a parity standard, then Qwest must provide wholesale service that is at the same level (statistically) as Qwest's retail service. The second type of standard is called a "benchmark." Benchmark standards are used for performance measures for which there is no retail equivalent. Benchmarks give a certain standard (e.g., 95% of firm order commitments in less than 20 minutes, etc.) which Qwest must meet in order to pass a performance measure with a benchmark.

42. Some performance measurements have a "diagnostic" standard rather than a parity or benchmark standard. Data is gathered on Qwest's performance on diagnostic measurements. However, Qwest is not penalized based on this performance. Data gathered on these diagnostic measures will be reviewed at a later date to determine whether these measures should be given parity or benchmark standards, making Qwest liable for penalties for failures on these measurements. Currently, there are on-going discussions about converting certain diagnostic measures to benchmark or parity measures.

43. The performance measurements to be evaluated are attached in Appendix A. This attachment gives definitions, standards, weighting, and other details of each measure.

Statistical Analysis

44. In order to determine whether Qwest meets a parity standard, statistical analysis will be used. For a given measure, this analysis compares the mean of wholesale observed data to the mean of observed retail data to determine whether a failure to meet a standard can be deemed statistically insignificant or significant. If the difference in means is determined to be statistically significant, the percent difference between the two means is used to calculate the number of occurrences that are eligible for payments.

45. Measures with benchmarks are evaluated on a "stare and compare" basis with no statistical analysis. For example, performance measure PO-5a requires that firm

order confirmations on certain orders be delivered within 20 minutes 95% of the time. If the data indicate that Qwest has met or exceeded the 95% benchmark, then Qwest makes no payments. If the data indicate that Qwest is below the benchmark, then Qwest will be liable for penalty payments. The number of occurrences that are eligible for payments will be based on the difference between the actual performance and the benchmark.

Other Aspects of PAP

46. Qwest's PAP contains a section regarding the limitations of the plan. This section details how the plan may and may not be used. Qwest also highlights how PAP data will be reported. Qwest mentions that the PAP will be reviewed every six months in order to make changes or modifications to the plan. This review will determine if performance measurements need to be changed, added, or deleted. It will also review the weighting of measures, measurement standards, and payment levels.

H. ISSUES RESOLVED BETWEEN THE PARTIES

47. The parties involved in this proceeding agreed at the fifth Arizona PAP Workshop to use the PAP approved by the FCC in SBC Telecom, Inc.'s 271 application in Texas as a foundation. The Texas PAP contained a provision for six-month reviews of the PAP after it is approved. Parties to the Arizona proceeding agreed to this provision as well. Starting from the Texas PAP, several disputed issues were identified. The parties were able to resolve many of these issues without direct Staff intervention. These resolved issues are discussed and summarized below.

Performance Measurements

48. Prior to the start of the PAP Workshop process, the Arizona Test Advisory Group (TAG) developed its own performance measurements (known as Performance Indicator Definitions or PIDs) for use in the Arizona OSS test.[11] The TAG is made up of Qwest and numerous CLECs, principally WorldCom and AT&T. The Arizona TAG also reviewed the performance measurements adopted in New York and Texas in their development of the Arizona PID. Therefore, the parties to the Arizona PAP Workshops agreed to begin with these measurements rather than the measurements created in the Texas PAP. Additional PIDs may be created or current PIDs modified as requested by parties through the Arizona TAG.

Texas Six-Month PAP Review

49. The Texas PAP called for a review of the PAP after it had been in operation for six months. The first six-month review resulted in many modifications to the Texas PAP. Qwest has agreed to adopt the changes made to the Texas PAP in its first six-month review, with one exception. The exception is that Qwest did not agree to perform root cause analysis after missing a measure for two consecutive months. This

[11] See Appendix A: AZ 271 Working PID

issue will be further discussed in Section I under the title "Disputed Issues and Resolution."

Additional PIDs (PAP-1)[12]

50. In the ROC PAP process,[13] three additional PIDs were agreed to by the participating parties: GA-3 ("Gateway Availability – EB-TA"), GA-4 ("System Availability – EXACT"), and GA-6 ("Gateway Availability – GUI Repair"). Qwest proposed that these be included if they were only classified as Tier II measures. Violation of Tier II measures would result in penalty payments, but not to CLECs. Qwest made this same proposal in the Arizona proceeding. WorldCom agreed to this proposal.

51. CLECs proposed that PID MR-6 ("Mean Time to Restore") be included in the PAP. Qwest and the CLECs came to the following agreement: 1) include MR-3a, MR-3b, MR-3c (MR-3 measures "Out of Service Cleared Within 24 Hours"), MR-6a, MR-6b, and MR-6c for non-designed services; and 2) include MR-3d, MR-3e, MR-5a, and MR-5b (MR-5 measures "All Troubles Cleared Within 4 Hours") for design services. Non-designed services are services which are standard and for which Qwest currently has facilities. Designed services are services for which Qwest must design new facilities in order to provision the service.

52. All parties agreed to include OP-4 ("Installation Interval") and OP-6 ("Delayed Days") as a set of five "families": OP-4a/OP-6-1, OP-4b/OP-6-2, etc. For example, OP-4a and OP-6-1 would both be in the PAP. However, if both measures are missed, Qwest would only make one penalty payment. The penalty payment would be made on the measurement with the highest payment. All parties agreed that OP-3 ("Installation Commitments Met") would stand alone, and not be included in the above "family" concept. However, OP-3 would be included as three families: OP-3a/3b, OP-3c, and OP-3d/e.

Cap Rolling Forward (PAP-6a)

53. Parties agreed that if monthly caps are imposed on the total amount Qwest will pay, then the unused balance would move forward into the subsequent months. Therefore, the cap balance will move forward on a monthly basis until the end of the year.

I. DISPUTED ISSUES AND RESOLUTION

54. Below is a summary of the positions of the parties on the PAP issues that were at impasse at the end of the workshop on April 2-3, 2001. At the last Workshop a

[12] PAP-# refers to the issue number from the original PAP issues log.

[13] The ROC PAP process refers to the Regional Oversight Committee's series of workshops on a PAP. Twelve of the 14 states in Qwest's territory participated in the ROC PAP process (Arizona and Colorado being the exceptions).

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briefing schedule was established for the parties to provide their positions on each of these issues. The parties filed Comments on these issues on April 5, 2001; Opening Briefs on May 10, 2001; and Reply Briefs on May 24, 2001. WorldCom was the only CLEC to file comments on April 5, 2001. WorldCom and Z-Tel jointly filed an opening brief on May 10, 2001. WorldCom was the only CLEC to file a reply brief on May 24, 2001.

55. After the Arizona Workshop process was complete, Qwest made several changes to its proposed PAP during the ROC Workshop process. Qwest discussed these changes in its reply briefs and generally offered to include them in the Arizona PAP. To allow the CLECs to comment on Qwest's latest proposal and to allow Qwest to clarify its proposal, another comment cycle was initiated. On July 6, 2001, Qwest filed its proposed Arizona PAP changes based on changes made in the ROC. CLECs responded to these changes on July 26, 2001. Staff filed its Proposed Staff Report on Qwest's Performance Assurance Plan ("Proposed Report" or "Initial Report") on October 29, 2001. Worldcom and Qwest filed comments on the Proposed report on November 8, 2001 and November 9, 2001 respectively. A summary of the parties' positions on each issue is included. Staff follows with its analysis and recommendation on each of the issues.

DISPUTED ISSUE NO. 1: Additional PIDs (PAP-1)

56. There are two main categories for this impasse issue: 1) PIDs PO-6 and PO-7 and 2) PIDs PO-8 and PO-9. Therefore, this section will divide the background, comments, and Staff's resolution in accordance with each of these main categories.

57. PO-6 measures "Work Completion Notification Timeliness." Its purpose is to evaluate the timeliness with which Qwest issues electronic notification to CLECs that provisioning work on an order has been completed and that service is available to the customer.

58. PO-7 measures "Billing Completion Notification Timeliness." Its purpose is to evaluate the timeliness with which electronic billing completion notifications are transmitted to CLECs. This measure focuses on the percentage of orders for which notifications are transmitted (for CLECs) or posted in the billing system (for Qwest retail) within five business days.

59. PO-8 measures the "Jeopardy Notice Interval." Its purpose is to evaluate the timeliness of jeopardy notifications, focusing on how far in advance of original due dates jeopardy notifications are provided to CLECs (regardless of whether the due date was actually missed).

60. PO-9 measures "Timely Jeopardy Notices." Its purpose is to measure the extent to which Qwest notifies customers in advance of jeopardized due dates when original due dates are missed.

a. Summary of Qwest and CLEC Positions[14]

1. PO-6 and PO-7

61. WorldCom and Z-Tel want PO-6 and PO-7 included in the PAP as individual measures. If this is not possible, they suggest including whichever measure will result in higher payments to CLECs. Qwest advocates including PO-6 and PO-7 as a "family." The "family" concept signifies that PO-6 and PO-7 would share a payment opportunity. If Qwest fails to meet the standards for PO-6 or PO-7, Qwest makes one payment. If Qwest fails to meet the standards for both PO-6 and PO-7, then Qwest still only makes one payment.

62. In its Comments filed on April 5, 2001, and its opening brief, Qwest states that including PO-6 or PO-7, but not both, is justified because the PAP provides the CLECs with ample payment opportunities. These payment opportunities exceed the annual profit the CLECs or Qwest receive from business customers.

63. In their comments filed on April 5, 2001, WorldCom, and both WorldCom and Z-Tel in their joint brief state that PO-6 and PO-7 measure different things. The work completion notice is needed so that CLECs know as soon as possible that Qwest has completed the installation. This allows the CLECs to inform their customers about order status. The billing completion notice informs the CLECs of the day that Qwest will stop billing the customer and the date that the CLEC can begin billing the customer. Late or missing billing completion notices can result in customers being double billed. The TAG needs to develop an appropriately defined standard for PO-6.

64. WorldCom states that the Texas PAP does include a measure similar to PO-6. WorldCom would accept including either PO-6 or PO-7 based on which would result in higher payments to the CLECs.

65. In its modifications to the PAP to reflect agreements reached in the ROC process, Qwest has agreed to treat PO-6 and PO-7 as a family in the ROC and makes the same offer here in Arizona. Qwest filed comments on this issue in its filing on the ROC proceeding. Qwest states that in the ROC CLECs agreed to include PO-6 and PO-7 as a "family." PO-6a and PO-7a, PO-6b and PO-7b, and PO-6c and PO-7c would become three "families." Each family is composed of two sub-measures. If Qwest misses both sub-measures in a family, then Qwest would pay a penalty on whichever sub-measure would result in a higher payment.

2. PO-8 and PO-9

66. WorldCom wants PO-8 and PO-9 included as individual measures. Qwest advocates including PO-8 and PO-9 as a "family."

[14] Throughout this report the sections labeled "a. Summary of Qwest and CLEC Positions" contain only a summary of the parties positions, these sections do not represent Staff's position.

67. Qwest states that including PO-8 and PO-9 could make Qwest liable for two payments on one late Jeopardy Notice. Qwest proposes that PO-8 and PO-9 should be included as a "family."

68. WorldCom and Z-Tel state that PO-8 and PO-9 measure different aspects of the process. PO-9 measures the quality of the process while PO-8 measures the timeliness of the process. In its Reply Brief, WorldCom also argued that since PO-8 and PO-9 measure different aspects of the process, WorldCom encourages the Commission to include both measures in the PAP.

69. In the ROC, Qwest agreed to include both PO-8 and PO-9 individually and makes that same offer here in Arizona.

70. WorldCom discusses this issue in its comments on the ROC proceeding. WorldCom agrees that Qwest's ROC proposal, which it is submitting in Arizona, does resolve WorldCom's concerns that both PO-8 and PO-9 be included.

b. Discussion and Staff Recommendation

1. PO-6 and PO-7

71. In Staff's Proposed Findings of Fact and Conclusions of Law, Staff believed that this issue was resolved. Staff agreed that PO-6 and PO-7 should be included as a "family".

72. Comments submitted in response to Staff's initial report did not address this issue. Staff continues to support its prior recommendation.

2. PO-8 and PO-9

73. In Staff's Proposed Findings of Fact and Conclusions of Law, Staff believed that this issue was resolved. Staff agreed that PO-8 and PO-9 should both be included in the PAP. Qwest will be liable for penalties if either measurement standard is missed. If both standards are missed, then Qwest should make payments for each of these measures.

74. Comments submitted in response to Staff's initial report did not address this issue. Staff continues to support its prior recommendation.

DISPUTED ISSUE NO. 2: Change Management (PAP – 2)

75. Changes to Qwest's OSS systems will affect CLECs who depend on those systems. In order to best manage Qwest's changes to its systems, and minimize the negative consequences for CLECs, several change management measures (PIDs) have been suggested.

a. **Summary of Qwest and CLEC Positions**

76. Qwest stated that it has proposed PO-16 ("Timely Change Management Notifications") and GA-7 ("Timely Outage Resolution Following Software Releases") as diagnostic change management measures for its PAP. Qwest states that these measures should be considered for PAP inclusion during the first six-month PAP review. Qwest states that no additional measures are necessary, but new measures may be considered at the six-month PAP review.

77. WorldCom filed comments on this issue on April 5, 2001 and WorldCom and Z-Tel jointly filed an opening brief on this issue. These parties indicate that Qwest has proposed two change management measures: PO-16 and GA-7. WorldCom and Z-Tel state that an additional change management measure for software validation (PO-6 in New York) should be developed. This software validation measure would measure if the test deck[15] provided to CLECs by Qwest is an accurate reflection of real world scenarios. WorldCom and Z-Tel further recommend measures for the percent of missing confirmations and rejections as well as billing and provisioning completion notices. The BANY PAP[16] contains a measure titled: "Missing Notifier Trouble Tickets Cleared in Three Days." WorldCom and Z-Tel recommend that the same measure be adopted here, with a small change. The change desired would require that the measure be calculated until the trouble ticket is closed, not just cleared. A related measure on resubmission of orders should be adopted as well.

78. WorldCom and Z-Tel state that the BANY PAP is more inclusive of change management measures. The BANY PAP includes measures for the following issues: notification of system changes, software validation, change management timeliness, and the resolution of problems within Verizon's (formerly known as Bell Atlantic's) systems. These measures are subdivided into five categories: emergency, regulatory, industry standards, requests by Verizon, and CLEC requests. These measures and subdivisions include time lines and intervals. WorldCom and Z-Tel mention that this approach is more flexible and responsive.

79. Several features of any change management process are listed: 1) freeze time to enable CLECs to implement and test a proposed change, 2) time frame and explanation of effects of new changes, 3) backwards compatibility after installation for a specific time period, 4) CLEC feedback opportunity, 5) standards for stable test environment provided to CLECs, and 6) plan for reversing a change in the presence of significant problems.

[15] A "test deck" refers to a simulated OSS system that allows CLECs to "practice" interacting with Qwest's OSS and to determine whether their systems are functioning properly. The test deck is also referred to as the "test bed" and the "Stand Alone Testing Environment" or SATE.

[16] This refers to the Bell Atlantic New York (BANY) Performance Assurance Plan approved by the FCC.

80. WorldCom and Z-Tel state that the Qwest CICMP[17] process only provides CLECs the opportunity to suggest changes. Qwest is in charge of decision making and implementing the proposed changes. WorldCom and Z-Tel argue for greater visibility into Qwest's decision making process and an ability to resolve disputes if CLECs disagree with Qwest decisions regarding change management. WorldCom and Z-Tel would like to have access to a database in which all aspects of Qwest's change management processes are addressed.

81. WorldCom and Z-Tel discuss the recommendations made in the Colorado Draft Report[18] on change management. The Colorado Draft Report recommends that a group be created to maintain a website on change management issues, hold collaborative forums on change management, serve as a complaint contact, and participate in revising the PAP.

82. Qwest states in its reply brief that its two proposed change management measures were adopted in the Texas PAP. Qwest states that these are appropriate since it has similar processes as SBC. Qwest stands by its opening brief statements regarding PO-16 and GA-7. Qwest states that its CICMP process is compatible with the recommendations made by the Special Master in Colorado[19].

83. WorldCom states in its reply brief that the GA-7 change management measure proposed by Qwest should not be diagnostic. This should be a benchmark measure which requires 100% compliance by Qwest. WorldCom states that Qwest's proposed change management measurements (PO-16 and GA-7) are not enough. Two additional change management measures should be developed: "Software Validation" and RQ-3 ("Release Quality"). The Release Quality measure would address the number of software releases that require changes or retraction within 14 days of their implementation.

84. Change management is not included in the ROC agreed upon amendments subsequently submitted by Qwest.

b. <u>Discussion and Staff Recommendation</u>

85. Change management PIDs are an important part of maintaining the integrity of the PAP. In Staff's Proposed Findings of Fact and Conclusions of Law, Staff proposed that PO-16 and GA-7 be included in the PAP prior to the six-month review and prior to Qwest filing its 271 application with the FCC. Staff stated that both of these measures should be included as more than diagnostic measures (i.e., they should have benchmark standards and penalties imposed for non-conformance). The other two PIDs

[17] CICMP stands for Co-Provider Industry Change Management Process. This is an organization through which Qwest communicates with CLECs and solicits comments from the CLECs. The CICMP has been renamed the Change Management Process (CMP).
[18] Weiser, Phil. *Draft Report and Recommendation and Further Request For Comments*, 2001. This is a draft PAP developed by Phil Weiser (known as the "Special Master") for Qwest's Colorado 271 proceeding.
[19] Weiser, Phil. *Draft Report and Recommendation and Further Request For Comments*, 2001.

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suggested, "Software Validation" and RQ-3, should not be included in the PAP as a diagnostic measure at this time. At the six-month review, the Commission and interested parties can review the results of Qwest's performance in this area and determine at that time whether the development of both of these measures is necessary for inclusion in the PAP.

86. Qwest did submit comments on this issue in response to Staff's initial report. Qwest states that it will include PO-16 and GA-7 in the PAP once standards are adopted by the parties. Qwest states that these measurements will be classified as Tier II with a high ranking given to payments.

86. WorldCom also submitted comments on this issue in response to Staff's initial report. WorldCom agreed with Staff's recommendation that PO-16 and GA-7 be included in the PAP. WorldCom states that parties have now agreed to standards for both of these measures. The GA-7 standard is one miss for volumes between 1 and 20. For volumes greater than 20, a 95% benchmark will be used. WorldCom states that parties are in the process of creating a standard for PO-16. WorldCom states that the PO-16 standard should be included in the PAP once the standard is developed.

87. WorldCom states that Staff has not recommended payment levels for these change management measures. WorldCom recommends that Staff not agree to Qwest's proposal to classify these measures as Tier II with a high payment ranking. Instead, WorldCom proposes that Staff review and adopt the Colorado recommendations on these change management issues.

88. WorldCom also mentions that Qwest has developed a change management measure related to Qwest's SATE: PO-19 ("Stand-Alone Test Environment"). Parties have not developed a standard, but WorldCom recommends that this measure be included in the PAP.

89. Staff continues to recommend that PO-16 and GA-7 be included in the PAP prior to the six-month review. Staff agrees with the parties' proposed standards for GA-7. Since comments were filed on Staff's report, parties have agreed to a standard for PO-16. For volumes between one and ten, Qwest will be allowed one miss. For volumes greater than ten, the benchmark standard is 92.5%. Staff agrees with this standard for PO-16. Staff agrees with Qwest that these measures will be classified as Tier II with a high payment ranking. This payment classification can be modified as necessary in the six-month PAP review.

90. Staff agrees with WorldCom that the PO-19 SATE measurement be included in the PAP. Staff recommends that if parties develop a standard for this measurement prior to the effective date of the PAP, then parties' recommended standard should be adopted. If no standard is developed prior to the effective date of the PAP, then Staff recommends that PO-19 be diagnostic. This diagnostic standard can be reviewed at the six-month PAP review.

DISPUTED ISSUE NO. 3: Root Cause Analysis (PAP – 3)

91. One of the goals of the PAP is to ensure that when Qwest is non-compliant in an area, that the cause of this noncompliance is addressed. In this way, future improvement can be assured. Root cause analysis performed by Qwest would examine the root causes for Qwest's failures. Once this understanding is obtained, Qwest could make true improvements rather than merely treating symptoms of its poor performance.

1. Summary of Qwest and CLEC Positions

92. Qwest states in its opening brief that it will investigate consecutive two-month failures for measures at the Tier II level. Qwest will identify a solution based on its investigations as to the causes of a miss. Qwest states that due to low CLEC volumes in Arizona, root cause analysis at the Tier I level is unwarranted. Qwest also states that for this same reason, requiring root cause analysis for all measures missed for two consecutive months at a mean difference of at least 25% is unreasonable.

93. WorldCom and Z-Tel jointly filed an opening brief on this issue. The parties state that the Texas PAP was modified after the first six-month PAP review to include root cause analysis on an *aggregate basis for Tier I* after two consecutive months of failure on a performance measure. WorldCom and Z-Tel want Qwest to adopt this change in the Arizona PAP. WorldCom and Z-Tel state that when a measure is missed for three consecutive months, then a root cause analysis is warranted. Also, if a measure is missed for two consecutive months at a mean difference of at least 25%, then root cause analysis should also be performed. The Arizona Corporation Commission should have the ability to perform a root cause analysis at any time it deems necessary.

94. Qwest's reply brief states that it has provided its root cause analysis proposal in its opening brief.

95. WorldCom restates in its reply brief its position as outlined in its opening brief. It clarifies that the Commission should formally establish its right to initiate root cause analysis. WorldCom states that any root cause analysis findings should be posted to Qwest's website with the corresponding remedial action. A PAP audit process which includes root cause analysis could alleviate the need for extensive root cause analysis outside of an audit. This audit process should investigate the issue and ameliorate the problem.

96. In its proposed modifications reflecting agreements reached in the ROC, Qwest restates that it will investigate consecutive two-month failures for measures at the Tier II level.

97. WorldCom did not comment on this issue in its response to Qwest's ROC proposal.

b. **Discussion and Staff Recommendation**

98. In Staff's Proposed Findings of Fact and Conclusions of Law, Staff stated that root cause analysis is necessary. Qwest should perform root cause analysis on a CLEC aggregate basis for Tier I after two consecutive months of failure on a performance measure. Staff agreed with Qwest that it investigate consecutive two-month failures for measures at the Tier II level. If an individual CLEC requests root cause analysis, then it should be performed by Qwest. The dispute resolution process may be used if Qwest refuses a CLEC request for root cause analysis. Staff also stated that the Commission may request root cause analysis at any time that it deems necessary.

99. Qwest stated in its opening brief that due to low CLEC volumes in Arizona, root cause analysis at the Tier I level is unwarranted. However, CLECs are most vulnerable when entering a new market. This time is marked by low CLEC volumes. It is at this stage that root cause analysis can be most beneficial to CLECs.

100. Qwest's root cause analysis should identify the cause of the failure and its proposed solution. These results should be provided to the Commission and all CLECs.

101. Qwest did submit comments on this issue in response to Staff's initial report. Qwest agrees to supply root cause conclusions to all CLECs as long as confidential and proprietary information about Qwest or CLECs is not disclosed.

102. WorldCom also submitted comments on this issue in response to Staff's initial report. WorldCom agreed with Staff's initial recommendation. WorldCom also wanted Staff to specify how Qwest should provide root cause information to parties. WorldCom recommends that Qwest file root cause information in this proceeding, serves all parties with this information, and posts this information at a specified location.

103. RUCO submitted comments on this issue also in response to Staff's initial report. RUCO agrees with Staff's initial recommendation. However, RUCO clarifies that root cause analysis should be performed at the Tier I and Tier II levels.

104. Staff agrees with Qwest that it should not be required to disclose confidential or proprietary information in its submission of root cause analysis conclusions. Therefore, reports on root cause analysis should be issued in a redacted format when appropriate. In response to WorldCom's concerns, Staff does not believe that it needs to identify the methods by which Qwest will notify parties of root cause analysis conclusions. Staff leaves the dissemination of this information to Qwest's discretion. However, Staff emphasizes that the results of root cause analysis should be easily accessible to the CLECs. Qwest should include its proposed method for disseminating the results in its revised Arizona QPAP. In response to RUCO's concerns, Staff does believe that its root cause analysis proposal is sufficient to satisfy RUCO's concerns regarding Tier I and Tier II root cause analysis.

DISPUTED ISSUE NO. 4: K-Table (PAP – 4)

105. The K-Table corrects for the statistical error that allegedly exists in the PAP. When the PAP's individual CLEC monthly results are calculated, the K-Table is applied to them. The K-Table allows forgiveness for some of the penalties for which Qwest would have been liable.

a. Summary of Qwest and CLEC Positions

106. Qwest states in its April 5, 2001, comments that it does not support the balanced exclusion table as presented by Z-Tel.[20] Qwest also commented on the K-Table in its opening brief. A z-test is used to determine if differences in samples are statistically significant. The standard applied in Qwest's PAP (and more generally) is to provide 95% confidence that the observed results from the samples truly differ. In other words, it is a test at the 5% level of significance, which means that the z statistic is equal to 1.645.

107. This results in approximately 5% of a large number of observations appearing to be significantly different from a statistical perspective even though, in reality, they are not different at all. This is Type I error (falsely concluding that Qwest is not providing parity service). The greater the number of parity tests performed the greater becomes the probability of a Type I error. Qwest opposes making adjustments for Type II error (falsely concluding parity) because, outside of a controlled test environment, Type II error cannot properly be controlled without affecting Type I error. Type II error is unknown because determining it requires assumptions about the "true" difference in the population. If the true difference were known, there would be no need for statistical testing – the purpose of statistical testing is to estimate the difference that truly exists. It is possible to hold the probability of Type I error to 5% when conducting only one z-test. However, when multiple Z tests are conducted, Type I error increases. For example, if 10 tests each have a 5% chance of Type I error, then there is a combined probability of 40% that at least one test will be failed purely by random chance alone.

108. The K-Table was developed by Dr. Collin Mallows of AT&T[21] and by MCI/WorldCom[22]. The K-Table keeps the combined Type I error rate at 5% regardless of how many tests are run. Therefore, the K-Table *reduces*, but does not eliminate, the occurrences of false failures for which Qwest will be required to make payments to CLECs. The effect of the K-Table on payments will vary from CLEC to CLEC[23]. Qwest

[20] The balanced exclusion table was proposed by Z-Tel during the workshop process as an alternative to the K-table.

[21] Qwest Exhibit 17 (Testimony of Dr. Collin Mallows, AT&T, "In the Matter of Performance Measurements and Reporting Requirements for Operations Support Services, Interconnection, and Operator Services and Directory Assistance," FCC Docket No. 98-56, May 29, 1998).

[22] Qwest Exhibit 18 (MCI and WorldCom, "Local Service Non-Discrimination Compliance and Compliance Enforcement," Version 1.0, August 4, 1998).

[23] Note, Qwest's proposed K-Table applies to Tier I payments only. Tier II payments are not subject to any K-Table exclusions.

proposes to apply K-table exclusions in a systematic manner such that missed PIDs that are designated as "low" will be excluded first. This method would decrease the mitigating effect of the K-Table on payments. Qwest's K-Table is essentially the same as the one adopted in Texas, Kansas, and Oklahoma.

109. WorldCom filed comments on this issue on April 5, 2001. WorldCom and Z-Tel jointly filed an opening brief on this issue. WorldCom and Z-Tel state that the K-Table is conceptually flawed and allows for excessive forgiveness. WorldCom supports rejecting the K-Table in its entirety. However, if the Commission does not agree with rejecting the K-Table outright, WorldCom recommends the balanced exclusion table (submitted by Z-Tel in the February workshop), which accounts for both Type I and Type II error. If the Commission does decide to go with Qwest's K-Table WorldCom recommends that limits on sample sizes, z-score levels, or means differences should be considered. Also, repeated misses over more than one month should never be forgiven.

110. In the opening brief, WorldCom and Z-Tel state: "Statistical issues aside, a large means difference between Qwest and the CLECs will generate harm to the CLEC and gain to Qwest, regardless of whether or not the means difference was the result of Type I error or not." The Pennsylvania PUC has adopted a PAP with no K-Table forgiveness and the New Jersey PUC's staff has recommended a PAP with no K-Table. The New York Verizon plan had no K-Table and only limited forgiveness.

111. Qwest submitted comments on this issue in its reply brief. In the ROC Qwest has agreed to eliminate the K-Table in exchange for graduated z score critical values. Qwest is making the same offer here in Arizona. The ROC agreement eliminates the K-Table and specifies the following critical values to be used for statistical testing in the PAP:

Table 1: ROC Critical Value/Confidence Level Proposal

Sample Size	LIS Trunks, UDITs, Resale, Unbundled Loops – DS1 and DS3	All Other Parity Measurements
1-10	1.04 / 0.8508	1.645 / 0.95
11-150	1.645 / 0.95	1.645 / 0.95
151-300	2.0 / 0.97	2.0 / 0.97
301-600	2.7 / 0.9965	2.7 / 0.9965
601-3000	3.7 / 0.9999	3.7 / 0.9999
3001 and above	4.3 / 1	4.3 / 1

112. While the K-Table applied only to Tier I payments, Qwest proposes using the above graduated critical values for both Tier I and Tier II payments.

113. WorldCom submitted comments on this issue in its reply brief. Qwest has agreed to eliminate the K-Table in the ROC in exchange for graduated critical values. WorldCom will accept this compromise as long as all measures with sample sizes less than 10 have a critical value of 1.04.

114. In response, Qwest restated the agreement reached in the ROC on the K-Table. In the ROC proceeding, Qwest agreed to eliminate the K-Table in the PAP. In its place, Qwest and certain CLECs (that did not participate in the Arizona PAP process) agreed to the ROC critical value proposal in Table 1. It was also agreed that the 1.04 critical value would not be used in determining what constitutes a miss for consecutive months. The critical value of 1.645 (which provides a 95% level of confidence that the observed results from the samples truly differ) would be used instead. In instances where the performance measurements are disaggregated into two zones (i.e., regions), these zones would be combined in order to perform statistical tests.

115. WorldCom submitted additional comments in response to Qwest's filing on its ROC proposal. WorldCom does not support the proposal outlined by Qwest in its ROC filing. WorldCom would prefer critical values of 1.645 (which gives a 95% confidence level) for all sample sizes. WorldCom also states that it would be in favor of Qwest's ROC proposal if the critical value of 1.04 was extended to all services with sample sizes between one and ten. There is a high probability of committing a Type II error when sample sizes are small. WorldCom restates that Type I and Type II error should be balanced.

b. <u>Discussion and Staff Recommendation</u>

116. In Staff's Proposed Findings of Fact and Conclusions of Law, Staff did not agree with the inclusion of the K-Table. Therefore, Staff was more agreeable to the ROC proposal submitted by Qwest than the K-Table. However, Staff still disagreed with the critical values/confidence levels in the ROC proposal.

117. Information provided confidentially by Qwest indicated that Tier II payments are severely restricted under Qwest's ROC proposal even though Tier II payments were never subjected to K-Table forgiveness in the first place. (The initial K-Table proposed by Qwest did not apply to Tier II payments.) Under the new ROC proposal, Qwest's Table 1 would apply to both Tier I and Tier II payments. Staff proposed that the ROC proposal, as modified in Table 2, be used for Tier I payments. For Tier II payments, Staff proposed that Table 2 not apply (i.e., that a critical value of 1.645 be used in all instances).

Table 2: Staff Modified Critical Value/Confidence Level Proposal

Sample Size	LIS Trunks, UDITs, Resale, Unbundled Loops – DS1 and DS3	All Other Parity Measurements
1-10	1.04 / 0.8508	1.645 / 0.95
11-150	1.645 / 0.95	1.645 / 0.95
151-300	2.0 / 0.97	2.0 / 0.97
301-600	2.0 / 0.97	2.0 / 0.97
601-3000	2.0 / 0.97	2.0 / 0.97
3001 and above	2.0 / 0.97	2.0 / 0.97

118. Staff stated that critical values greater than 2.0 are inappropriate. Qwest had offered no explanation as to why such high critical values are appropriate from a statistical perspective. Staff stated that the critical values given in Table 1 essentially discriminate against CLECs which focus on selling high volumes of a particular service. Such CLECs would not receive the same protection as those that specialize in selling low volumes of many different services. Such discrimination is likely to be in Qwest's best interests, but not in the best interest of competitors nor consumers.

119. Qwest did submit comments on this issue in response to Staff's initial report. Qwest states that it offered its critical value proposal in order to replace the K-Table. Qwest only agreed to the K-Table elimination inasmuch as the critical value proposal was adopted by Staff in its entirety. Qwest states that Staff's proposed critical value table does not afford Qwest the same protection from penalties as did Qwest's own critical value proposal. Qwest recommends that Staff's proposed critical value table be rejected.

120. WorldCom also submitted comments on this issue in response to Staff's initial report. WorldCom agreed with Staff to the limit of a 2.0 z-score level for sample sizes of 151 and above. WorldCom states that Staff has not addressed its concern regarding the services covered with sample sizes between one and ten. The critical value table proposed by Staff only covers LIS Trunks, UDITs, Resale, and Unbundled Loops (DS1 and DS3). WorldCom asks that all services be covered by the 1.04 z-score in the sample sizes are between one and ten.

121. Neither Qwest nor WorldCom address the merits of Staff's proposed resolution in their comments in response to Staff's initial report. Therefore, Staff continues to recommend that its critical value proposal (Table 2) be adopted. Staff appreciates the effort of Qwest and other parties to come to an agreement on this difficult issue. However, Staff does not believe that the agreement among the parties would be in the public interest. Staff does not believe that the Arizona Commission is obligated in any way to adopt agreements from other jurisdictions without significant and critical review. For this reason, Staff could not agree to adopt the ROC critical value proposal. Staff does not agree with WorldCom's proposal that all services with volumes of less than ten be measured at a z-score of 1.04. Staff believes this change would unduly penalize Qwest. However, Staff reserves the right to review this issue at the six-month PAP review.

<u>DISPUTED ISSUE NO. 5: Penalty Cap (PAP-5)</u>

122. A cap on the total amount of payments to be made under the PAP has been used in numerous states. This cap has been an absolute cap on the total percentage of revenues of the local provider which can be paid under the PAP in one year. Below are the comments of the parties on a provision in the PAP which would impose a cap on total payments.

a. Summary of Qwest and CLEC Positions

123. Qwest states in its opening brief that its proposal of a cap of 36% of net local revenue provides sufficient incentive for Qwest to improve its wholesale service. Qwest states that 44% of net local revenue is overly onerous and not justified in Arizona. Qwest also states that its 271 approval would be in jeopardy if it were paying substantial remedies to CLECs and to the State of Arizona. This fact would provide additional incentive for Qwest to implement service improvements.

124. WorldCom and Z-Tel jointly filed an opening brief on this issue. WorldCom and Z-Tel believe that a procedural cap should be established, rather than an absolute cap. When the procedural cap is reached, a review of Qwest's performance would be conducted. The procedural cap should be set at 44% of Qwest's net local revenues. WorldCom and Z-Tel believe that by setting an absolute cap, the effectiveness of the PAP would be undermined. The per-occurrence and per measure caps in Qwest's PAP would also reduce the PAP's effectiveness. WorldCom and Z-Tel end by stating that no caps on the remedy payments to one CLEC should be established

125. Qwest states in its reply brief that the PAPs approved in Texas, Kansas, Oklahoma, and New York all have absolute penalty caps. Qwest states that 36% of net local revenue is significant and would induce Qwest to improve wholesale service quality. Qwest states that it agreed in the ROC to remove the per measure caps on PO-7 and NI-1. Qwest would agree to do the same in the Arizona proceeding.

126. WorldCom states in its reply brief that it continues to oppose an absolute penalty cap as stated in its opening brief.

127. Qwest agreed in the ROC to remove the per measurement penalty caps on the following PIDs: PO-1, PO-3, PO-7, and NI-1. Qwest would retain the per measurement penalty caps on BI-1, BI-3, and BI-4. Qwest offers this same proposal in the Arizona proceeding as a possible resolution to the penalty cap issue.

128. WorldCom responded to Qwest's ROC proposal. WorldCom agrees with Qwest's changes as cited in Qwest's ROC proposal. WorldCom agrees that these changes resolve this issue.

b. Discussion and Staff Recommendation

129. In Staff's Proposed Findings of Fact and Conclusions of Law, Staff stated that it is appropriate to place a cap of 36% of total Arizona net revenues per year. If this cap is deemed inadequate, then it can be changed at the PAP six-month review period. Staff clarified that Qwest's suggestion that depreciation rates in Arizona be used in calculating revenues is not appropriate. The cap should be 36% of net revenues as calculated in Qwest's ARMIS reports.

130. WorldCom did submit comments on this issue in response to Staff's initial report. WorldCom opposes any penalty caps.

131. RUCO did submit comments on this issue in response to Staff's initial report. RUCO references the Colorado PAP's ("CPAP") language on this issue. The CPAP sets an annual cap of $100 million. The CPAP also specifies certain exceptions to the cap (e.g., interest payments and late filing or reporting penalties). The CPAP penalty cap may be raised based on Qwest's performance.

132. Staff maintains its position of setting an annual cap of 36% of total Arizona net revenues per year. Staff believes that an annual cap is important in that it can alert parties of extraordinary payment amounts which may merit review of Qwest's §271 approval. However, setting the annual cap above 36% would be excessive at this time. The six-month PAP review would enable an adjustment of the annual cap if it was deemed necessary to ensure compliance.

DISPUTED ISSUED NO. 6: Minimum Per Occurrence Penalty (PAP – 6b)

133. In the PAP Workshops, discussion arose over having a minimum penalty amount applied to each occurrence of a failure. This minimum amount would be received by the CLECs as a Tier I payment. Qwest opposes minimum per occurrence penalties. The CLECs are in favor of minimum per occurrence penalties.

a. Summary of Qwest and CLEC Positions

134. Qwest supplied comments on this issue in its April 5, 2001, filing. Qwest states that the CLECs have not provided any factual support for their arguments supporting minimum payments. Originally Z-Tel had proposed a minimum penalty of $15,000, then $5,000, and now $2,500. Qwest stated that this draws into question what their previous minimum payment amounts represented.

135. Qwest filed an opening brief addressing this issue. Qwest states that the CLECs minimum payment proposal is unreasonable and unfair because it results in payments in excess of the actual harm to the CLECs. Arizona data demonstrate that, on average, 61 percent of the results on the sub-measurement level have fewer than ten data points. Given this level of dissagregation a large CLEC could have hundreds of orders in a given month, but those orders could be spread across a number of services and geographic zones, thereby giving the false appearance that the CLEC is small. This could lead to multiple minimum payments which is fundamentally unfair. Since Z-Tel changed their minimum penalty proposal from $15,000 to $5,000 and then to $2,500; Qwest states that their proposal must be arbitrary. Qwest contends that any minimum penalty will be arbitrary since actual CLEC harm is fact specific.

136. Qwest proposed a provision that applies minimum penalties to nascent services in its November filing, (see Section 10 of Qwest's PAP Low Volume, Developing Markets). Section 10 provides that when the aggregate monthly volume for a

qualifying performance measurement for CLECs participating in the PAP is between 10 and 100 and Qwest misses the standard for the qualifying sub-measurement, Qwest will make a Tier I payment to participating CLECs. The Qwest payment will be calculated on a CLEC aggregate volume for the measurement and apportioned to the affected CLECs based upon their relative share of the service misses. The payment calculation will be subject to a $5,000 minimum. There will be no K-table exclusions for these measures but they will count in calculating the K values. This is similar to a provision in the Texas plan, however in Texas payments in the nascent services part of the plan go to the state (i.e., they are Tier II payments) not the CLECs.

137. WorldCom filed comments on April 5, 2001, addressing this issue. They state that small order counts will never produce much in the way of penalty payments. However, discrimination against CLECs with small order counts may be a potent impediment to competition. WorldCom proposes a minimum penalty level of $2,500. Also, duration and severity factors should be applied.

138. WorldCom and Z-Tel jointly filed an opening brief on this issue. The above statement is reiterated. For example, a CLEC having problems with its first 100 loops would likely not roll out a plan to purchase 10,000 loops. The per occurrence payments Qwest would have to make would be very small relative to what they plan to gain by slowing the CLECs ramp up plans. Qwest may pay penalties on each of the 100 loop orders and still make a profit due to the monthly collocation charge which CLECs must pay whether loops are connected or not.

139. Qwest filed a reply brief on this issue stating that the CLECs' example of problems with ordering an initial 100 loops leading to cancellation of plans to market 10,000 loops is purely hypothetical speculation. The specter of hypothetical, unspecified harm to CLEC marketing plans is not a sound basis for implementing minimum per occurrence penalty payments.

140. WorldCom's reply brief reiterated its position from its opening brief.

141. This issue was not included in Qwest's submission containing agreements reached in the ROC proceeding which Qwest proposed to import into Arizona. WorldCom did not comment on this issue in its response to Qwest's ROC proposal.

b. **Discussion and Staff Recommendation**

142. In Staff's Proposed Findings of Fact and Conclusions of Law, Staff agreed with Qwest that no minimum penalty should apply besides that for nascent services outlined in Qwest's opening brief. Staff was concerned that the level of disaggregation in the PAP could result in multiple minimum payments for a single occurrence. Also, Staff believed that the penalties in the PAP, absent minimum payments, are sufficient to incent Qwest to provide parity OSS service to the CLECs.

143. WorldCom did submit comments on this issue in response to Staff's initial report. WorldCom asks that Staff reconsider its recommendation. WorldCom mentions the minimum payments in the Liberty Consulting report dated October 22, 2001. This report by Liberty recommended a minimum payment of $2,000 per month "for each month in which Qwest missed any measure applicable to such CLECs."[24] WorldCom also mentions the CPAP recommendation. This recommendation called for a minimum per measure payment of $600 for larger CLECs or $300 for CLECs with less than 100,000 lines in service in Colorado.

144. Staff maintains its prior recommendation. Staff agrees that a minimum penalty should only apply to the nascent services mentioned in Qwest's opening brief. Staff would like to review this issue at the six-month PAP review. Knowing Qwest's actual performance under the PAP, and the state of competition in Arizona following §271 approval, would enable Staff to determine whether additional minimum payments are necessary.

DISPUTED ISSUE NO. 7: Duration Factors (PAP – 6c)

145. Qwest has proposed that penalties should escalate month after month if Qwest misses a performance measure several months in a row (such escalation is referred to as a "duration factor."). Qwest proposes that penalties begin escalating with the second month a measure is missed and continue to escalate until the sixth month it is missed (see Table 3 below). After the sixth month the penalty level will remain constant until the measure is not missed. The CLECs favor continued escalation beyond six months.

Table 3: Qwest Tier I Penalty Payment Levels

Per Occurrence						
Measurement Group	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6 & each following
High	$150	$250	$500	$600	$700	$800
Medium	$75	$150	$300	$400	$500	$600
Low	$25	$50	$100	$200	$300	$400

Per Measure/Cap						
Measurement Group	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6 & each following
High	$25,000	$50,000	$75,000	$100,000	$125,000	$150,000
Medium	$10,000	$20,000	$30,000	$40,000	$50,000	$60,000
Low	$5,000	$10,000	$15,000	$20,000	$25,000	$30,000

a. Summary of Qwest and CLEC Positions

146. Qwest provided comments on this issue in its April 5, 2001, filing. Qwest believes that the issue of the escalation of Tier I and Tier II payments, whether through the extension of the QPAP payment table beyond six months, a factor for severity, the calculation of occurrences, or sticky duration, must be addressed jointly because the true

[24] Liberty Consulting Group Report on QPAP, October 22, 2001, pg. 67.

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issue is the overall level of PAP payments. Qwest claims that exhibits they have presented demonstrate that the QPAP provides more than adequate financial incentive to provide compliant service while the CLEC proposals are overly punitive.

147. Qwest provided comments on this issue in its opening brief. The per occurrence payment amounts should not escalate any further because the six-month levels already greatly exceed any potential financial harm to the CLECs. At the December workshop, Qwest demonstrated through Exhibit 5 that CLECs have the opportunity to receive PAP payments that substantially exceed the potential lost profit from losing the customer. With the likely inclusion of additional Tier II per occurrence payments of $200, $300, and $500, Qwest will already have substantial incentive to fix non-compliant service. The CLECs have submitted no evidence of the financial harm they might incur from missed performance standards.

148. WorldCom discussed this issue in its April 5, 2001 filing. WorldCom indicated that it is unclear why Qwest would be okay with escalating payments but would limit escalations to the 6th month. Stopping the escalation of payments after 6 months makes it easier for Qwest to judge whether the costs and benefits of not fixing the problems outweigh the remedies at risk.

149. WorldCom and Z-Tel jointly filed comments on this issue in their opening brief. They state that Qwest's proposed duration factor is insufficient. The percentage increase in remedy amounts from month to month drops dramatically after the fourth month and beyond, with a 0% increase after the 6th month. Continuous duration penalty escalation discourages repeated non-conformance. Repeated non-conformance indicates that payment levels are too low and are being treated as a cost of doing business. If penalties escalate continuously eventually Qwest will have an incentive to fix the problem. The Pennsylvania PAP adopted on December 31, 1999, requires a pro rata remedy the first month and then remedies of $2000 for the second month and $4000 for the third month on top of the pro rata amounts. At the fourth month of non-compliance, the PUC can levy up to an additional $25,000 fine, but it is not self-executing like the second and third month fines. Also, Bell Atlantic-Pennsylvania must have two compliant months in a row before penalties return to the first month pro rata level.

150. Qwest filed comments on this issue in its reply brief. The CLECs' reliance on a quote from a portion of the Pennsylvania remedy plan to support their arguments on continuous escalation is misplaced. The Qwest plan is adequate, and it is neither helpful nor appropriate for CLECs to pick and choose advantageous provisions from plans from other jurisdictions.

151. WorldCom filed comments on this issue in its reply brief that state that Qwest's claim that continuously escalating penalties will result in a windfall for the CLECs is not true. Qwest's measure of CLEC harm is inadequate.

152. Qwest does not mention this issue in its filing on the ROC proceeding. WorldCom did not comment on this issue in its response to Qwest's ROC proposal.

b. Discussion and Staff Recommendation

154. In Staff's Proposed Findings of Fact and Conclusions of Law, Staff agreed with Qwest that an additional duration factor past the sixth month is not necessary. If it is determined that the penalty levels are not high enough, then the issue of duration factors can be revisited at the six-month PAP review.

155. Staff noted that Qwest's contentions about the "lost profit" CLECs would receive from Qwest's performance misses are contradicted by statements Qwest has made concerning the impasse issue on the limitations of the plan (see Disputed Issue No. 14 of this report). With respect to plan limitations, Qwest stated in Disputed Issue No. 14 that the damage to the CLECs from performance misses is unknown and unknowable. Staff also notes that since the purpose of the PAP is to provide incentives to Qwest, not to compensate CLECs, arguments concerning harm to the CLECs are not relevant.

156. WorldCom did submit comments on this issue in response to Staff's initial report. WorldCom opposes the payment escalation limit at six months. WorldCom states that Commissions in Utah and Colorado both disagreed with a imposing a limit on escalation. WorldCom asks that Staff reconsider its recommendation.

154. RUCO did submit comments on this issue in response to Staff's initial report. RUCO suggests that Staff consider the CPAP approach to this issue. The CPAP states that the total per occurrence payment will be multiplied by two starting in the second continuous month missing a performance measurement. The multiplier will be three in the third continuous month of poor performance. The escalation will continue in this fashion until Qwest meets performance standards.

155. Staff continues to support its prior recommendation. However, Staff would like to clarify its recommendation. Staff advocates payment escalation for both Tier I and Tier II payments. The penalty payments outlined in Table 3 are agreeable to Staff for Tier I escalation. Table 4 outlines the initial Tier II penalty payment levels recommended by Qwest. Staff agrees that these payment levels are appropriate for the first month in which Qwest makes Tier II penalty payments. For most measurements, this first Tier II payment will be made after three consecutive months of performance misses. For the measurements mentioned in Table 6 under the section covering "Disputed Issue No. 9", the escalation levels will vary and are listed in Table 7 of that same section. Staff's Tier II escalation payments for other Tier II measures are set forth in Table 5. These Table 5 figures are derived by utilizing Qwest's Tier II payment in the first month of payment penalties (which is actually the third month of consecutive misses). These payment levels closely match the Tier I payments in the third consecutive

month of non-compliance.[25] Staff then extrapolated to the following months using the same es ..ation increments used by Qwest in its Tier I payments outlined in Table 3.[26]

Table 4: Qwest Tier II Penalty Payment Levels

Per Occurrence	
Measurement Group	
High	$500
Medium	$300
Low	$200

Per Measure/Cap	
Measurement Group	
High	$75,000
Medium	$30,000
Low	$20,000

Table 5: Staff's Proposed Tier II Penalty Payment Levels[27]

Per Occurrence			
Measurement Group	Month 3	Month 4	Month 6 & each following
High	$500	$600	$700
Medium	$300	$400	$500
Low	$200	$300	$400

Per Measure/Cap			
Measurement Group	Month 3	Month 4	Month 6 & each following
High	$75,000	$100,000	$125,000
Medium	$30,000	$40,000	$50,000
Low	$20,000	$25,000	$30,000

DISPUTED ISSUE NO. 8: Bill Credits Versus Cash Payments (PAP – 6d)

156. Qwest has proposed to pay out PAP penalties to the CLECs in the form of bill credits applied to the amount of the CLECs monthly bill to Qwest. CLECs oppose this method of payment and want monthly cash payments.

[25] The only difference noted by Staff is that the Tier I per occurrence payment level for low ranking measurements is $100 less than the Tier II per occurrence payment level. Also, the Tier I per measure/cap payment level for low ranking measurements is $5000 less than the Tier II per measure/cap payment level.

[26] For low ranking measurements, Staff added $100 to the Tier I per occurrence payment levels for each month of Tier II per occurrence payment escalation. Also, for low ranking measurements, Staff added $5,000 to the Tier I per measure/cap payment levels for each month of Tier II per measure/cap payment escalation.

[27] This table does not apply to the measurements mentioned in Table 6 of this Staff Report. Table 7 in "Disputed Issue No. 9" will include the escalation payment levels for the measurements specified in Table 6.

a. Summary of Qwest and CLEC Positions

157. Qwest filed comments on this issue in its opening brief. In that brief Qwest states that the PAPs in Kansas, Massachusetts, New York, and Texas all use bill credits. CLEC claims that checks are easier to administer than bill credits are unsubstantiated. Financial management at a modern corporation is done through an accounting system not a cash box. Qwest senior management does not hand sign all checks. Whether paid by bill credit or check the payments will be visible to senior management.

158. WorldCom filed comments on this issue in its filing dated April 5, 2001. There it states that payments to CLECs should be made by check by the end of the month following the data report (e.g. June data, reported in July, remedies paid by August 31). Qwest should be liable for accrued interest for every day the payment is late. An invoice should accompany the payment explaining the calculation for each submetric missed. Payment by check is necessary to ensure payment and is easier for CLECs to track. Bill credits are inappropriate because they are not easily traceable back to a specific CLEC account for credit, are less visible and hence less motivating to Qwest management, and are hard to track when Qwest billing is erratic or subject to numerous billing disputes. Penalty payments can potentially be greater than the bill for a given month, which will result in direct payments anyway. If direct payments are going to be used when this happens and for Tier II payments, why design two entire payment systems?

159. WorldCom and Z-Tel jointly filed an opening brief on this issue that restates the position of the April 5 filing. Also, they indicate that the Pennsylvania and Michigan orders require direct payment to the CLECs and Pennsylvania requires an invoice attached to the payment. Bell South's plan in Georgia has always included only direct payments.

160. Qwest filed a reply brief on this issue. Qwest believes the most important elements of payment delivery are timeliness and accuracy and that it should have the flexibility of using its billing process to administer payments. Direct payments are not more accurate or easier to audit; they are more costly to administer. Qwest agreed in the ROC to supply detailed statements showing exact PAP payment calculations. Qwest agreed to provide CLECs with sample statements and to accept input from the CLECs regarding the design of these statements. Qwest extends the same offer in AZ.

161. WorldCom filed a reply brief on this issue. The position stated on April 5, 2001, is reiterated. However, whatever payment method is ordered, the Commission must order Qwest to provide an adequate explanation of the payments being made. The Commission should require Qwest to provide it with a prototype of any explanation of payments to ensure that the explanation is complete, detailed, and allows CLECs to track the reasons for Qwest penalty payments.

162. Qwest does not mention this issue in its filing on the ROC proceeding. WorldCom did not comment on this issue in its response to Qwest's ROC proposal.

b. **Discussion and Staff Recommendation**

168. In Staff's Proposed Findings of Fact and Conclusions of Law, Staff agreed with Qwest that bill credits are an adequate means of administering the PAP. If, in a given month, Qwest owes a CLEC more in penalties than the CLEC's monthly bill to Qwest, the balance should be paid by check from Qwest. Bill amounts that are in dispute should be netted out of the above calculation. Each month, each CLEC should receive a statement from Qwest detailing the source of the PAP payments the CLEC received.

169. It is important that penalty payments are received with timeliness. Staff agreed with the CLEC's proposal that Qwest remit payments by the end of the month following the data report (through bill credit or check as stated above). Staff does believe that a five-day grace period for Qwest to remit payment is appropriate. If Qwest does not comply, then Qwest will be liable for accrued interest for each day the payment is late. The Colorado Final PAP Report[28] included a recommendation that Qwest pay interest at twice the one-year treasury rate if it provides late payments (due to a need to correct a report). Staff supported this level of interest if Qwest is late in making a payment to a CLEC, whether due to correction of a report or otherwise.

170. WorldCom did comment on this issue in their response to Staff's initial report. WorldCom believes that Staff should reconsider its initial recommendation and indicates that the Colorado Hearing Commissioner sided with WorldCom on this issue.

171. Staff continues to support its prior recommendation of bill credits in spite of WorldCom's comments.

DISPUTED ISSUE NO. 9: Penalty Classification (PAP – 9)

172. Each of the measures proposed in the PAP are classified and ranked according to their importance. The classification categories are Tier I and Tier II. Penalty payments in Tier I would be received by the effected CLECs. Penalty payments in Tier II would not be received by CLECs but will be paid into a fund administered by the state. Each measure is also ranked as "high", "medium", or "low" and penalty amounts vary accordingly.

a. **Summary of Qwest and CLEC Positions**

173. Qwest mentions the classification of measures in its opening brief. Qwest states that all measures are classified as Tier I unless measures are diagnostic, measures are parity by design, or individual CLEC results are not reported for those measures. Qwest also mentions five measures (GA-3, GA-4, MR-4, MR-10, and OP-7) for which CLECs did not request Tier I classification, and which are not included in Tier I. Qwest

[28] Weiser, Phil. *Final Report and Recommendation*, 2001.

states that its Tier II classifications are appropriate. Tier II classifications are based on how results are reported and the importance of the measures to the CLECs.

174. Qwest states that the ranking (or weighting) of the performance measurements is based on the importance of the measures. This ranking is consistent with SBC's PAP in Texas. Qwest states that the CLECs have not proposed alternative ranking for measurements.

175. WorldCom and Z-Tel jointly filed an opening brief on this issue. WorldCom and Z-Tel state that all measures should be classified as Tier I and Tier II. WorldCom and Z-Tel state that ranking (or weighting) measures is subjective. The parties mention that the Michigan Public Service Commission gave a medium rank to all performance measures. It also doubled the Tier I and Tier II penalty amounts. WorldCom and Z-Tel state that the Colorado Draft Report identified areas of performance which are of particular CLEC concern: 1) interconnection, 2) customer switching, 3) collocation, and 4) provisioning of local loops. WorldCom and Z-Tel believe that the Commission can use this list in order to rank performance measures based on their importance to CLECs.

176. Qwest mentions penalty classification discussions in the ROC in its reply brief. Qwest presents the same proposal in the ROC here in this proceeding. Qwest changed the rank of the following Tier I measures to "High": OP-8, OP-13, MR-3, MR-5, and MR-6. CLECs accepted these changes. Qwest proposed to change the rank of the following Tier II measures to "Medium": OP-3, OP-4, OP-5, MR-7, and MR-8. CLECs did not accept these changes. However, the CLECs stated that they would agree if MR-3 and MR-5 were added to the list of Tier II measurements. Qwest stated that it would also agree to this condition.

177. For Tier II payments, Qwest has proposed a variety of changes. Qwest proposes that three month consecutive failures are not necessary for the following measurements: GA-1, GA-2, GA-3, GA-4, GA-6, OP-2, MR-2, and PO-1. Also, the PO-1 sub-measurements would be grouped into two GUI and EDI sub-measurements. Qwest offered to implement a new payment schedule outlined in its reply brief.

178. WorldCom restates in its reply brief that all Tier I measures should also be Tier II measures, except for GA measures.

179. Qwest does mention this issue in its filing on the ROC proceeding. Qwest states that staff members of the public utility commissions of the states represented in the ROC proceeding requested that Tier I payments be increased while lowering Tier II payments. Qwest responded to this request by increasing or decreasing the rank given to certain measures. Qwest increased the rank from medium to high for the following Tier I measures: OP-8, OP-13a, MR-[illegible] MR-5, MR-6a, MR-6b, and MR-6c. Qwest decreased the rank from high to medium for the following Tier II measures: OP-3, OP-4, OP-5, OP-6, MR-7, and MR-[illegible]

180. WorldCom discusses this issue in its filing on Qwest's ROC proposal. WorldCom believes that classifying and ranking performance measures is a subjective process, which it opposes. Instead, WorldCom suggests that all performance measurement be given the same rank. In this way, Qwest could not decide that some measures are more important since all would be equally important. WorldCom mentions that it approves of Qwest's ROC proposal to increase the ranking of OP-8, OP-13a, MR-3, MR-5, MR-6a, MR-6b, and MR-6c from medium to high. However, it opposes Qwest's proposal to decrease the rank of OP-3, OP-4, OP-5. OP-6, MR-7, and MR-8 from high to medium. WorldCom argues that measurement ranking is difficult as the importance of various measures may change over time. Also, it may be difficult to give one rank to a measure which contains sub-measurements with varying levels of importance.

b. **Discussion and Staff Recommendation**

181. In Staff's Proposed Findings of Fact and Conclusions of Law, the Commission Staff did not agree with the ROC proposal which required Qwest to shift penalty amounts from Tier II to Tier I. This would be done if Tier II measurements OP-3, OP-4, OP-5, OP-6, MR-7, and MR-8 were decreased from a high to medium ranking. Staff maintains that these measurements should continue to have a high ranking. Staff agrees with Qwest's proposal to raise the ranking of OP-8, OP-13a, MR-3, MR-5, MR-6a, MR-6b, and MR-6c from medium to high. Staff believes that Tier II payments are important because they further the primary aim of the 271 process: to increase competition for local telecommunications service in the State of Arizona. Tier II payments act as an incentive to Qwest when CLEC volumes are too low to generate significant Tier I payments.

182. Qwest did submit comments on this issue in response to Staff's initial report. Qwest disagreed with Staff's recommendation set forth in Staff's initial report. Qwest states that the offer made in the ROC proceeding was made based on recommendations from commission staff members participating in the ROC. Qwest asks that Staff's recommendation be changed to match Qwest's ROC proposal or that the measurements retain their original classifications.

183. Staff continues to support its prior recommendation. Staff notes that Qwest mentioned in its reply brief that its proposal was not fully accepted by all parties in the ROC. Qwest mentions in its comments that state commission staff members participating in the ROC stressed preference for the types of Tier I and Tier II changes illustrated in Qwest's proposal. However, the Arizona Commission was not part of that ROC proceeding and Staff does not support Qwest's proposal. It is understandable that various state commissions might approach these disputed issues in different ways. These differences do not indicate erratic policy making, but rather an attention to the specific and varied concerns of each state. Staff does not believe that the Arizona Commission should in any way be bound by decisions made in other state jurisdictions.

184. Also, Staff points out that Tier II measures in the ROC now have a harder trigger than those in Arizona (i.e., Tier II payments begin at month 2 not month 3). Thus, Qwest's straightforward comparisons between Arizona and the ROC on this issue are not appropriate. Staff believes that its initial recommendation does resolve this disputed issue, in spite of Qwest's unsupported claim to the contrary.

DISPUTED ISSUE NO. 10: Severity Factors (PAP – 10)

185. Severity factors refer to escalation of payment amounts based on the severity of a performance miss. For example, if Qwest is ten days late provisioning a service they would pay more than if they were only one day late. CLECs have advocated including a severity factor in the PAP. Qwest has opposed including a severity factor in the PAP.

a. **Summary of Qwest and CLEC Positions**.

186. Qwest filed comments on April 5, 2001, addressing this issue. They state that Tier I payments proposed in Qwest's PAP are sufficient to compensate CLECs. Any escalation of payments to CLECs without evidence from CLECs as to the nature and level of CLEC harm specifically due to missed standards at the sub-measurement level is inappropriate. Qwest states that every calculation of CLEC proposed payment formulae and their application to Qwest service levels have demonstrated that CLEC proposed payments are so high as to not be within any bound of reasonableness.[29]

187. WorldCom addressed this issue in its April 5, 2001, filing. Qwest's plan does not adequately take into account the severity of poor performance. WorldCom supports Z-Tel's proposal for increasing penalties for severity and duration.

188. WorldCom and Z-Tel jointly filed an opening brief on this issue. They state that Qwest's plan only picks out the number of customers harmed not the degree to which they received poorer service than retail customers. For example, there is a significant difference in missing the "Commitments Met" metric 88% of the time versus less than 50%. Also, additional penalties should be imposed when poor performance is industry wide. Severe or repeated non-conformance indicates that penalties are too low to incent parity performance.

189. Qwest does mention this issue in its filing on the ROC proceeding. Qwest proposes Table 6 as a solution to this impasse issue. As Qwest's performance further deviates from the standard set in the PAP, Qwest would make Tier II penalty payments. Qwest proposed this solution in the ROC proceeding and states that the CLECs in attendance agreed.

[29] See Qwest exhibit G which shows payment levels for missed installation commitments (OP-3) and installation intervals (OP-4).

Table 6: Qwest's Severity Factor ROC Proposal

Measure	Performance Relative to Benchmark Or Parity	Tier II Payment Per Month
GA-1, 2, 3, 4, 6[30]*	1% or lower	$1,000
	>1% to 3%	$10,000
	>3% to 5%	$20,000
	>5%	$30,000
PO-1[31]*	2 seconds or less	$1,000
	>2 seconds to 5 seconds	$5,000
	>5 seconds to 10 seconds	$10,000
	>10 seconds	$15,000
OP-2/MR-2[32]**	1% or lower	$1,000
	>1% to 3%	$5,000
	>3% to 5%	$10,000
	>5%	$15,000

*Performance relative to benchmark
**Performance relative to parity

190. WorldCom filed comments on this proposal filed by Qwest. WorldCom agreed to the changes made by Qwest in its ROC proposal. WorldCom also states that Qwest has agreed to provide Tier II payments for these measures each month, rather than after three months.

b. Discussion and Staff Recommendation

191. In Staff's Proposed Findings of Fact and Conclusions of Law, Staff agreed with Qwest that its approach to severity factors, with the above ROC proposal, is improved. Staff was concerned that the Table 6 performance measures are appropriately aggregated at the sub-measurement level. These sub-measures should be weighted based on their number of occurrences. Staff reviewed Qwest's updated weighting proposal and found it to be adequate. The PAP should explicitly state that these performance measures in Table 6 will be weighted according to their number of occurrences.

192. Additional severity factors are not necessary and may result in excessive CLEC reliance on penalty payments. If it is determined that the penalty levels are not high enough, then the issue of severity factors can be revisited at the six-month PAP review.

[30] GA-1 measures "Gateway Availability IMA-GUI." GA-2 measures "Gateway Availability IMA-EDI." GA-3 measures "Gateway Availability EB-TA." GA-4 measures "System Availability EXACT." GA-6 measures "Gateway Availability GUI-Repair."
[31] PO-1 measures "Pre-Order/Order Response Times."
[32] OP-2 measures "Calls Answered Within Twenty Seconds – Interconnect Provisioning Center." MR-2 measures "Calls Answered Within Twenty Seconds – Interconnect Repair Center."

193. WorldCom did submit comments on this issue in response to Staff's initial report. WorldCom requests that Staff c[illegible] its recommendation. WorldCom asks that its comments on penalty caps and escalation also be referenced here. The reasoning behind WorldCom's statements on those issues would apply here as well. Comments submitted in response to Staff's initial report did address this issue.

194. Staff continues to support its prior recommendation. Staff would also like to clarify its position on the issue of escalation for the measures listed in Table 6. As illustrated in Staff's Table 5, Staff believes that escalation for Tier II penalties is important. Staff's escalation proposal in Table 5 covers all Tier II measurements except those in Table 6. For the measures in Table 6, Staff proposes the escalation payments in Table 7 below.

Table 7: Staff's Proposed Tier II Penalty Payment Levels for Measurements in Table 6[33]

Measure	Performance Relative to Benchmark Or Parity	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6 & each following
GA-1, 2, 3, 4, 6*	1% or lower	$1,000	$1,500	$2,000	$2,500	$3,000	$3,500
	>1% to 3%	$10,000	$15,000	$20,000	$25,000	$30,000	$35,000
	>3% to 5%	$20,000	$25,000	$30,000	$35,000	$40,000	$45,000
	>5%	$30,000	$35,000	$40,000	$45 000	$50,000	$55,000
PO-1*	2 seconds or less	$1,000	$1,500	$2,000	$2,500	$3,000	$3,500
	>2 seconds to 5 seconds	$5,000	$10,000	$15,000	$20,000	$25,000	$30,000
	>5 seconds to 10 seconds	$10,000	$15,000	$20,000	$25,000	$30,000	$35,000
	>10 seconds	$15,000	$20,000	$25,000	$30,000	$35,000	$40,000
OP-2/MR-2**	1% or lower	$1,000	$1,500	$2,000	$2,500	$3,[illegible]	$3,500
	>1% to 3%	$5,000	$10,000	$15,000	$20,000	$25,000	$30,000
	>3% to 5%	$10,000	$15,000	$20,000	$25,000	$30,000	$35,000
-	>5%	$15 000	$20,000	$25,000	$30,000	$35,000	$40,000

*Performance relative to benchmark
**Performance relative to parity

195 Staff will give an example of payments under Table 7 in order to describe how this table would be used. If Qwest missed PO-1 by more than 10 seconds, then Qwest would pay $15,000 in the first month. If in month two, Qwest again missed PO-1 by more than 10 seconds, then Qwest would pay $20,000 since this was the second consecutive month of missing PO-1 at that severity level. If in month three, Qwest missed PO-1, but by 7 seconds, then Qwest would pay $10,000 since this is the first month in which PO-1 was missed at that severity level. If in month four, Qwest met the benchmark for PO-1, then no penalty payment would be made. If in month five, Qwest again missed PO-1 by more than 10 seconds, then Qwest would pay $15,000 based on the concept of sticky duration explained in disputed issue number thirteen.[34]

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[33] This table does not apply to the measurements mentioned in Table 5 of this Staff Report. Table 7 includes the escalation payment levels for the measurements specified in Table 6.

[34] For the concept of sticky duration to enable payment levels to drop, Qwest would have to meet a performance standard first. For example, if in month four of the previous example, Qwest missed PO-1 by 3 seconds, then Qwest would pay $5,000 since this was the first time that this standard was not met. If in month five, Qwest again missed PO-1 by more than 10 seconds, then Qwest would pay $20,000. The

DISPUTED ISSUE NO. 11: Audits (PAP – 11)

196. Auditing Qwest's procedures and financial systems once it receives Section 271 approval was discussed. An audit of Qwest's procedures would involve review of the procedures used in calculating Qwest's performance measures in accordance with PAP guidelines. Qwest's financial systems would be reviewed to determine if penalty amounts are also calculated in accordance with PAP guidelines.

a. **Summary of Qwest and CLEC Positions**

197. Qwest provided comments on this issue in its April 5, 2001, filing. Qwest proposes that an ongoing monitoring program of the PIDs be adopted in lieu of the comprehensive annual audit proposed by the CLECs. An audit of Qwest's financial systems would be initiated after one year of operation under the PAP. Another financial audit would begin no later than 18 months following the initiation of the first audit. For all audits, Qwest would choose the auditor or the Commission may conduct the audit. Qwest would cover the costs of the audits.

198. In instances of reporting or payment disagreements between Qwest and CLECs, an independent audit may be conducted. Any under or overpayments would be corrected following the audits. Interest on the payments would be calculated at the one year U.S. Treasury rate. Also, the party which is found responsible for payment deficiencies must cover the expense the auditor incurred in conducting the audit. The issue in question must also be less than twelve months old when the audit begins. Each CLEC can request a maximum of two PIDs be investigated per audit. CLECs are limited to two audits per calendar year.

199. Monitoring would be combined with these audit provisions. Additional monitoring would be focused on key areas which were identified in the initial audit as requiring further monitoring.

200. WorldCom filed comments on this issue on April 5, 2001. WorldCom states that periodic and comprehensive third-party audits of Qwest's reporting procedures and reportable data is necessary to ensure accurate and reliable data. The audits should validate that all systems, methods, and procedures for reporting performance measures are consistent with the business rules, methods of calculation, reporting structures, disaggregation, and measurable standards of the PIDs. WorldCom proposes an initial comprehensive audit that will commence six months after the ROC OSS test ends. Additional audits would then be conducted every twelve months. WorldCom proposes the following guidelines for audits:

- The cost of these audits will be born by Qwest.

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payment level would not be escalated to $25,000 because Qwest did not miss the measure by more than 10 seconds for three consecutive months. Also, Qwest would not experience the falling of payment levels to $15,000 because Qwest did not pass the measure in the previous month.

- An independent third-party auditor (selected jointly by Qwest, the Commission, and the CLECs) will perform the audit. The audit process will be open to the CLECs. When the audit is completed, the results of the audit will be submitted to the Commission and sent to the CLECs.
- If the audit finds that Qwest is not reporting accurately, consequences should ensue including placing Qwest's 271 approval on hold until it proves it has permanently fixed the problem.

201. In addition to the regular annual audits, additional audits could be triggered by recommendations from the previous auditor, by the Commission staff, or by a CLEC request for a mini audit. Penalties should be imposed if the auditor cannot replicate a measure because of missing data.

202. WorldCom and Z-Tel jointly filed an opening brief on this issue. They refer to the five-step process laid out in the Colorado Draft PAP Report. Under the Colorado Plan, for the first three years of the auditing program, Qwest should pay for the first three aspects of this audit process described below. After the three years, the Commission can decide whether Qwest should bear full financial costs for future annual audits based on the results of past audits and the current competitive state of the Arizona market. The fourth and fifth aspects of the audit process address mini-audits and Commission audits. WorldCom and Z-Tel add a sixth element for a requirement that Qwest adopt a change management plan for metrics so that auditors and CLECs can follow changes in metrics from month to month for accurate replication. At the PAP's inception, and every year thereafter, the Arizona Corporation Commission, with input from its Staff, Qwest and CLECs, should select an appropriate outside firm to perform the auditing function. The five step process is summarized below.

(1) Basic Requirements Imposed on Qwest

Qwest must not be authorized to make any change in its performance measurement and reporting system unless the Commission, through the PAP Revision Process or otherwise, approves of such a procedure in advance. In addition, to facilitate the use of effective auditing of Qwest's performance measurement system, Qwest should be required to store all such records in easy-to-access electronic form for three years after they have been produced (and an additional three years in an archived format). Any failure to follow either of these requirements shall be treated as a violation of the Change Management Procedure and would result in penalties. The auditor should be empowered to go beyond checking Qwest's calculations and adherence to business rules, but to also ensure that the underlying data was properly coded so that exclusions are appropriate.

(2) Oversight of Initial Problem Areas

During the first two years following the institution of the PAP (starting with the first generation of the performance reports called for by the PAP), Qwest shall be subject to periodic specialized audits. These audits would focus on areas of performance that were identified in the initial audit. Any issues identified by the auditor must be corrected by Qwest to the satisfaction of the auditor and the Commission before the audit is closed. Additionally, any future audits may include "areas of performance" not "identified" in the initial performance measurement audit.

(3) Regular Performance Management Audits on Selected Measures

At annual intervals for the first three years of the PAP's operation, and at intervals to be determined by the Commission thereafter, the outside auditor shall perform an audit that will entail three basic steps. First, this audit should evaluate the accuracy of the measures. Second, the audit should examine the measures responsible for producing 80% of the penalties paid by Qwest over the prior interval. Finally, the audit should take particular care in evaluating whether Qwest is accurately evaluating which, if any, requests for performance can be properly excluded and thus not counted toward its wholesale performance requirements. To facilitate this exercise, Qwest shall be required to keep a record of all exclusions (whether authorized by the PIDs or otherwise excluded) and to catalog the effect of such exclusions on otherwise applicable penalty calculations. Such records should be kept in easy-to-access electronic format for three years and an additional three years in an archived format.

(4) Mini-audits Upon CLEC Request

CLECs can request a "mini-audit" of Qwest's wholesale measurement systems. This mini-audit must be conducted by a third-party auditor. Qwest should pay for fifty percent of the costs of the mini-audits. The other fifty percent of the costs will be divided among the CLEC(s) requesting the mini-audit, unless Qwest is found to be "materially" misreporting data, "materially" misrepresenting data, or to have non-compliant procedures. If any of these apply, then Qwest should pay for the entire cost of the third-party auditor. "Materially" at fault means that a reported successful measure changes as a consequence of the audit to a missed measure, or there is a change from an ordinary missed measure to a higher severity level. Each party to the mini-audit should bear its own internal costs, regardless of which party ultimately bears the costs of the third-party auditor. In addition to fixing the identified problems, Qwest should also be responsible for paying a penalty under the change management process.

When a CLEC has reason to believe that the data collected for a measure is flawed or the reporting criteria for the measure is not being followed, it must have the right to have a mini-audit performed on the specific measure/sub-measure upon written request (including e-mail). This request will include the designation of a CLEC representative to engage in discussions with Qwest about the requested mini-audit. If, thirty days after the CLEC's written request, the CLEC believes that the issue has not been resolved to its satisfaction, the CLEC may commence the mini-audit, after providing Qwest with written notice five business days in advance.

Each CLEC should be limited to auditing three single measures/sub-measures or one domain area (preorder, ordering, provisioning, maintenance, or billing) during an audit year. Mini-audits cannot be requested by a CLEC while the OSS third-party test or an annual audit is being conducted (i.e. before completion of the complete test). Mini-audits should include two months of raw data. No more than three mini-audits should be conducted simultaneously. If, during a mini-audit, it is found that for more than thirty percent of the measures in a major service category Qwest is "materially" at fault, the entire service category should be re-audited at Qwest's expense.

The results of each mini-audit should be submitted to the CLEC involved and to the Commission as a confidential document. Qwest should provide notification to all CLECs of any mini-audit requested when the request for the audit is made on its website or by other means.

(5) Commission Audits

The Commission should retain the right to perform an audit, with the assistance of the outside auditor, if the Commission so chooses to examine any aspect of Qwest's wholesale performance at any time that it deems warranted. Such an audit should be paid for through Tier II penalties maintained in a state fund. If the audit discovers errors in performance reporting that are adverse to the CLECs, Qwest should reimburse any costs of the audit and be liable for penalties under the change management process.

(6) Change Management Process

Qwest should adopt a change management process with input from CLECs to ensure that metrics can be replicated by the auditor. The change record would cover all elements of a metric. This process should be enforced by Commission directive that states that the auditor's inability to replicate a metric due to poor change control or missing data should elicit the same remedy as if the metric had been missed. This would include duration remedies if multiple months cannot be replicated.

203. WorldCom's reply brief states that in order for an audit process to be meaningful, Qwest must not be allowed to select the auditor. The Commission should have the ability to initiate an audit if it finds that Qwest is not properly complying with the PAP. Depending on the trigger the Commission uses, Commission audits will impact the need for root cause analysis. As laid out in the opening brief, the CLECs should have the right to mini-audits. The Commission should determine who pays for the mini-audits. If a CLEC is abusing the mini-audit process, it should be assessed the cost of the audit.

204. Qwest did not comment on this issue in its filing on the ROC proceeding. WorldCom did not comment on this issue in its response to Qwest's ROC proposal.

b. Discussion and Staff Recommendation

205. In Staff's Proposed Findings of Fact and Conclusions of Law, Staff stated that auditing Qwest's procedures is important. Tier II payments as described in the next disputed issue could help fund this effort. Staff believed that Qwest's monitoring proposal was sufficient especially in light of the six-month review efforts which will be conducted. The CLEC auditing proposal would be too onerous an effort. However, Staff believed that the Commission rather than Qwest should choose the auditor (or monitor) of Qwest. The Commission should also be able to conduct an audit or have one conducted at any time it deems necessary. In an audit or monitoring program, the results should be provided to Qwest, the Commission, and all CLECs.

206. Qwest did submit comments on this issue in response to Staff's initial report. Qwest did support much of Staff's recommendation on this issue. Qwest also mentions that it has agreed to a multi-state audit/monitoring program. Qwest states that it would be beneficial for Arizona to be involved in a multi-state audit effort. Staff initially recommended that the Commission be allowed to conduct audits at "any time." Qwest is opposed to this part of Staff's recommendation.

207. WorldCom did submit comments on this issue in response to Staff's initial report. WorldCom disagrees with Staff's audit recommendation in that its scope is too limited. WorldCom asks that Staff review the recommendations in other states (such as Colorado and Utah) which developed more meaningful audit provisions.

208. Staff supports its prior recommendation with some clarifications. Staff reiterates that the choice of auditor should be made by the Commission. Staff is not opposed to the Arizona Commission joining in a multi-state audit effort if the terms of the auditing procedures are deemed favorable by the Commission. However, the Commission should always reserve the right to leave a multi-state audit effort if the audit methods do not meet Arizona's auditing needs, or to conduct its own audit at any time. Given that the Commission has not been a part of the multi-state proceeding, Staff is not even aware of how the multi-state participants plan to select an auditor. Staff would not oppose joining the multi-state audit process if it is determined that it will meet Arizona's needs. However, again participation in any multi-state auditing effort still should not preclude Arizona in ordering and conducting its own audits if necessary or found to be warranted. One condition that Staff believes is essential is that the auditing process be open to the CLECs; Staff could only recommend joining the multi-state process if that process is open. The Staff will review the PAP auditing provisions in its six-month reviews.

DISPUTED ISSUE NO. 12: Tier II Payments (PAP – 12)

209. Since Tier II penalty payments will not be received by CLECs, parties have suggested how to utilize the Tier II payments collected under the PAP.

a. Summary of Qwest and CLEC Positions

210. Qwest states its position on Tier II payments in its opening brief. Qwest states that its Tier II proposal is sufficient to encourage compliance and not provide windfall payments to CLECs. Qwest states that Tier II payments would be used to extend telephone service in Qwest's territory and to extend Qwest's service territory into new areas. Qwest states that payment levels under the CLECs proposal for Tier II payments would be unreasonable. Qwest states that its proposed Tier II changes as mentioned in its reply brief on penalty classification addresses CLEC concerns.

211. WorldCom and Z-Tel jointly filed an opening brief on this issue. WorldCom and Z-Tel state that Qwest should not receive Tier II payments or be allowed to benefit from these payments to the State of Arizona. Tier II payments can be received by the State of Arizona or the Commission for administering the PAP and to audit PAP processes. WorldCom and Z-Tel state that it is not appropriate that Tier I measurements are evaluated every month, but Tier II measurements are evaluated every three months. WorldCom and Z-Tel believe that all performance measurements should be classified as Tier II, except those GA measures to which CLECs have agreed.

212. WorldCom restates in its reply brief that all measurements (except GA measurements) should be classified as Tier II.

213. Qwest maintains that Tier II payments revert to Qwest for usage that relates to its service territory.

214. WorldCom did not comment on this issue in its response to Qwest's ROC proposal.

b. Discussion and Staff Recommendation

215. In Staff's Proposed Findings of Fact and Conclusions of Law, Staff agreed with the CLECs in that the Tier II payments should not revert solely to Qwest for its personal use. Tier II payments should further the aim of increased competition in Arizona's telecommunications market.

216. Staff recommends that funds collected through Tier II payments should be used to fund certain Commission activities. The Commission activities funded should include and be limited to: 1) covering the additional costs of administering the PAP and 2) covering the costs of developing permanent wholesale service quality standards. Both of the above may include the costs of utilizing consultants. Staff recommends that if Tier

II payments exceed what is necessary to cover the above two costs, the balance should be given to the Arizona State Government's general fund.

217. Qwest's contention that Tier II payments be used to extend Qwest's service territory into new areas directly contradicts their current policy of resisting such expansions. Also, returning the payments to Qwest will diminish any incentives those payments may have on changing Qwest's performance.

218. WorldCom did submit comments on this issue in response to Staff's initial report. WorldCom points out that issues previously mentioned by WorldCom were not addressed by the Commission. WorldCom believes that there should not be a three month trigger for Tier II payments. For Tier II measures that have Tier I penalties as well, payments should begin after two consecutive months of non-compliance. Also, both Tier II and Tier I payments should escalate over time.

219. Qwest did submit comments on this issue in response to Staff's initial report. Qwest indicated that they were strongly opposed to Staff's proposed resolution of how Tier II payments should be used.

220. Staff agrees with WorldCom that Tier II payments should also escalate. Staff's Tier II escalation proposal is illustrated in Tables 5 and 7. Staff does not agree with WorldCom's suggestion that payments on measures with Tier I and Tier II penalties should begin in the second consecutive month of non-compliance. Staff notes that the measures listed in Table 7 would have payments begin in the very first month of non-compliance. Staff believes that the three month trigger on most measures plus the more stringent requirements of Table 7 are sufficient to ensure Qwest's compliance. Staff also can review this recommendation in the PAP six-month review.

221. Qwest was strongly opposed to Staff's initial recommendation on this issue. However, the resolution outlined above is considerably different than that in Staff's initial report. Staff continues to support use of at least of a portion of payments to the Tier II fund to be used to enable the Commission to administer the PAP on an ongoing basis. Staff's initial report identified those uses as follows: 1) audits of the PAP by the Commission as necessary, 2) retention of additional Staff and/or consultants to monitor post-entry compliance and 3) dispute resolution. In addition, Staff believes that it would be appropriate to utilize such funds as needed to encourage improvements to Qwest's wholesale service quality in both federal and state proceedings. Staff still can not support Qwest's proposal to have the Tier II penalties returned to it.

DISPUTED ISSUE NO. 13: Sticky Duration (PAP - 13)

222. The term "sticky duration" refers to escalated penalty levels (i.e., amounts) "sticking" in place until a certain time at which Qwest is deemed to merit penalty level reductions to initial levels. Qwest is opposed to sticky duration while the CLECs are in favor of this concept.

a. Summary of Qwest and CLEC Comments

223. Qwest states its stance on the issue of "sticky duration" in its opening brief. Qwest believes that the issue is composed of two parts: 1) whether two months compliance is sufficient for penalty levels to return to initial amounts; and 2) whether repetition of a previous offense should require higher than initial penalty amounts.

224. Qwest mentions that Z-Tel proposes "sticky duration" in which repeated failures are perceived as demonstrating the need for higher penalty levels. Qwest states that this has not been proven in the telecommunications industry. Qwest also states that no FCC approved PAPs include this provision. Qwest states that it might not be the cause of a failure and that a failure does not indicate discrimination toward CLECs by Qwest. Qwest also believes that it is uneconomical for it to provide perfect service to CLECs, yet that is what "sticky duration" requires of Qwest. Qwest believes that since new services or service upgrades can result in a temporary decline in service quality, that the incentive for Qwest to implement needed changes to its systems may be eroded by "sticky duration."

225. WorldCom and Z-Tel jointly filed an opening brief on this issue. The parties state that severity and duration factors provide necessary incentives to improve Qwest performance. WorldCom and Z-Tel believe that two or three months of compliant Qwest performance is necessary before allowing payment levels to return to initial levels.

226. Qwest mentions a ROC proposal to address this issue in its reply brief. In the ROC proposal, Qwest agreed to a specific concept of "sticky duration." Qwest refers to the table below in its proposed PAP as the method by which penalty payments will be increased and decreased. Payment levels will be increased as consecutive month misses accumulate according to Table 8. If Qwest does meet a measurement, then penalty payment levels will revert downward one month after compliance for one month. For example, if there are four consecutive months of failures in one measure, then Qwest would be responsible for penalty payments at the month four level in Table 8. If in the next month, Qwest meets the measurement standard, then the payment amount is zero. If in the following month after this compliant performance, Qwest fails on the measurement, then the penalty payment level would be at the month three level.

Table 8: Qwest Tier I Penalty Payment Levels

Per Occurrence						
Measurement Group	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6 & each following
High	$150	$250	$500	$600	$700	$800
Medium	$75	$150	$300	$400	$500	$600
Low	$25	$50	$100	$200	$300	$400

Per Measure/Cap						
Measurement Group	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6 & each following
High	$25,000	$50,000	$75,000	$100,000	$125,000	$150,000
Medium	$10,000	$20,000	$30,000	$40,000	$50,000	$60,000
Low	$5,000	$10,000	$15,000	$20,000	$25,000	$30,000

227. In summary, Qwest payment levels do not reduce to the initial levels on merely one month of compliant performance. However, after demonstrated commitments to meeting the measurement standards, then the penalty payment levels would eventually return to initial levels. Qwest makes this same proposal here in the Arizona proceeding.

228. WorldCom agrees with Qwest's proposal to have payment levels adjusted downward one month after compliance for one month.

229. Qwest restated its position on this issue in its filing on the ROC collaborative.

230. WorldCom refers to the concept of "sticky duration" in its filing responding to Qwest's ROC proposal. WorldCom restates its reply brief response. WorldCom mentions that there is a drop in the percentage increase in the Tier I payments past month three. Under Qwest's Tier II proposal, Qwest would make the same payment amount each month, even after months of non-compliant behavior. WorldCom "still has issues with the payment table itself."

b. **Discussion and Staff Recommendation**

231. In Staff's Proposed Findings of Fact and Conclusions of Law, Staff agreed with Qwest's proposal on sticky duration. As discussed in the section on disputed issue number 7, Staff disagreed with the CLECs that the payment levels should escalate beyond the sixth month. Staff supported Qwest's payment table as presented in Table 8, which indicated that penalties for month six and thereafter be equalized.

232. WorldCom did submit comments on this issue in response to Staff's initial report. WorldCom opposes the limit of six months on payment escalation which is part of Staff's recommendation on the issue of sticky duration.

233. Staff disagrees with WorldCom's recommendation that penalties escalate beyond six months. This issue can be revisited in the PAP six-month review if it seems that Qwest does not have the incentive to comply with the current limit of six months on escalation.

234. Staff continues to support its initial recommendation and also provides clarification of its recommendation. Staff supports sticky duration for Tier II payments as well. Tables 5 and 7 illustrate the escalation levels which would apply to Tier II payments. Staff recommends that the same sticky duration concept expressed by Qwest for Tier I payments, would apply to Tier II payments.

DISPUTED ISSUE NO. 14: Plan Limitations (PAP – 14)

235. Section 13 of Qwest's proposed PAP contains several legal limitations on or associated with the PAP.

236. Section 13.1 states that the PAP will not go into effect until after Qwest receives approval of its 271 application with the FCC. The CLECs oppose this provision and want the PAP to go into effect at the time the Commission approves it, regardless of the status of Qwest's application with the FCC. Qwest is not willing to concede on this issue.

237. Section 13.2 states that Qwest will not be liable for Tier I damages to a specific CLEC until the Commission approves an interconnection agreement, which incorporates the PAP, between Qwest and that CLEC. The CLECs generally oppose this requirement. CLECs believe that they should be able to opt into the PAP as soon as the Commission approves the PAP. They do not want to go through the process of amending their interconnection agreements.

238. Section 13.3 indicates that PAP penalties will not be paid if measurements were missed due to force majeure events. The CLECs initially claimed that Qwest's definition of force majeure was too vague.

239. Section 13.4 states that the fact that Qwest made payments under the PAP cannot be used by CLECs as evidence in other proceedings that Qwest is discriminating against them. This is commonly referred to as the "liquidated damage" provision. The CLECs oppose this provision.

240. Section 13.5 states that actual damages from missed performance measures would be difficult to ascertain. Thus, the payments made under the PAP (the "liquidated damages") are a reasonable approximation for contractual damages. Section 13.5 also states that payments under the PAP are not intended to be a penalty. These PAP payments do not foreclose any non-contractual legal or regulatory claims and remedies that may be available to CLECs. The CLECs oppose the provisions of Section 13.5.

241. Section 13.6 states that CLECs are not entitled to receive payments from both the PAP and any other rules, orders, or other contracts (such as interconnection agreements) that cover payments for the same or analogous performance as the PAP. If CLECs have alternatives to the PAP available, they must choose between the PAP and the available alternatives. The CLECs claim that the language referring to analogous performance in 13.6 is too broad.

242. Section 13.7 states that Qwest will not be liable for both Tier II payments and other assessments or sanctions by the Commission that cover the same or analogous performance. The CLECs claim that the language referring to analogous performance in 13.7 is too broad.

a. <u>Summary of Qwest and CLEC Positions</u>

243. Qwest filed comments on this issue on April 5, 2001, and in its opening brief Qwest states that the provision in Section 13.1 that the PAP not become effective until after Qwest receives 271 approval from the FCC is appropriate. Qwest states that "the FCC has clearly stated that the purpose of a performance assurance plan is to prevent backsliding once the RBOC obtains approval..."[35] The rational behind a PAP is that a RBOC's incentive to engage in market opening behavior exists before, but not after, approval.

244. Qwest states that the CLEC's opposition to Section 13.2 is unfounded. The FCC orders for Kansas, Oklahoma, and Texas indicate that the PAP is part of standard interconnection agreements in those states.

245. Qwest states that Section 13.3 simply disallows double payments for the same performance. Qwest claims that this is consistent with statements made by the FCC in the Massachusetts order.[36]

246. Qwest states that adopting the PAP essentially deprives CLECs of their constitutional due process rights. Therefore, it is appropriate for Section 13.4 to prohibit the use of performance results or payments under the plan as an admission of discrimination or of Qwest's liability for claims brought outside of the PAP. Qwest claims that this provision is based on language from the SBC Texas PAP approved by the FCC for Texas, Oklahoma, and Kansas.

247. Qwest indicates that Section 13.5 simply states that payments under the PAP are "liquidated damages." "(T)he payment amounts are unquestionable estimates, and the intent of the plan is to have Qwest make the payments without actual proof of harm incurred." "(L)iquidated damages are a means by which the parties, in advance of a breach, fix the amount of damages that will result therefrom and agree upon its payment." Qwest claims that the CLECs objection to Section 13.5 stems from their desire to take advantage of the PAP's self-executing liquidated damage payments and then litigate for the actual damages. Qwest believes that "the reservation of a right to sue for actual damages renders the liquidated damages unenforceable."

248. Qwest states that Sections 13.6 and 13.7 are totally appropriate and simply preclude Qwest from paying two penalties for the same performance miss.

249. WorldCom filed comments on this issue in its filing on April 5, 2001. WorldCom and Z-Tel jointly filed an opening brief discussing this issue. WorldCom and Z-Tel object to many of the limitations in Section 13 and refer to them as loopholes. They object to Section 13.1 because instituting the PAP before FCC approval will allow the Commission to evaluate the effectiveness of the PAP. They object to the limitations in Section 13.2. They believe that CLECs should be able to opt into the PAP under Section 1.8 of the SGAT immediately upon approval of the PAP by the Commission.

[35] Qwest cites the Verizon Massachusetts Order Paragraph 236-7, and 240

[36] Qwest cites the Verizon Massachusetts Order Paragraph 242

250. WorldCom/Z-Tel believe that the force majeure language in Section 13.3 is too vague. They indicate that there currently is language in the SGAT that defines force majeure events (SGAT Section 5.7). This existing SGAT language should be used in the PAP as well.

251. WorldCom/Z-Tel also take issue with Section 13.4 of the PAP. They state that Qwest's conduct underlying its performance, including its performance results, is discoverable and may be admissible as evidence. Qwest is free to contest the evidence, but it cannot bar it from being introduced. WorldCom and Z-Tel also state that Section 13.4 is vague and needs further clarification.

252. In relation to both Sections 13.4 and 13.5, WorldCom and Z-Tel indicate that PAP payments are not "liquidated damages." Therefore, the reference to liquidated damages should be deleted.

253. WorldCom and Z-Tel object to Sections 13.6 and 13.7 because they do not believe that any court would allow for double recovery. They also state that they would not seek double recovery. That is, any PAP penalty payments Qwest makes would be netted out of any other damages the CLECs could potentially receive. They point out that restrictions on double recovery should only apply to double recovery for the same acts. Qwest's restriction against double recovery for "analogous" wholesale performance is too vague.

254. WorldCom and Z-Tel believe that both Sections 13.8 and 13.9 should be deleted.

255. Qwest filed a reply brief on this issue. Qwest does not change its position outlined in its opening brief. Qwest clarifies that Section 13.4 does not limit "...the introduction of performance results into evidence in another proceeding, if appropriate."

256. Qwest believes that the position of WorldCom and Z-Tel that Sections 13.6 and 13.7 are too broad and overly restrictive is vague and unsupported.

257. WorldCom filed a reply brief on this issue. WorldCom requests that the Commission adopt a "memory" concept if the Commission does not choose to make the PAP effective before the FCC grants Qwest 271 approval. WorldCom believes that if 1) Qwest has missed a measure for three consecutive months prior to the PAP being in effect and 2) misses that measure again in the first month that the PAP is effective, then that measure should be treated as if Qwest has missed it four months in a row. The appropriate escalated penalties should then apply.

258. WorldCom indicates that CLECs should not be entitled to double recovery for the same violation. However, Qwest's restrictions on payments for analogous activity are too broad and will result in disputes over what constitutes analogous activity.

259. Qwest did address this issue in its filing on the ROC collaborative. In this filing, Qwest proposes a definition of force majeure (to be inserted in to Section 13.3) that is similar, but not identical to the definition WorldCom advocated in its opening brief.

260 WorldCom does address this issue in its filing on Qwest's ROC proposal. WorldCom states that Section 13.3 should include either the language in the SGAT Section 5.7.1 or this language should be cross-referenced. The language on force majeure in Section 13.3 should be limited to only benchmark standards and should not apply to parity measures. WorldCom states that the force majeure language in the Colorado final PAP report[37] is more appropriate. It is not as general as the language Qwest provided in this proceeding. WorldCom would like the following language added to Section 13:

> "If Qwest desires a waiver of its obligation to pay any penalties it must file an application with the Commission. Any waiver request must, by a preponderance of the evidence, establish the circumstances that justify the waiver, stating any and all relevant documentation to support the request. CLECs and other interested parties would have a full opportunity to respond to any such waiver request prior to the Commission ruling. Qwest shall be required to pay any disputed amounts or place the disputed amount of money into an interest-bearing escrow account until the matter is resolved. In addition, any such waiver should only apply to a narrow period of time when the activity occurred, not months after the activity or has ended."

261. WorldCom opposes the Section 16.0 changes proposed by Qwest. WorldCom does not support Qwest changes which indicate that Qwest may be able to have the final say on PAP changes.

b. <u>Discussion and Staff Recommendation</u>

262. In Staff's Proposed Findings of Fact and Conclusions of Law, Staff agreed with Qwest's position on Section 13.1. Staff believed that the effective date of the PAP should follow FCC 271 approval.

263. Staff disagreed with Qwest's position on Section 13.2. Staff supported the CLECs desire to opt into the PAP as soon as it goes into effect. An amendment to a CLECs current interconnection agreement should not be necessary. The Arizona OSS test has documented that obtaining an amendment to an interconnection agreement can be a lengthy and difficult process (see AZ IWOs 1130, 1132, and 1134).

264. Staff supported Qwest's inclusion of Section 13.3 force majeure language that corresponds to the language in the SGAT for measures with a benchmark standard. However, if Qwest misses a measurement with a parity standard, then Qwest should not

[37] Weiser, Phil. *Final Report and Recommendation*. 2001.

be forgiven for these Tier I or Tier II misses. Staff believed that the PAP should clarify that resumption of the PAP will occur in the month following a force majeure event.

265. Staff supported Qwest's position on admission of liability stated in Section 13.4. This is the same language as is in the Texas PAP.

266. Staff supported Qwest's position on liquidated damages stated in Section 13.5. This is the same language as is in the Texas PAP.

267. Staff supported the CLEC position on payment entitlements stated in Section 13.6. A similar section to 13.6 does not exist in the Texas PAP. Staff opposed the inclusion of Section 13.6 in the PAP. Staff was especially against the inclusion of the vague reference to "same or analogous" performance.

268. Staff supported the CLEC position that the Section 13.7 language referring to "analogous performance" is too broad. Currently, Qwest's Section 13.7 reads:

> "Qwest shall not be liable for both Tier II payments and assessments or sanctions made for the *same or analogous performance* pursuant to any Commission order or service quality rules." (Italics added.)
>
> The same section as presented in the FCC approved Texas PAP for SBC reads:
>
> "SWBT shall not be liable for both Tier II "assessments" and any other assessments or sanctions under PURA or the Commission's service quality rules relating to the *same performance*." (Italics added.)

269. In addition, Staff believed that there is a valid distinction between PAP penalty payments and Commission performance standards. For most measurements under the PAP, Qwest is required to deliver parity performance or face penalties. However, Commission performance standards set retail/wholesale levels of performance. These retail/wholesale levels may be above Qwest's current level of performance (as utilized in computing parity performance). If Qwest does not meet these standards, then Qwest should be liable to penalties under both the PAP and any Commission performance standards.

270. Qwest should change the final sentence of the first paragraph in Section 16.0 to read: "Any changes to existing performance measurements and this PAP shall be by mutual agreement of the parties." This was the original sentence and was changed by Qwest in its latest submission of the PAP. The Commission should also be able to make changes to the PAP without Qwest approval.

271. Qwest did submit comments on this issue in response to Staff's initial report. With respect to Section 13.7 Qwest proposes that the term "same underlying activity or omission" be used instead of Staff's proposed (and Texas' adopted) "same

performance." Qwest also indicates that if Staff is proposing to eliminate Section 13.7 they would oppose it.

272. Qwest states that Staff's position on this issue was one of the more troubling parts of Staff's initial report. Qwest states that changes made to the PAP should not be made without Qwest consent. Staff's recommendation on disputed issue 16 contrasted to Staff's position on PAP changes in issue 14. In issue 16, Staff stated that mutual consent of the parties was required for PAP changes. Qwest states that federal law does not support the Staff's recommendation that changes to the PAP can be made without Qwest's consent. Qwest proposes an approach to this issue which was developed in the multi-state proceeding. This approach is outlined in the following language which would be included in Section 16.0 of the PAP:

> "Changes shall not be made without Qwest's agreement, except that disputes as to whether new performance measurements should be added shall be resolved by one arbitration proceeding conducted pursuant to Section 5.18.3 of the SGAT, which shall bind CLEC and Qwest and all parties to the arbitration and determine what new measures, if any, should be included in Exhibit K to the SGAT..."

273. Qwest proposes to require CLECs to file for approval of PAP amended interconnection agreements prior to opting into the PAP. These agreements need only be filed with the Commission (and do not need to be approved) in order for CLECs to opt into the PAP. Qwest also recommends that it begin supplying performance data to the Commission once the FCC has issued §271 approval, rather than starting on March 2001 since this date has passed.

274. WorldCom did submit comments on this issue in response to Staff's initial report. WorldCom requests that Staff require Qwest to begin supplying performance data to the Commission and to CLECs. WorldCom states that the multi-state QPAP report reads: "The QPAP should therefore require Qwest to provide monthly reports as if the QPAP had become effective on October 1, 2001." In Colorado, the Hearing Commissioner asked that Qwest provide monthly performance reports within 60 days of the Colorado commission's approval of the CPAP. The method of reporting and the storage of Qwest's performance data was specified as well. WorldCom asks that the Commission request that Qwest add the following sentence to the PAP: "The Commission can modify the PAP without Qwest approval."

275. With respect to Section 13.7, Staff rejects Qwest's new proposed language ("same underlying activity or omission") and continues to recommend "same performance." Also, Staff clarifies its position by stating that Section 13.7 should not be removed from the PAP. The removal of Section 13.7 was never contemplated by Staff.

276. Staff would like to clarify that it will seek mutual consent on changes to the PAP. When mutual consent is not possible, the Commission will make the final recommendation. Staff agrees with WorldCom that Qwest add the following sentences to

the PAP at the end of the first paragraph of Section 16.0: "The Commission can modify the PAP without Qwest approval. However, the Commission will first seek mutual consent of the parties. In the event that mutual consent is not possible, the Commission will make the final recommendation on PAP changes." These sentences should replace the last sentence in the first paragraph of Section 16.0 which reads: "Any changes to existing performance measurements in this PAP shall not be made without Qwest's consent."[38]

277. Staff disagrees with Qwest's recommendation that an amended interconnection agreement be filed prior to a CLEC opting into the PAP. Staff continues to support its prior recommendation on this issue. Qwest indicated in its comments on Staff's initial report that it would be willing to begin making payments to a CLEC when an amended interconnection agreement is filed with the Commission, as opposed to when the Commission approves it. This proposal in no way addresses Staff's concern. Staff's concern is that the process of negotiating the amendment prior to it being filed with the Commission may be lengthy and burdensome for the CLECs. Staff would support including the PAP in interconnection agreements if Qwest would be willing to agree to the following:

1) Qwest must file standard language for the amendment that any and all CLECs can use that indicates that the CLEC is eligible for payments under the Arizona PAP. The language must be filed with the Commission at the time Qwest's modified PAP plan is filed. The language will be subject to Commission approval after parties have an opportunity to comment on it.

2) For any CLEC that indicates that they want to use the standard language, the CLEC shall be able to file the amendment to the interconnection agreement with the Commission for approval. The CLEC will be required to send notice to Qwest that they are opting into the standard language, but Qwest will not be required to take any action.

3) Qwest will begin making payments under the PAP when the amendment is filed with the Commission.

278. Staff also disagrees that Qwest begin supplying performance data and PAP calculations to the Commission and CLECs following §271 approval. Staff continues to recommend that Qwest supply monthly performance data to the parties prior to PAP approval. Qwest already supplies monthly performance data to the Commission. Staff asks that performance data results for all PIDs be supplied to the Commission and CLECs beginning with data from March 2001. This data should be supplied to CLECs within 30 days of the approval of the PAP by the Commission. Qwest should supply data in accordance with its reporting requirements as currently listed in Section 14.0 in the PAP. Qwest's initial performance data report should include monthly data for the last month for which data is available and all months between that month and March 2001, including March 2001. The data necessary to make these calculations exists in Qwest's systems

[38] Qwest PAP, revised July 3, 2001, page 21.

now. In order to budget for penalty payments and to identify performance areas that need to be improved, it would be advantageous to Qwest to make Staff's proposed historical calculations. Thus, Staff does not believe that our proposal is burdensome on Qwest. Also, Staff believes that the historical data will greatly enhance the effectiveness of the six-month review. Having the additional data that Staff's proposal would afford would give the participants in the six-month review much more data to work with. Additional data will allow for more informed decision making at the six-month review.

DISPUTED ISSUE NO. 15: Data Timeliness (PAP – 15)

279. The PAP penalties are calculated based on data Qwest collects and analyzes. At regular intervals "performance reports" are made available to the CLECs by Qwest. Each CLEC receives reports that detail Qwest's performance relative to that CLEC and a report detailing Qwest's performance for the CLEC community as a whole. (CLECs do not receive reports of Qwest's performance for other CLECs; performance reports for individual CLECs are considered to be highly confidential.)

280. Performance reports need to be created on a timely basis in order for any PAP penalties to be paid out on a timely basis. Also, performance reports need to be delivered to the CLECs on a timely basis in order for the CLECs to respond with any reconciliation issues in a timely fashion.

a **Summary of Qwest and CLEC Positions**

281. Qwest does mention this issue in its filing on April 5, 2001. Qwest states in its opening brief that it believes that late reporting of monthly CLEC results will not cause CLECs harm. Qwest, however, has agreed to pay $500 to the State of Arizona, for each business day for which a report is past a grace period.

282. WorldCom mentions this issue in its filing on April 5, 2001. WorldCom asks that Qwest be liable for a $5000 payment to the State of Arizona for each day past the delivery due date of a report. WorldCom also states that if the reports provided to CLECs are incomplete or inaccurate, then Qwest would be liable for a $1000 payment to the state for each day past the initial due date. In the event that a CLEC cannot access the data on which reports are based, then Qwest would be liable for a $1000 payment to affected CLECs per day until this data is available. This payment would only be required if Qwest was responsible for the lack of CLEC access. Interest would accrue if Qwest does not provide payments by the due date. If reports are late, and Qwest pays associated penalties, Qwest would still be liable for penalties due to poor performance as evidenced in the reports.

283. Qwest maintains that the CLECs have not supported their contention that CLECs are harmed by late reporting. However, Qwest continues to commit to a penalty for late reporting.

284. Qwest did address this issue in its filing on the ROC collaborative. Qwest mentions that previous PAP versions omitted a due date on providing CLEC data to CLECs. Qwest will provide data by the last day of the month which follows the month for which data is available. Qwest also asks for a grace period of five business days. If Qwest does not comply, then it would make a $500 payment to the State of Arizona for each business day missed following the five day grace period.

285. WorldCom filed comments on Qwest's ROC proposal. WorldCom does not support Qwest's contention that its ROC proposed changes resolve this impasse issue. WorldCom restates its stance as outlined in its opening brief. WorldCom also states that Qwest's stance is not consistent with the Texas PAP. The Texas PAP contains the following guidelines on reports:

- If no reports are filed, $5,000 per day past due
- If incomplete reports are filed, $1,000 per day for each missing performance results

286. WorldCom also mentions the Colorado Final PAP Report. This report included a recommendation that Qwest pay interest at twice the one-year treasury rate if it provides late payments. This report also recommended that if reports are inaccurate, then Qwest should pay the applicable penalty to the affected CLEC(s) plus a penalty of fifty percent of the amount in question.

b. <u>Discussion and Staff Recommendation</u>

287. In Staff's Proposed Findings of Fact and Conclusions of Law, Staff agreed with the data timeliness penalties as stated in the Texas PAP and supported by the CLECs.

288. Qwest did submit comments on this issue in response to Staff's initial report. Qwest recommends a $500 total payment to the Commission for each business day a report is past the grace period of five days. Qwest opposes Staff's recommendation which ostensibly eliminates the grace period. Qwest also opposes Staff's recommended late reporting penalties as excessive and states that they are not based on any alleged harm to the CLECs.

289. Staff continues to support its prior recommendation, with the clarification that the five day grace period for reporting should remain intact. Staff sees no reason to deviate from the penalty levels that have been in effect in Texas. In response to Qwest's statement that the penalty levels are excessive and that they are not based on any alleged harm to the CLECs, Staff is compelled to point out that the purpose of the PAP is to incent Qwest. It is not meant to compensate the CLECs for any alleged harm. Staff will review the reporting penalties in the six-month PAP review.

DISPUTED ISSUE NO. 16: A.R.S. §40-424 (PAP – 16)

290. The PAP is a method by which the Commission will be penalizing Qwest due to noncompliance. Arizona Statute 40-424, titled "Contempt of Corporation Commission; penalty," addresses the leveling of penalties by the Commission. Parties have varying concepts of how this statute applies to the PAP. Below is the text of this statute:

> A. If any corporation or person fails to observe or comply with any order, rule, or requirement of the commission or any commissioner, the corporation or person shall be in contempt of the commission and shall, after notice and hearing before the commission, be fined by the commission in an amount not less than one hundred nor more than five thousand dollars, which shall be recovered as penalties.
>
> B. The remedy prescribed by this article shall be cumulative.

291. Qwest responds to this issue in its opening brief. Qwest states that the Arizona Corporation Commission is unable to award monetary damages due to its non-judicial nature. Qwest states that unless Qwest agrees to the imposition of penalty payments, the Commission is unable to enforce payments under the PAP. Also, any payments imposed by the Commission cannot be made payable to the CLECs, but must be made to the State of Arizona.

292. WorldCom and Z-Tel jointly filed an opening brief on this issue. WorldCom and Z-Tel state that the Arizona Corporation Commission is authorized to enforce PAP penalty payments through the Telecommunications Act of 1996. WorldCom and Z-Tel state that the Commission should be able to impose penalties without an Order unless needed as part of a dispute resolution process. Any Arizona statutes that may restrict the Commission's penalty enforcement powers (such as A.R.S. §40-424), are not applicable in this proceeding. However, A.R.S. §40-424 would enable the Commission to impose penalties on Qwest. These penalty payments would be received by the State of Arizona, not by the CLECs. WorldCom and Z-Tel also state that these payments would not be due to the penalty provisions in the PAP.

293. Qwest restates its stance on this issue in its reply brief. Qwest believes that it is only through its agreement to hold to the terms of the PAP, that the Arizona Corporation Commission has the ability to impose PAP penalties. According to A.R.S. §40-424, the Commission can force Qwest to make PAP penalty payments with Qwest's agreement. Qwest also states that federal authority to enforce penalty payments under the Telecommunications Act of 1996 is lacking. Qwest's consent is integral to the imposition of PAP penalty payments. Qwest states that the opening brief of WorldCom and Z-Tel agrees with Qwest that payments must be received by the State of Arizona and that the payments would not be due to the penalty provisions of the PAP.

b. **Discussion and Staff Recommendation**

294. In Staff's Proposed Findings of Fact and Conclusions of Law, Staff supported the CLEC comments. Staff stated that the Commission is adopting this performance assurance plan under not only State law, but the Telecommunications Act of 1996 as well. Furthermore, the PAP is designed largely to ensure Qwest's continued compliance with the market opening requirements of the Federal Act and Section 271 of the Federal Act. Therefore, Staff did believe that the Commission has the authority to institute a PAP which imposes penalties in the event of Qwest's noncompliance.

295. Qwest did submit comments on this issue in response to Staff's initial report. Qwest states that without Qwest consent to the PAP penalties, all penalties must be made to the State of Arizona. The Commission is not legally able to mandate that Qwest make penalty payments directly to CLECs. Staff continues to support its prior recommendation. The Commission may require that Qwest make payments directly to CLECs absent Qwest's consent.

J. Verification of Compliance

296. The proposed PAP outlined herein will act to ensure continued compliance by Qwest Corporation with the Act's market opening measures after Qwest receives 271 authorization.[39] This is important since one factor the FCC examines in 271 applications, is whether there exists adequate measures or incentives for the BOC to continue to satisfy the requirements of section 271 after entering the long distance market. The FCC has previously stated that the existence of a satisfactory performance monitoring and enforcement plan is probative evidence that the BOC will continue to meet its section 271 obligations after such a grant of authority.

297. The Arizona PAP is modeled on the Texas plan, which the FCC has said would be effective in practice. *Bell Atlantic New York Order*, 15 FCC Rcd at 4166-67, para. 433. The Arizona PAP includes the five characteristics which the FCC considers to be substantial evidence of the effectiveness of any such plan: 1) the potential liability provides a meaningful and significant incentive to comply with the designated performance standards, 2) the plan contains clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance; 3) the plan contains a reasonable structure that is designed to detect and sanction poor performance when it occurs; 4) the plan contains a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal, and

[39] This report rejects any suggestion that Qwest's implementation of a PAP is an option insofar as Section 271 compliance is concerned. As Ameritech recognized in 1997, without "'concrete, detailed performance standards and benchmarks for measuring Ameritech's compliance with its contractual obligations and impos[ing] penalties for noncompliance,' Ameritech's statutory nondiscrimination obligations are only 'abstractions.'" In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in the State of Michigan, CC Docket No. 97-137, Evaluation of The United States Department of Justice, at 40 (June 25, 1997) (available at http://www.usdoj.gov/atr/public/comments/sec271/ameritech/1147.htm) (quoting Ameritech Brief at 35).

5) there exist reasonable assurances that the reported data are accurate. See, *SWBT Texas Order*, 15 FCC Rcd at 18558-59, para. 423.

298. Qwest has agreed to allow any and all CLECs operating within the State of Arizona to opt into the PAP, which will become a part of Qwest's SGAT.

299. Staff recommends the following additional conditions:

1) the PAP will become a part of Qwest's SGAT, and Qwest claims that its SGAT will be in effect for a period of three years only. The PAP should not automatically be terminated when/if the Commission approves Qwest withdrawing its SGAT in Arizona.

2) also, the performance data gathered by Qwest should be forwarded to the Commission for each month of data. Qwest should submit performance data, starting with March 2001, to the Commission.

3) the evaluation of the appropriateness of a proposed PAP should be performed within the context of the docket opened to evaluate Section 271 issues.

4) the proposed PAP's provisions, if embodied in a SGAT filed by Qwest and accepted by the Arizona Corporation Commission, will remain in force regardless of developments in other states unless the Commission rules otherwise.

300. Staff recommends that the Commission withhold final endorsement of Qwest's 271 application with the FCC until Qwest has filed a PAP that conforms with all of Staff's above recommendations and agrees to abide by the provisions of that PAP.

II. CONCLUSIONS OF LAW

1. 47 U.S.C. Section 271 contains the general terms and conditions for BOC entry into the interLATA market.

2. Qwest is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. Sections 40-281 and 40-282 and the Arizona Commission has jurisdiction over Qwest.

3. Qwest is a Bell Operating Company as defined in 47 U.S.C. Section 153 and currently may only provide interLATA services originating in any of its in-region States (as defined in subsection (I)) if the FCC approves the application under 47 U.S.C. Section 271 (d)(3).

4. The Arizona Commission is a "State Commission" as that term is defined in 47 U.S.C. Section 153(41).

5. Pursuant to 47 U.S.C. Section 271(d)(2)(B), before making any determination under this subsection, the FCC is required to consult with the State Commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c).

6. In order to obtain Section 271 authorization, Qwest must, inter alia, meet the requirements of Section 271 (c)(2)(B), the Competitive Checklist.

7. The Commission's jurisdiction to adopt this PAP arises under both State and Federal Law to ensure Qwest's continued compliance with its section 271 obligations, including Competitive Checklist requirements, after it receives Section 271 authority from the FCC.

8. The PAP adopted herein provides the necessary assurances that the local market will remain open after Qwest receives Section 271 authorization.