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2 came up with this alternative, alternative plan.
3 So yesterday Mr. Williams raised a concern
4 that random fluctuations in data could come, could
5 cause payments in the APAP, just through, just through
6 normal random fluctuations and, and in my mind this is
7 a non issue for, for some reasons that I'm not gonna
8 get into, but what I am gonna, what I am gonna try to
9 do is make this issue go away, and I'm gonna do that
10 by offering up some language, an additional part to
11 Condition No. 4 that we proposed to try and make this
12 a non issue. Because the CLECs goal isn't to try to
13 collect money from the, you know from the Joint
14 Applicants in terms of plan. Our, our CLEC goal is
15 really that we hope they never make a payment, we just
16 want to assure wholesale service quality doesn't
17 decline as a result of the merger and want the
18 incentive in place. And so, and so this would be a
19 subpart to condition, Condition 4 regarding the,
20 regarding the APAP. And what we would say is that
21 APAP remedy payments to a CLEC for a specific PID in
22 some measure will not occur until the remedy payments
23 exceed the remedy credit. And for each CLEC and each
24 PID, product, and disaggregation in the APAP a remedy
25 credit will be calculated as described in this

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paragraph. The remedy credit is calculated as follows for each PID, product, and disaggregation. For each month one year prior to the merger filing date monthly performance will be compared to the average wholesale performance provided by Qwest to each CLEC for one year prior to the merger filing date. If monthly performance as described in the preceding sentence would result in a remedy payment calculated using the methodology in the APAP to determine remedy payments, then the calculated amount will be a remedy credit for the PID, product, and disaggregation.

So what this really gets to is if, if, if under, under Mr. Williams you know concern that just performance in the past would have caused payments under the APAP, say payments won't start until you go beyond, you go beyond that level. So let's, let's just make sure that we're really capturing a deterioration in, in wholesale service quality. You know before, before there be any remedy payments under the plan.

But the, but at the same time there be calculations and the information will be going forward so the, so the Joint Applicants will, will see that they're facing a, they're facing a risk of potential

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2 terms -- and conditions very carefully, didn't you?

3 A. Yes, I chose them carefully, and al -- but a
4 lot of them I took as much as possible, just the words
5 and kind of the methodology, right out of the QPAP. I
6 was trying to minimize the creation of, you know,
7 something new. And trying to use what we already had
8 in place and just apply it in a slightly different
9 manner.

10 Q. And you wanted to make sure that this plan
11 would measure what you testified to as performance
12 deterioration or performance degradation as a result
13 of the merger, didn't you?

14 A. That's correct.

15 Q. And now, throughout your testimony you seemed
16 to interchangeably use the terms "performance
17 deterioration" and "performance degradation," but we
18 can agree here that both terms mean roughly the same
19 thing; is that correct?

20 A. That's correct.

21 Q. Okay. So I can refer to either term and
22 we'll know what we're talking about?

23 A. Yes.

24 Q. But you never defined the terms "performance
25 deterioration" or "performance degradation" in your

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2 APAP plan, did you?

3 A. No, I think they are defined by the
4 statistical test that would apply to pre-merger and
5 post-merger performance. And I think it's determined
6 when there's a significant deterior -- I mean,
7 "deterioration" just means decline.

8 But the test in the APAP is when there's a
9 statistically-significant deterioration, then a remedy
10 payment would kick in. And I think those are very
11 clearly defined.

12 Q. In fact, sir, you've never even used the
13 terms "performance deterioration" or "performance
14 degradation" in the APAP? I mean, I did a search and
15 I couldn't find them.

16 A. Oh, that's quite possible.

17 Q. Okay. But when you went about drafting the
18 APAP you were careful with it and you wanted to make
19 sure that you got it right for the right public
20 policies, correct?

21 A. Right. I wanted to put a proposal forward
22 that would incent wholesale service quality
23 post-merger. Make sure that the company had the
24 incentives to respond to deteriorations in wholesale
25 service quality in a timely manner.

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2 Q. Well, you don't say that in your testimony
3 here.

4 A. No. I said it right now, just a minute ago.

5 Q. Okay. So, but I just want to confirm that
6 you did not look at the Utah PAP when you prepared
7 this testimony to make this statement?

8 A. Well, I, I don't have the Utah PAP in front
9 of me, so I -- so first I'd have to go through and
10 confirm. But I did go through the Utah PAP when I
11 prepared this testimony.

12 Q. And --

13 A. Is it possible that I missed this reference?
14 That's possible. But I'd have to look at the Utah PAP
15 to confirm that. But I did go through that PAP
16 preparing this testimony.

17 Q. You'd agree with me that there can be wild
18 fluctuations in one month compared to a 12-month
19 period, correct?

20 A. What type of fluctuations?

21 Q. Well, there could be, you know, unusual
22 fluctuations in one month compared to when you look at
23 something spread over a 12-month period.

24 A. I mean, I agree, a single month's performance
25 can be different than a 12-month average.

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Q. Well, let's cut to the chase then. Some months can be higher and some months can be lower?

A. Right.

Q. Okay. And that's why statisticians like to use a larger sample than a smaller sample to get a more accurate result, correct?

A. I mean, that's one benefit of a larger sample. That's correct.

Q. So for example let's say that because of snowy weather in Northern Utah in January, January is a really bad month, and thus the APAP results for that month are really bad. You know, suppose that after January things settled for the rest of the year.

You'd agree with me that the average for the whole year would be more indicative of Qwest's performance than the results in that one bad month of January?

A. And that, I mean, that's the reason we put in the force majeure provisions -- that don't exist in every state PAP -- is to say here, there is a reason -- here is a reason, like bad weather, that we shouldn't have to make that payment this month. That's why we put that into the plan.

Q. Well, and it doesn't have to be something

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2 APAP, please. You agree with me that if there is
3 performance deterioration or performance degradation
4 as a result of the merger, Qwest would have to pay
5 penalties to CLECs like Integra, correct?

6 A. If there's statistically significant
7 differences in post-merger performance to pre-merger
8 performance under the APAP as written here, Qwest
9 would pay penalties to -- kind of a remedy payment to
10 the CLECs.

11 Now, with the new proposal that I put forth,
12 that may not be the case. Because you have a kind of
13 a, what I call the "remedy credit" kind of built in
14 there before you would make a payment.

15 Q. And you just said "significant," but
16 significant is not defined in the APAP, is it?

17 A. Well, I mean, it is in a sense, because
18 that's what -- when you do a statistical test that's
19 what the statistical test is trying to capture is a
20 significant change in the -- or a significant
21 difference in the things that you're comparing.

22 And so the term "significant" may not be used
23 in the, you know, in the APAP, but I'm using it in
24 the, basically the statistical sense, saying we're
25 doing a test to see whether performance has

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2 significantly changed pre- and post-merger.

3 Q. So it's defined, in a sense; is that what
4 you're saying? In a sense?

5 A. No, it's defined in there as the -- it's
6 defined as a statistical -- form of a statistical
7 test. Significant in a statistical -- in statistics
8 means, it basically means a statistical test to
9 determine whether you're, you know, kind of beyond a
10 threshold that would require a remedy.

11 Q. And indeed, these penalties can be very
12 substantial, can't they?

13 A. The greater the deterioration in performance,
14 the greater the payments can be. And the longer that
15 it takes to fix performance the payments escalate kind
16 of over time when, when you don't fix performance.

17 Q. Let's go to page 11 of your APAP proposal,
18 Exhibit 1.1. And specifically Section 13.9. I see
19 that you took out 13.8; is that correct?

20 A. That's correct.

21 Q. Okay. And according to Section 13.9, the
22 penalties can exceed \$3 million in only one month; is
23 that correct?

24 A. Right. And this -- I took this section out
25 of the, out of the QPAP. And, you know, I can't