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## FISCAL IMPACT REPORT

SPONSOR: Sanchez, M. DATE TYPED: 02/26/03 HB \_\_\_\_\_

SHORT TITLE: Telecommunications Performance Assurance Fund SB 775

ANALYST: Padilla

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
	Indeterminate-- see narrative			Recurring	New Fund – Performance Assurance Plan Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
	Indeterminate-- see narrative		Recurring	New Fund – Per- formance Assurance Plan Fund
	(Indeterminate)		Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

Responses Received From  
Public Regulation Commission  
Attorney General’s Office

### SUMMARY

#### Synopsis of Bill

Senate Bill 775 adds a new section to the New Mexico Telecommunications Act to create a special, non-reverting fund in the state treasury called the “Performance Assurance Plan Fund.” The

fund would be administered by the PRC and financed by payments from telecommunications companies that are subject to a “performance assurance plan.” The fund would be used by the PRC to administer and audit the performance assurance plan of the telecommunications company.

### Significant Issues

1. The New Mexico telecommunications company currently subject to a performance assurance plan is Qwest. Qwest’s performance assurance plan (“QPAP”) springs from its pursuit of 271 approval from the Federal Communications Commission. That approval will allow Qwest to re-enter the interstate long-distance market. The QPAP is a method to ensure customers and regulatory authorities of Qwest’s commitments to performance in key areas. If Qwest fails to provide adequate service to competitive local exchange carriers (CLECs), Qwest will make “Tier 1” payments directly to those carriers.

This bill concerns what are called “Tier 2” payments. Tier 2 payments will be made directly to states when Qwest’s performance with respect to overall measurements is deficient.

2. This bill would allow the PRC to use the Tier 2 payments specifically for administration of the QPAP. The PRC reports the fund would allow for the following activities:

- Wholesale performance oversight
- Participation in region-wide oversight and wholesale dispute resolution
- State-specific dispute resolution proceedings
- Audits required by the QPAP

3. The PRC believes that without this new fund, it may not be able to pay for its share of the costs of monitoring the QPAP.

### **FISCAL IMPLICATIONS**

This bill would appropriate any money in the Performance Assurance Plan Fund to the PRC. If this bill is not enacted, Qwest’s Tier 2 payments will go into the general fund. The PRC could not estimate what Qwest’s payments might be. The payments will be affected by the volume of wholesale activity from CLECs and Qwest’s ability to meet its performance targets. Although the payments will likely be recurring, they will fluctuate from month to month.

The PRC estimates that New Mexico’s cost to participate in the multi-state collaborative effort for post-271 QPAP monitoring will be approximately \$20.0 a year. This activity is only a part of what the new fund would be used for.

The AGO believes the costs of the PRC’s efforts to monitor the QPAP should be borne by the cost-causer, in this case Qwest. This bill would create the means to allow the cost-causer to bear the costs.

Continuing Appropriations

This bill creates a new fund and provides for continuing appropriations. The LFC objects to including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

LP/njw