BEFORE THE ARIZONA CORPORATION COMMISSION

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 TELECOMMUNICATIONS ACT OF 1996

T-00000A-97-0238
DOCKET NO. ~~T-00000B-97-238~~

QWEST COMMENTS REGARDING OUTSTANDING PAP ISSUES

PAP-2: Change Management Measurement

Qwest is circulating a proposed change management performance measurement with the Arizona TAG this week. A draft of the measurement will be distributed in the PAP workshop. The measurement addresses the timeliness within which Qwest provides notice of key software release notification documentation to CLECs for relevant gateway interfaces.

PAP-3: Texas Requirement to Investigate Two Consecutive Month Misses

Qwest's proposal is described separately in Exhibit A, Qwest Proposal – Investigation of Two Consecutive Month Misses. Qwest addressed the efficiency of the Texas requirement in its comments filed January 29, 2001. In addition, Qwest provides the following.

Z-Tel acknowledges that "it is impossible to specify, *ex ante*, all conditions under which a root cause analysis is warranted."[1] Despite being correct in its observation, Z-Tel nonetheless

[1] Z-Tel Comments, January 29, 2001, p.2.

proposes the kind of blunt administrative requirement that belies a more enlightened regulatory approach.

The "conditions" that Z-Tel acknowledges, but does not enumerate, are that the determination of whether Qwest meets or fails the standards of Tier-1 performance sub-measurements will most of the time be made with fewer than 10 data points. At the February workshop, Mr. Inouye stated that in August and October 2000, 69% and 57% of all (benchmark and parity) performance measurements had fewer than 10 data points. Qwest Exhibit B shows that just for the parity measurements, the percentage with less than 10 data points is higher at 61% and that the percentage with less than 30 data points is 72%. It would be fair to conclude that a Texas type requirement applied to Arizona small samples will require Qwest to conduct a lot of investigations of relative few missed orders.

The Texas requirement is made even more onerous by the CLECs' proposals that the statistical confidence level for meets/fails decisions for parity be lowered from the traditionally accepted 95% confidence level. For example, Qwest Exhibit C shows that for the CLEC proposal to balance Type I and Type II error, the statistical confidence level would be between 55% to 65% when CLEC volume is less than 9, and 65% to 75% when CLEC volume is between 10 and 30. Lowering the confidence level to such low levels increases the likelihood that Qwest will miss sub-measurements two consecutive months. It would be unreasonable and a waste of resources to require root cause analyses of performance results judged to be non-compliant with only a 55% to 65% confidence level.

Z-Tel proposes that root cause analysis be triggered when performance results exceed "a mean difference of 25%" or more. Qwest opposes such a proposal. Z-Tel's concept of a 25% mean difference is that when the relevant retail measurement point is 90%, the CLEC result could be no less than 87.5%.[2] Given the fact of small CLEC volumes, a margin of 87.5% to 90%

[2] See Z-Tel Comments, January 29, 2001, Exhibit 2, p. 9, footnote 8. Z-Tel proposes that the difference percent difference between CLEC and Qwest result is calculated as the difference between the CLEC and Qwest result divided by 1 minus the Qwest result. A 25% mean difference calculated by dividing by 1

is meaningless. When CLEC volume is 5, a single miss causes the CLEC result to fall 20 percentages points from 100% to 80%. Even when CLEC volume is 20, a single miss causes the CLEC result to fall 5 percentage points from 100% to 95%.

The Texas requirement to do root cause analysis after two consecutive months of Tier-1 misses for any performance sub-measurements is a bad fit for the circumstances of the Arizona CLEC volumes.

PAP-4: K-Table

Mr. Kobbervig will be discussing the Qwest K-Table during the workshop. Additionally, Qwest provides the following comments.

With respect to the Balanced Exclusion Table, it appears that its practical effect is to minimize K-Table exclusions, if not eliminate the K-Table entirely and substitute a 1.65 critical value applied across the board. Qwest opposes the proposal.

Z-Tel proposes to statistically test whether all parity measurements are in parity. If such a test cannot be passed and the average CLEC sample size is 1,450 or less, then no K-Table exclusions are allowed.

However, if the statistical test cannot reject the hypothesis that Qwest has met standards on all parity measurements, exactly the test that Z-Tel relies upon, then logically no payment whatsoever should be made to the CLEC, regardless of whether individual sub-measurements met or failed standard at a 1.65 critical value. Why in this situation Z-Tel would allow K-Table exclusions only to the extent of the K value is unfathomable. If the test that Qwest has met all parity standards cannot be rejected, then no payments should be made.

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minus the Qwest result gives the illusion of a 25% margin, but in fact is a difference of 2.5 percentage points.

Furthermore, Z-Tel's proposal that no K-Table exclusions would be allowed if the CLECs' average sample size was less than 1,450 is unacceptable given that 72% of the time Arizona CLEC sample size is less than 30.

PAP-5: 36% Cap

Z-Tel claims that once the cap is reached, there is no counterbalance to Qwest's incentive to discriminate.[3] Nothing could be further from the truth. The risk of losing the ability to market inter-LATA services is no small financial incentive to Qwest.

Z-Tel's claim relies upon the premises that Qwest would intentionally scheme to discriminate, could quickly institute such a scheme through orchestrated activity of thousands of employees, and then could quickly turn such a scheme off in time to avoid spill over effects on the following year's performance results. All are false and ridiculous premises.

Z-Tel purports to present evidence that it is impossible for SBC to reach its 36% cap[4] and claims to extend its analysis to Qwest. Qwest wonders what relevance a simulation of SBC-Texas data has for Qwest-Arizona. Qwest constructed its own simulation and presented its results in comments filed January 29, 2001 and at the February 5, 2001 workshop. The simulation relies entirely upon publicly available information and demonstrates that indeed the 36% cap would be reached.

Qwest's Exhibit D is a refinement of the simulation and is submitted not only to demonstrate that the 36% cap would be reached, but also to demonstrate the magnitude of escalation of payments that are embedded in the QPAP.

[3] Z-Tel Comments, January 29, 2001, p. 3.

[4] Z-Tel Comments, January 29, 2001, p. 3. It is curious that Z-Tel would present SBC-Texas evidence without an explanation whether such evidence had been presented to the Texas Commission and what the Texas Commission's conclusion are with respect to it. The presumption would have to be that the Texas Commission judged the Z-Tel information to be flawed since the Texas PAP is operating and has undergone at least one 6 month review.

The Qwest simulation is performed at various levels of misses, starting at 1%[5]. One percent represents the portion of CLEC volumes from which Tier-1 and Tier-2 payments are calculated. In other words, the simulation starts by assuming 1% of CLEC volumes are calculated as occurrences pursuant to Sections 8.0 and 9.0 of the QPAP.

For a benchmark performance measurement with a standard equal to 90%, a 1% miss is equivalent to a CLEC result equal to 89.1%. A 2% miss equals a CLEC result of 88.2%. A 5% miss is a CLEC result of 85.5%. A 7% miss is a CLEC of 83.7%.

For convenience, misses are assumed to be distributed across the performance measurements according to the CLEC aggregate volumes projected for May 2002. Alternative distribution of misses could be made.

In order to provide the Commission a reference point, Qwest's Exhibit E calculates the percent of overall misses based upon October 2000 performance results. For Tier-1 the overall percent is 3.7%. For Tier-2 the percent is 4.2%.

Qwest's simulation indicates that as CLEC volumes grow, payment levels will increase, all other factors remaining constant.[6] Assuming three month consecutive misses, which is the point at which Tier-2 payments start, the 36% net return cap proposed by Qwest would be reached at an overall percentage miss of approximately 7%.

Z-Tel claims that the calculation of a 36% cap should result in $93.6 million. In so doing, Z-Tel ignores actions by the Commission that affect the level of Qwest intrastate earnings and wishes instead to substitute Federal Communication Commission ("FCC") rules. As the Commission is well aware, the Arizona earnings of Qwest is determined mostly by rates set by this Commission, as opposed to the FCC. Qwest has calculated its Arizona earnings by

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[5] Certain performance measurements, because of the nature of the denominators used to calculated performance results, had their percentage of misses scaled back considerably. They are MR-8, BI-1, BI-2, BI-3, BI-4b, and NI-1.

[6] Qwest's simulation is based upon projected May 2002 CLEC volumes. The projection is based upon the projection relied upon for the Arizona OSS test.

recognizing the effect of depreciation rates of this Commission on the intrastate portion of the plant investment. Z-Tel wishes to ignore the Commission's rates and use the FCC's.

When Qwest filed the QPAP, it noted on Attachment 3 of the QPAP that the calculation the 36% would be updated upon a final Commission order in Docket No. T-01051B-99-105. It was not anticipated that such an order would incorporate an alternative regulation plan of scheduled rate reduction with opportunity to raise rates. Incorporation of such an order into the 36% calculation of a cap would be impossible. Therefore, Qwest proposes that the Arizona cap be calculated annually using 36% and relying upon the FCC ARMIS report, modified for intrastate depreciation expense. For instance, the year 2002 annual cap would be 36% of year 2001 ARMIS net revenues modified for 2001 intrastate depreciation expense.[7]

PAP-6: Other PAP Changes

A. Unused Portions of Monthly Cap

With respect to rolling forward unused portions of the monthly cap, Qwest will agree that the unused portion of prior months' caps roll forward continuously until the last month of the calendar year. The following language will be removed from Section 12.0 the QPAP as it is contradictory and inconsistent.

> At the end of the year, if the aggregate of all payments for which the cap applies equals or exceeds the annual cap, but Qwest has paid less than that amount due to the monthly cap, Qwest shall be required to pay an amount equal to the annual cap. In such an event, Tier-1 payments shall be paid first on a pro rata basis to CLECs, and any remainder within the annual cap, shall be paid as Tier-2 payments. In the event the total of Tier-1 and Tier-2 payments is less than the annual cap, Qwest shall be obligated to pay only the actual calculated amount of Tier-1 and Tier-2 payments.

B. Minimum Payments

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[7] The 2001 revenue effect of the Commission Order in Docket No. T-01051B-99-105 will automatically be reflected in the revenue accounts reflected in the 2001 ARMIS report.

The CLECs propose minimum payments to be paid whenever Qwest fails to meet standard for a sub-measurement. Earlier in these workshops, the CLECs claimed that minimum payment was necessary to protect nascent competitors. Qwest responded with its nascent market proposal.

Now Z-Tel proposes that a minimum payment be imposed because when CLEC volumes are small the per occurrence payment structure will produce payment levels that are less than the "actual consequences of the discrimination."[8] Qwest has asked the CLECs to bring to these workshop their evidence of the "actual consequences." So far, the CLECs have produced no evidence or quantification. Previously, Z-Tel has proposed minimum payments of $15,000, $5,000, and now $2,500.[9] Its attempt to justify $2,500 as representing "actual consequences of discrimination" draws into question what its previous minimum payment amounts represented. Minimum payment is a factual issue and the CLECs have yet to provide any factual support.[10]

PAP-6, PAP-10 and PAP-13 (Escalations of all Forms)

The issue of the escalation of Tier-1 and Tier-2 payments, whether through the extension of the QPAP payment table beyond 6 months, a factor for severity, the calculation of occurrences, or sticky duration, must be addressed jointly because the true issue is the overall level of PAP payments. Specifically, the questions are whether Tier-1 payments to CLECs are sufficient to compensate CLECs and whether the combined effect of Tier-1 and Tier-2 payments is sufficient incentive for Qwest to provide compliant service.

A. Adequacy of the Level of Tier-1 Payments to CLECs:

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[8] Z-Tel Comments, January 29, 2001, p.4.

[9] Z-Tel's statement in its January 29, 2001 comments (p. 4) that it "originally" proposed a $5,000 minimum payment is factually incorrect. The first Z-Tel proposal had a $15,000 minimum payment.

[10] The factual support requires evidence at the sub-measurement level because that is the level Z-Tel proposes to impose a minimum payment.

Tier-1 payments at the level proposed in QPAP are sufficient to compensate CLECs. Any escalation of payments to CLECs, such as that through the various schemes proposed by the CLECs is unjustified, without evidence from CLECs as to the nature and level of CLEC harm specifically due to missed standards at the sub-measurement level.

In this regard, the Z-Tel claim that CLEC harm is "irrelevant" is simply wrong.[11] CLECs should not be compensated by more than the amount of their harm because exceeding that level creates strong incentives to game the PAP, competitively disadvantages Qwest by requiring Qwest to fund the CLECs market entry, and provides an uneconomic windfall to CLECs. Throughout the workshops the CLECs have provided little in the way of price-outs of the overall effect of their proposals or of the per occurrence payment amounts that would be assessed. It is not then surprising that every Qwest price-out of CLEC's 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.

At the February workshop, Qwest calculated that at the October 2000 service levels, the Tier-1 payment to CLECs would have been $[confidential] million. Based on Z-Tel's subsequent modification of its Q-Mod proposal, the Tier-1 payments would be $[confidential] million. The calculation is shown on Qwest Confidential Exhibit F. It is inconceivable that CLEC harm approaches these levels of payments.

Qwest Exhibit G illustrates the level of payments that would be paid to a CLEC for missed installation commitments (OP-3) and installation intervals (OP-4) for analog and 2 wire unbundled loops. This exhibit demonstrates that payment levels are unjustified in large part because of the escalation schemes proposed by Z-Tel.

B. Whether the Overall Result of the QPAP is Sufficient Incentive:

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[11] Z-Tel Presentation, Feb. 5-6, 2001, p. 7-8.

In prior workshops, Qwest presented exhibits demonstrating that the QPAP provides more than adequate financial incentive to provide compliant service while the CLEC proposals are overly punitive. Under the QPAP, Tier-1 payments to CLECs could exceeds Qwest's pre-tax net profit of serving a business customers by a factor ranging from 6 to 44 times. With the additional risk of Tier-2 payments, the incentive to provide compliant service is even higher. At these levels of payment risk already built into the QPAP there can be no question that the financial incentive to provide discriminatory services has been offset.

On the other hand, the CLEC Q-Mod proposal would require Tier-1 payments that exceed Qwest's pre-tax net profit of serving a business customer by factors ranging from 199 to 1,192 assuming just a 5% severity penalty. At a 25% severity penalty, the factors range from 349 to 2,093 times net profit.[12] These levels are simply meant to be punitive to Qwest and to overly compensate CLECs.

Z-Tel's proposal that occurrences be calculated by un-truncating a means differences calculation produces a nonsensical result. The parties, including Z-Tel, have all agreed that a per occurrence payment structure is appropriate. Mathematical wizardry that calculates payment on more CLEC volume than actually exists is nonsensical. In OP-4 (Installation Interval), if the difference in CLEC and Qwest intervals is statistically significant, the CLEC receives a payment of $150 per order completed. The $150 for each order is fixed. That is what a per occurrence payment structure is, a set dollar amount per order. Z-Tel proposes a mathematical calculation that multiplies $150 by more than the number of CLEC orders than was actually completed for that month. If Z-Tel wishes such a scheme, the $150 per occurrence amount is no longer valid and should be lowered.

The Z-Tel math also leads to illogical results. A three day difference between CLEC and Qwest intervals when the Qwest interval is two days is a 150% difference and require the

[12] Recall that the CLECs propose to calculate severity with a denominator of 1 minus the Qwest retail result. In the case of a 90% benchmark, a 5% severity factor equivalent to a ½ of 1% difference in service performance, i.e., a 89.5% CLEC service result.

payment calculation to pretend as if CLEC volume was 150% of what it really was. The same three day interval difference when the Qwest interval is six days is only a 50% difference and does not cause the payment calculation to pretend as if CLEC volume was more than it was. It is illogical that the same three day interval difference would lead to 150% and 50% differences.

At the February workshop, Qwest demonstrated that at October 2000 service levels, the QPAP Tier-1 and Tier-2 payments would total $[confidential] million and would grow to $[confidential] million by May 2002 unless service was improved. This demonstrates that the QPAP would create a substantial incentive to Qwest to improve service.

Qwest also presented simulation results at the February workshop. Exhibit D is a refined simulation that demonstrates two points. The escalation built into QPAP is substantial. Tier-1 payment escalates between 65% and 82% as duration for a 1% miss escalates from the first month to the third month. The generation of Tier-2 payments at three consecutive months causes the escalation to jump 162% from the Tier-1, 2 month duration payment amount. Overall, Qwest would reach the $70 million level at approximately 7% misses.

In the end, the relevant issue, no matter which escalation scheme is being considered, is the overall level of payments that will result. Every price-out and simulation by Qwest, which always relies upon Arizona CLEC data, demonstrates sufficient payment levels.

C. Sticky Duration:

Z-Tel's assertion that repeated non-compliant service is evidence that payment levels are not high enough and, therefore, should be permanently escalated is simplistic and groundless. In the real world, all factors affecting service performance are not under the control of management. Variation in service happens, if for no other reason than because CLEC and customer demand cannot be perfectly forecasted. Therefore, one cannot reasonably assume that repeat misses are because payment levels were not set high enough.

The underlying premise that repeat non-compliant service performance should be heavily and permanently penalized is the view that Qwest performance results should be nearly 100% perfect. One hundred percent perfection is not economically efficient. The threat of permanent escalation of penalties could be guarded against only by have capital and human resources standing by to handle every unanticipated blip in CLEC volume. That means excess inventory of network switching and facilities. It means employees sitting at their desks in the event demand was to materialize. Obviously, such would be excessively costly to Arizona ratepayers and wasteful.

In the real world, systems are not designed to handle demand in all situations. Freeways and surface streets in Phoenix are not designed to avoid the possibility of traffic jams because to do so would too costly and would sit under-utilized too much of the time.

Even if the Commission were to adopt sticky duration, it could not reasonably do so without requiring CLECs to provide Qwest with 100% accurate forecasts of demand. CLECs must provide Qwest with pinpoint forecasts of where their customers will be and the exact services the CLEC will buy from Qwest. Otherwise, it is unfair to hold Qwest financially liable for guessing where and when CLEC demand will materialize.

Where CLEC demand materializes, but has not been accurately forecasted, Qwest performance results should adjust out unpredicted CLEC demand. Where CLEC demand was forecasted, but did not materialize, the CLECs should be required to pay Qwest for the services Qwest stood ready to provide.

Any payment escalation, whether sticky duration, plain duration, or severity, should not logically flow to CLECs. The CLECs are understandably silent, but their arguments do not justify that any escalation of payments should be paid to CLECs.

CLECs cannot logically propose both sticky duration and Tier-2 payment schemes. The only justification CLECs advance for sticky duration is to discourage repeat non-compliance. If that is the case, there is no role for Tier-2 and vice versa.

PAP-11 Audits

Qwest proposes that an ongoing monitoring program of the performance measurements and the reporting of performance results be adopted in lieu of the comprehensive annual audit proposed by the CLECs. Qwest proposes that an audit of the financial system that calculates PAP payments be started after the first year of operations and again within 18 months later. This audit would be performance by a third party. Additionally, Qwest proposes that CLEC and Qwest may upon a demonstration of good cause (e.g., evidence of material errors or discrepancies) request an independent audit in situations in which issues regarding perceived reporting or payment inaccuracies cannot first be resolved between the companies.

Qwest believes that in light of the comprehensive audit of its performance measurements currently being conducted as a part of the Arizona OSS test, and the expectation of an ongoing monitoring program, there is no need for an annual audit of the performance measurements.

The current audit is of sufficient scope and detail to establish the initial reliability of the performance measurements and Qwest's reporting of performance results. The audit is a detailed examination of the processes by which Qwest collects and processes data. It will verify that Qwest captures, processes and reports performance results against the standards that have been defined by the Arizona collaborative.

A monitoring program could focus on particular areas identified in the initial audit as being more important for ongoing monitoring. By contrast, a comprehensive annual audit that starts from the ground up would be inefficient and unnecessarily duplicative.

A separate financial system will take performance measurements and performance results as inputs and calculate payments according to the terms of the PAP. Qwest proposes that an independent audit of this financial system be initiated after one year of operation and a second audit be started no later than 18 months later. The 18-month period is proposed in order to allow Qwest to coordinate audit requirements among states. The auditor would be chosen and paid for by Qwest. Alternatively, the Arizona Commission staff could choose to conduct this audit itself. The necessity of subsequent audits of the financial system could be considered in the six-month PAP reviews, based upon the experience of the first two audits.

Should the monitoring program of the performance measurements or the audit of the financial system establish under or over payment occurred, parties should be made whole. In the event that Qwest underpaid, Qwest would add bill credits to CLECs and/or make additional payments to the State. In the event Qwest overpaid, future bill credits to CLECs and/or future payments to the State would be offset by the amount of the overage. All under and over payments would be credited with interest at the one year U. S. Treasury rate.

In order that CLECs and Qwest have adequate opportunity to raise perceived reporting or payment inaccuracies, the following procedures are proposed:

> A CLEC and Qwest shall first consult with one another and attempt in good faith to resolve any issues regarding the accuracy or integrity of data collected, generated, and reported pursuant to the PAP. If issues are not resolved within 45 days after a request for consultation, 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.
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> 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 in whole or in part 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 in whole or in part 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. An audit may not be commenced more than 12 months following the month in which the alleged inaccurate results were first reported.
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> An individual CLEC and Qwest may not request more than two audits per calendar year per the Qwest in-region operation. 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. Qwest shall not be required to conduct more than 3 CLEC initiated audits at any time.

This provision shall exclusively govern audits regarding performance measurements. Qwest agrees to inform Commission Staff and all CLECs of the results of an audit.

Issue 14: Limitations

A. Section 13.1:

WorldCom and Z-Tel propose that Qwest's Arizona performance assurance plan become effective before Qwest obtains section 271 approval from the FCC for the state of Arizona. Qwest vigorously opposes such a proposal.

The FCC has clearly stated that the purpose of a performance assurance plan is to prevent backsliding once the RBOC obtains approval to offer interlata long distance. The rationale behind such a plan is that an RBOC's incentive to engage in market opening behavior exist before, but not after approval. In order to demonstrate that granting 271 approval is within the public interest, an RBOC is invited to do more than it would otherwise have to do to meet its section 251 obligations, such as offer liquidated damages and penalties that are self-executing. Qwest's proposed PAP meets this standard as the level and type of payments made under the Qwest proposed plan exceed that which the Commission may unilaterally implement and represent a significant waiver of Qwest's constitutional due process rights.[13] Moreover, Qwest has a constitutional right to demonstrate that any statistical disparity is not the result of discrimination.[14] An order requiring Qwest to make automatic payments based solely on

[13] The Arizona Corporation Commission is not a judicial body with power to award money damages. The power to award money damages is plainly a judicial power vested in the courts *Eastin v. Broomfield*, 116 Ariz. 576 582, 570 P.2d 744 (1977).

[14] See *Hazelwood Sch. Dist. V. United States*, 433 U.S. 299 (1977).

statistical results would violate this right. Finally, any penalties assessed by the Commission must be obtained through a court of competent jurisdiction and must be made to the state, rather than to a CLEC.[15]

B. Section 13.2:

Z-Tel proposes that the PAP be available to any CLEC without the requirement that the CLEC have an interconnection agreement with Qwest. The appropriate vehicle for the performance assurance plan is the SGAT, or interconnection agreements that contain provisions of the PAP by virtue of the CLEC having opted into it. This structure makes the PAP available to any CLEC operating in the state and enables the Commission to approve and enforce the provisions agreed to by Qwest. In its comments to this section, Z-Tel also suggests that both Tier I and Tier II penalties be made available to CLECs. However, neither Z-Tel nor any other CLEC has demonstrated support for the amount of damages represented in Tier I, much less the amounts represented by Tier II. A request for Tier II payments to be paid to CLECs demonstrates the CLEC's desire for a windfall opportunity from the PAP.

C. Section 13.3:

Section 13.3 of the Arizona QPAP sets forth limited exceptions to payments that would otherwise be due under the PAP and, by reference to other provisions of the PAP, excludes any requirement that Qwest would be subject to duplicative payments for the same harm. Z-Tel apparently objects only to the reference to sections 13.5, 13. 6 and 13.7. Accordingly, the appropriateness of those provisions and their reference in 13. 3 will be discussed below.

D. Section 13.4:

Z-Tel proposes that this section be stricken in its entirety, but provides no rationale for eliminating this provision from the PAP. Section 13.4 prohibits the use of the performance results or payments under the plan as an admission of discrimination or Qwest's liability for claims or causes of actions brought outside of the plan. This provision is appropriate as the

[15] Const. Art. 15, § 16.

structure of the plan deprives Qwest of its constitutional due process rights. Qwest's waiver of these rights is solely in the context of a contract in which the liability is identified and settled. It would be unreasonable and unfair to ask Qwest to completely relinquish all constitutional protections and concede liability for future unknown claims and causes of actions. Nothing in section 13.4 limits the introduction of the performance results into evidence in another proceeding, if appropriate.

E. Section 13. 5:

Z-Tel also proposes the elimination of this section from the PAP. Section 13.5 simply states that the payments under the plan are "liquidated damages." This statement is entirely appropriate as the payment amounts are unquestionably estimates and the intent of the plan is to have Qwest make the payments without actual proof of harm incurred. Liquidated damages are a means by which the parties in advance of breach fix the amount of damages that will result therefrom and agree upon its payment.[16] Z-Tel undoubtedly objects to the clause because is wishes to have the opportunity to take the self-executing liquidated damages (without proof of harm), in addition to the ability to litigate for actual contractual damages. In essence, Z-Tel proposes that it be allowed to keep the specified liquidated damages when the amount of actual damages is less that liquidated sum, but seek actual damages when the amount exceeds the liquidated sum. Such an opportunity is offensive to sound legal and public policy principles. As a legal matter, the reservation of a right to sue for actual damages renders the liquidated damages unenforceable.[17] If CLECs desire the right to prove actual damages, then Qwest should not be asked to make self-executing payments of specified amounts.

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[16] See, e.g., *Moore v. Kline*, 143 P. 262 (1914).

[17] See *Catholic Charities of the Archdiocese of Chicago v. Thorpe,* 741 N.E. 2d 651 (Ill. App. 2000) (option to sue in addition to liquidated damages permits the non-breaching party to have its cake and eat it too and the liquidated damages are unenforceable).

F. Sections13.6 and 13.7

Sections 13.6 and 13.7 prevent duplicative recovery for the same harm and are appropriate. Nothing in the FCC's orders sanctions duplicative recovery. The approved Texas plan expressly eliminates such opportunities. For example, Section 6.3 (page 6) of the T2A states that: "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." The Bell Atlantic/Verizon New York plan exists concurrently with other interconnection agreements containing liquidated damages. However, that fact does not establish a precedent for duplicative recovery. In approving Verizon's Massachusetts performance assurance plan, the Massachusetts Commission questioned whether the remedies outside the New York plan were, in fact, duplicative, but in any event refused to make the remedies under the plan cumulative with the existing interconnection remedies in Massachusetts. The Commission held that to impose both penalties would "result in significant double counting and would be unfair."[18]

[18] Order Adopting Performance Assurance Plan, September 5, 2000, page 30.

DATED this 4th day of April, 2001.

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QWEST PROPOSAL - Investigation of Two Consecutive Month Misses

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 standard. 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.

Qwest proposes that investigations be limited to Tier-2 misses because aggregate CLEC volumes will be large enough to avoid the situation of Tier-1 where more than 50% of the time CLEC volumes are less than 10.

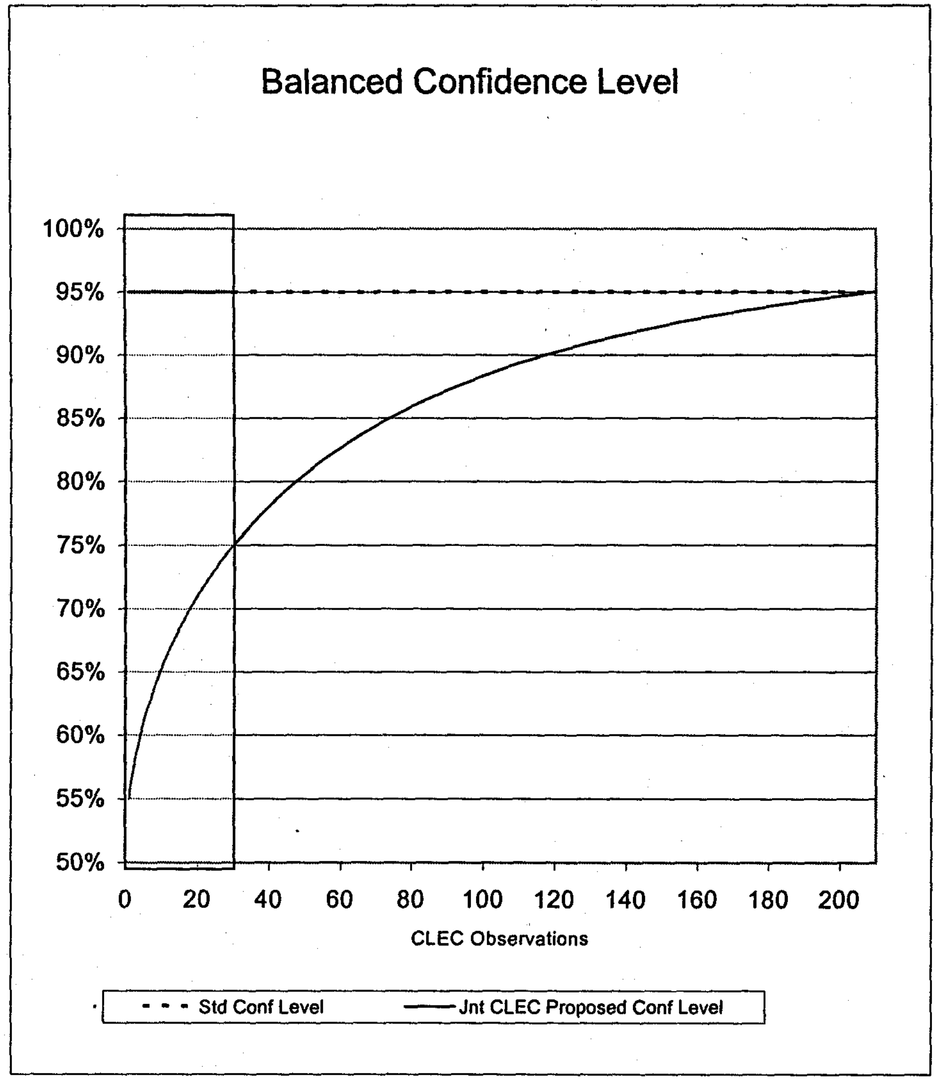
ARIZONA - DISTRIBUTION OF CLEC VOLUMES

(October 2000, Parity Only)

Volume (Number of Data Points)	Number of Sub-Measurements	Percent of Total	Cumulative Percent
0 - 9	500	61%	
10-19	67	8%	70%
20-29	22	3%	72%
30-39	26	3%	75%
40-49	14	2%	77%
50-99	33	4%	81%
100-199	27	3%	85%
200-299	25	3%	88%
300-399	35	4%	92%
400-499	4	0%	92%
500-599	2	0%	93%
600-699	1	0%	93%
700-799	3	0%	93%
800-899	3	0%	93%
900-999	4	0%	94%
>=1000	49	6%	100%
Total	815		

CLEC Obs	Std Conf Level	Jnt CLEC Critical Values	Jnt CLEC Proposed Conf Level	Balanced Type I/II Error
1	95%	0.125	55.0%	45.0%
2	95%	0.177	57.0%	43.0%
3	95%	0.216	58.6%	41.4%
4	95%	0.250	59.9%	40.1%
5	95%	0.279	61.0%	39.0%
6	95%	0.305	62.0%	38.0%
7	95%	0.330	62.9%	37.1%
8	95%	0.352	63.8%	36.2%
9	95%	0.373	64.6%	35.4%
10	95%	0.393	65.3%	34.7%
11	95%	0.412	66.0%	34.0%
12	95%	0.430	66.7%	33.3%
13	95%	0.448	67.3%	32.7%
14	95%	0.464	67.9%	32.1%
15	95%	0.481	68.5%	31.5%
16	95%	0.496	69.0%	31.0%
17	95%	0.511	69.5%	30.5%
18	95%	0.526	70.0%	30.0%
19	95%	0.540	70.5%	29.5%
20	95%	0.554	71.0%	29.0%
21	95%	0.567	71.5%	28.5%
22	95%	0.580	71.9%	28.1%
23	95%	0.593	72.3%	27.7%
24	95%	0.605	72.7%	27.3%
25	95%	0.617	73.1%	26.9%
26	95%	0.629	73.5%	26.5%
27	95%	0.641	73.9%	26.1%
28	95%	0.652	74.3%	25.7%
29	95%	0.664	74.7%	25.3%
30	95%	0.675	75.0%	25.0%
40	95%	0.775	78.1%	21.9%
50	95%	0.863	80.6%	19.4%
60	95%	0.940	82.7%	17.3%
70	95%	1.011	84.4%	15.6%
80	95%	1.076	85.9%	14.1%
90	95%	1.136	87.2%	12.8%
100	95%	1.192	88.3%	11.7%
110	95%	1.244	89.3%	10.7%
120	95%	1.294	90.2%	9.8%
130	95%	1.341	91.0%	9.0%
140	95%	1.385	91.7%	8.3%
150	95%	1.428	92.3%	7.7%
160	95%	1.468	92.9%	7.1%
170	95%	1.507	93.4%	6.6%
180	95%	1.544	93.9%	6.1%
190	95%	1.579	94.3%	5.7%
200	95%	1.614	94.7%	5.3%
210	95%	1.647	95.0%	5.0%

Qwest Observations	1000
delta	0.25



ARIZONA PAP SIMULATION

Arizona - PID	Oct 00 denominator	May 02 denominator	% Misses	Tier-1 Per Occurrence, 1 Mon	Tier-1 Per Occurrence, 2 Mon	Tier-1 Per Occurrence, 3 Mon	Tier-2 Per Occurrence	Tier-1 Payment	Tier-2 Payment
GA-1a	24,480	24,480	1,028				500		75,000
GA-1b	24,480	24,480	1,028				500		75,000
GA-1c	122,400	122,400	5,141				500		75,000
GA-2	24,480	24,480	1,028				500		75,000
PO-1a-1	873	2,322	98				300		29,259
PO-1a-2	1,077	2,865	120				300		30,000
PO-1a-3	238	633	27				300		7,977
PO-1a-4	1,762	4,687	197				300		30,000
PO-1a-5	211	561	24				300		7,072
PO-1a-6	656	1,745	73				300		21,986
PO-1a-7	241	641	27				300		8,077
PO-1b-1	1,588	4,224	177				300		30,000
PO-1b-2	1,743	4,636	195				300		30,000
PO-1b-3	412	1,096	46				300		13,809
PO-1b-4	3,161	8,408	353				300		30,000
PO-1b-5	386	1,027	43				300		12,937
PO-1b-6	941	2,503	105				300		30,000
PO-1b-7	374	995	42				300		12,535
PO-3a	700	1,862	78	25	50	100		7,820	
PO-3b	223	593	25	25	50	100		2,491	
PO-3c	479	1,274	54	25	50	100		5,351	
PO-5a-1a	2,423	6,445	271	25	50	100	300	27,070	30,000
PO-5a-1b	12	32	1	25	50	100	300	134	402
PO-5a-1c	639	1,700	71	25	50	100	300	7,139	21,417
PO-5a-2a	653	1,737	73	25	50	100	300	7,295	21,886
PO-5a-2b	16	43	2	25	50	100	300	179	536
PO-5a-2c	4	11	0	25	50	100	300	45	134
PO-5b-1a	2,250	5,985	251	25	50	100	300	25,137	30,000
PO-5b-1b	526	1,399	59	25	50	100	300	5,876	17,629
PO-5b-1c	971	2,583	108	25	50	100	300	10,848	30,000
PO-5b-2a	413	1,099	46	25	50	100	300	4,614	13,842
PO-5b-2b	182	484	20	25	50	100	300	2,033	6,100
PO-5b-2c	19	51	2	25	50	100	300	212	637
PO-5c-a	3,470	9,230	388	25	50	100	300	38,767	30,000
PO-5c-b	9	24	1	25	50	100	300	101	302
PO-5c-c	34	90	4	25	50	100	300	380	1,140
PO-5d	52	138	6	25	50	100	300	581	1,743
PO-5e-1a	921	2,450	103	25	50	100	300	10,289	30,000
PO-5e-1b	241	641	27	25	50	100	300	2,692	8,077
PO-5e-1c	59	157	7	25	50	100	300	659	1,977
PO-5e-2a	112	298	13	25	50	100	300	1,251	3,754
PO-5e-2b	53	141	6	25	50	100	300	592	1,776
PO-5e-2c	2	5	0	25	50	100	300	22	67
PO-7a	8,812	23,440	984	25	50	100		98,448	
PO-8a	21	56	2	25	50	100		235	
PO-8b	120	319	13	25	50	100		1,341	
PO-8c	1	3	0	25	50	100		11	
OP-2	41,959	111,611	4,688				500		75,000
OP-3a	754	2,006	84	150	250	500	500	42,118	42,118
OP-3b	7	19	1	150	250	500	500	391	391
OP-3c	4,705	12,515	526	150	250	500	500	262,821	262,821
OP-3d	1,166	3,102	130	150	250	500	500	65,133	65,133
OP-3e	56	149	6	150	250	500	500	3,128	3,128
OP-4a	753	2,003	84	150	250	500	500	42,063	42,063
OP-4b	7	19	1	150	250	500	500	391	391
OP-4c	4,704	12,513	526	150	250	500	500	262,765	262,765
OP-4d	1,058	2,814	118	150	250	500	500	59,100	59,100
OP-4e	54	144	6	150	250	500	500	3,016	3,016
OP-5a	-	-	-	150	250	500	500	-	-
OP-8b	149	396	17	75	150	300	300	4,994	4,994
OP-8c	1,958	5,208	219	75	150	300	300	65,624	65,624
OP-13a	63	168	7	75	150	300	300	2,112	2,112
OP-13a	381	1,013	43	75	150	300	300	12,770	12,770
MR-2	20,513	54,565	2,292				500		75,000
MR-3a	575	1,530	64	75	150	300		19,272	
MR-3b	15	40	2	75	150	300		503	
MR-3c	131	348	15	75	150	300		4,391	
MR-3d	342	910	38	75	150	300		11,462	
MR-3e	7	19	1	75	150	300		235	
MR-5a	488	1,298	55	75	150	300		16,356	

ARIZONA PAP SIMULATION

Arizona - PID	Oct 00 denominator	May 02 denominator	% Misses	Tier-1 Per Occurrence, 1 Mon	Tier-1 Per Occurrence, 2 Mon	Tier-1 Per Occurrence, 3 Mon	Tier-2 Per Occurrence	Tier-1 Payment	Tier-2 Payment
MR-5b	8	21	1	75	150	300		268	
MR-7a	713	1,897	80	150	250	500	500	39,828	39,828
MR-7b	18	48	2	150	250	500	500	1,005	1,005
MR-7c	427	1,136	48	150	250	500	500	23,852	23,852
MR-7d	365	971	41	150	250	500	500	20,389	20,389
MR-7e	7	19	1	150	250	500	500	391	391
MR-8	161,964	430,824	181	150	250	500	500	90,473	90,473
MR-9a	692	1,841	77	150	250	500	500	38,655	38,655
MR-9b	16	43	2	150	250	500	500	894	894
MR-9c	416	1,107	46	150	250	500	500	23,238	23,238
BI-1a	426,209	1,133,716	4,762	25	50	100		165,000	
BI-1b	4,921,282	#########	5,498	25	50	100		165,000	
BI-3a	1,795,251	4,775,368	20,057	25	50	100		205,000	
BI-3b	278,231	740,095	3,108	25	50	100		90,000	
BI-4a	7,393	19,666	826	25	50	100	300	82,599	30,000
BI-4b	183,918	489,221	2,055	25	50	100	300	70,000	30,000
NI-1a/1c	17,160	45,646	192	150	250	500	500	85,000	75,000
NI-1b/1d	3,408	9,065	38	150	250	500	500	5,711	19,037
NX-1	-	-							
CP-1a-1	19	51	2	25	50	100		212	
CP-1a-2	19	51	2	25	50	100		212	
CP-1b-1	58	154	6	25	50	100		648	
CP-1b-2	5	13	1	25	50	100		56	
CP-2a-1	24	64	3	150	250	500	500	1,341	1,341
CP-2a-2	22	59	2	150	250	500	500	1,229	1,229
CP-2b-1	72	192	8	150	250	500	500	4,022	4,022
CP-2b-2	7	19	1	150	250	500	500	391	391
CP-3a-1	19	51	2	25	50	100		212	
CP-3a-2	6	16	1	25	50	100		67	
CP-3b-1	28	74	3	25	50	100		313	
CP-3b-2	4	11	0	25	50	100		45	
CP-4a-1	19	51	2	25	50	100		212	
CP-4a-2	6	16	1	25	50	100		67	
CP-4b-1	28	74	3	25	50	100		313	
CP-4b-2	6	16	1	25	50	100		67	
CP-5a-2	5	13	1	25	50	100		56	
CP-5b-1	1	3	0	25	50	100		11	
CP-5b-2	13	35	1	25	50	100		145	
CP-6a-1	4	11	0	25	50	100		45	
CP-6a-2	15	40	2	25	50	100		168	
CP-6b-1	2	5	0	25	50	100		22	
CP-6b-2	72	192	8	25	50	100		804	

	Total	Tier-1	Tier-2*
Monthly Amount*	4,029,465	2,258,221	1,771,244
Annualized Amount	#########	#########	#########

	Month 1	Month 2	Month 3
Tier 1 month 1, month 2 and month 3 percentages, respectively	0%	0%	100%
Tier 2 month 1, month 2 and month 3 percentages, respectively	0%	0%	100%
October 2000 to May 2002 Increase	266%		
Percentage of Missed Denominators	4.2%		
1999 36% Arizona NOI Cap	$72 Million		

*Per Measure GA-1a,b,c, GA-2, OP-2, and MR-2 have been excluded because they are insensitive to changes in the assumption of percent misses

Percent Misses of Overall CLEC Business Volumes

Arizona Based on October 2000 Performance Results

Tier-1

Measureme e	Misses	CLEC Volume
PO-3	444	1,402
PO-5	604	13,061
PO-7	0	8,812
PO-8	0	142
OP-3	73	6,688
OP-4	339	6,576
OP-8	91	2,107
OP-13a	287	444
MR-3	2	1,070
MR-5	4	496
MR-7	7	1,530
MR-9	2	1,124
BI-4a	19	7,393
Total	1,872	50,845
Overall Percent		3.7%

Tier-2

Measureme e	Misses	CLEC Volume
PO-1	1,612	13,663
PO-5	4	13,061
OP-3	120	6,688
OP-4	145	6,576
OP-8	38	2,107
OP-13a	309	444
MR-7	0	1,530
MR-9	0	1,124
BI-4a	0	7,393
CP-2	1	125
Total	2,229	52,711
Overall Percent		4.2%

Does not include GA-1, GA-2, OP-2, MR-2, MR-8, BI-3, BI-4b, NI-1 because of the nature of their denominators.
Tier-1 does not include OP-5 because CLEC specific data is not available.

EXHIBIT F

CONFIDENTIAL

OP-3 CLEC Results - Unbundled Loops / Payments - QPAP / Payments - Joint CLECs

OP-3 Benchmark	Number of CLEC Orders Completed	CLEC Percent Commitments Met	Benchmark Adjusted for Small Volumes	QPAP Number of Misses	QPAP Months of Consec Misses	Tier-1 Per Occurrence Payment Amount	Tier-1 Payment to CLEC	Joint Number of Misses	Joint CLEC Base Payment	Duration	Duration Multiplier	Severity, Percent Diff from Benchmark	Severity Factor	Payment to CLEC, Before Min Payment	Minimum Payment	Payment to CLEC
90%	1	100%	0%													
90%	1	0%	0%					1	$150	1	1	900%	10.00	$1,500	$0	$1,500
90%	2	50%	50%					1	$150	2	2	400%	5.00	$1,500	$0	$1,500
90%	2	100%	50%													
90%	3	33%	67%	1	1	$150	$150	2	$150	1	3	567%	6.67	$6,000	$0	$6,000
90%	4	50%	75%	1	2	$250	$250	2	$150	2	4	400%	5.00	$6,000	$0	$6,000
90%	5	20%	80%	3	3	$500	$1,500	4	$150	3	5	700%	8.00	$24,000	$0	$24,000
90%	7	100%	86%													
90%	10	60%	90%	3	1	$150	$450	3	$150	1	6	300%	4.00	$10,800	$2,500	$10,800
90%	14	79%	86%	1	2	$250	$250	2	$150	2	7	114%	2.14	$4,500	$2,500	$4,500
90%	15	87%	87%					1	$150	3	8	33%				
90%	17	71%	88%	3	1	$150	$450	4	$150	4	9	194%	2.94	$15,882	$2,500	$15,882
90%	18	89%	89%													
90%	20	100%	90%													
90%	21	71%	86%	3	1	$150	$450	4	$150	1	1	186%	2.86	$1,714	$2,500	$2,500
90%	23	70%	87%	4	2	$250	$1,000	5	$150	2	2	204%	3.04	$4,565	$2,500	$4,565
Total	163	76%		19			$4,500	29								$77,248

OP-4 CLEC Results - Unbundled Loops / Payments - QPAP / Payments - Joint CLECs

OP-4 Benchmark (Days)	Number of CLEC Orders Completed	CLEC Avg Installation (Days)	% Miss from Benchmark	QPAP Number of Misses	QPAP Months of Consec Misses	Tier-1 Per Occurrence Payment Amount	Tier-1 Payment to CLEC	Joint Number of Misses	Joint CLEC Base Payment	Duration	Duration Multiplier	Severity, Percent Diff from Benchmark	Severity Factor	Payment to CLEC, Before Min Payment	Minimum Payment	Payment to CLEC
6	1	2.0														
6	1	10.5	75%	1	1	$150	$150	1	$150	1	1	75%	1.75	$263	$0	$263
6	2	24.0	300%	2	2	$250	$500	6	$150	2	2	300%	4.00	$7,200	$0	$7,200
6	2	11.5	92%	2	3	$500	$1,000	2	$150	3	3	92%	1.92	$1,725	$0	$1,725
6	3	6.5	8%						$150	4	4	8%	1.00		$0	$0
6	4	15.0	150%	4	1	$150	$600	6	$150	5	5	150%	2.50	$11,250	$0	$11,250
6	5	21.2	253%	5	2	$250	$1,250	13	$150	6	6	253%	3.53	$41,340	$0	$41,340
6	7	10.6	77%	5	3	$500	$2,500	5	$150	7	7	77%	1.77	$9,275	$0	$9,275
6	10	4.1														
6	14	6.7	12%	2	1	$150	$300	2	$150	7	7	12%	1.00	$2,100	$2,500	$2,500
6	15	7.7	28%	4	2	$250	$1,000	4	$150	8	8	28%	1.28	$6,133	$2,500	$6,133
6	17	9.6	60%	10	3	$500	$5,000	10	$150	9	9	60%	1.60	$21,656	$2,500	$21,656
6	18	5.8														
6	20	5.4														
6	21	5.7														
6	23	9.6	60%	14	1	$150	$2,100	14	$150	1	1	60%	1.60	$3,363	$2,500	$3,363
	163			49			$14,400	54								$104,705

Total Payments $18,900

Total Payments $181,953