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Arizona Corporation Commission
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BEFORE THE ARIZONA CORPORATION COMMISSION

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Commissioner

IN THE MATTER OF US WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH SECTION 271 OF THE TELECOMMUNICATIONS ACT OF 1996	)	Docket No: T-00000A-97-0238

WORLDCOM'S COMMENTS ADDRESSING QWEST'S PROPOSED PERFORMANCE ASSURANCE PLAN

WorldCom, Inc. ("WCom") submits these comments to the Arizona Corporation Commission ("ACC") in response to Qwest's proposal for an Arizona Performance Assurance Plan. WCom, because of the amount of effort required to establish any performance assurance plan and WCom's resource constraints, recommends that the ACC work with the Regional Oversight Committee ("ROC") to establish a "regional or multi-state cooperative approach" to the "development of anti-backsliding incentives, or a post-271 performance assurance plan ("PAP")." If the ACC does not accept WCom's recommendation that the ACC participate in the ROC

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process, WCom's participation in this phase of these proceedings will be minimal, at best, and essentially non-existent, at worst.

GENERAL COMMENTS

WCom believes that in order to have an effective PAP, the following must be considered and included:

A. The consequences (penalties) for failure to comply with the PAP must be severe enough to encourage compliance with performance standards, deter misconduct, and cause Qwest to fix the problem rather than merely being part of Qwest's cost of doing business.

B. The consequences (penalties) must be greater and increase based upon the magnitude, confidence levels, and duration of poor performance.

C. The consequences (penalties) must be imposed without delay and expense.

D. Payments of penalties to individual CLECs harmed must be based on performance failures in accordance with the relevant metric.

E. Additional consequences (penalties) must be imposed for industry-wide poor performance.

F. The penalties must be substantial enough in order to ensure local market competition.

WCom recommends that the remedies recognize the following:

A. That the impact of poor performance on competitors' reputations in the market is immediate, long-lasting and foretelling to all market participants.

B. That the CLECs' ability to enter the market is constrained by the reliability and quality of Qwest's operational processes and operational support systems.

C. That Qwest's poor performance may result in civil liability and violations of rules of state and federal commissions for CLECs.

D. That Qwest has a powerful incentive to protect its near local market monopoly, its advanced digital services, and future long distance revenues.

WCom also recommends that the Commission adopt "self-executing" remedies to take effect before Qwest receives 271 approval.

SPECIFIC COMMENTS ADDRESSING QWEST'S PERFORMANCE ASSURANCE PLAN

Modules and Performance Measure Indicators: The number of remedy measures proposed by Qwest is not only too few, but strongly favors diagnostic results and neglects to adequately assess parity and benchmark measures.

Penalty Thresholds: WCom strongly objects to Qwest's recommendation that penalties will only be enforced upon three consecutive month's worth of level one failures. Under Qwest's proposal, it is possible that in one calendar year, Qwest could fail eight (8) out of twelve (12) months without penalty. Both the New York and Texas performance plans impose penalties for each month that performance misses the parity standard of 95% confidence and z score of -1.645. Penalties must also be more substantial based on the magnitude of the violation, confidence levels, and duration of poor performance.

Level of Fines: Regarding an overall dollar cap, there should be no absolute monetary caps established on Qwest 's liability. However, a threshold may be established to trigger regulatory review (a procedural cap). The threshold or procedural cap should be set high enough to avoid burdening CLECs with constant litigation to impose and collect the appropriate penalties.

Uncertainty about the amount at risk for Qwest creates a greater incentive to fix problems. Qwest must not be able to easily weigh the cost of corrective action versus the cost of "worst case" penalty to determine whether to take appropriate corrective action.

Limited price reductions and bill credits are an inadequate means to serve as a deterrent for poor performance. For example, credits are generally small, hard to administer, can be delayed due to bill cycles and can be treated as a cost of doing business. Large checks paying a CLEC a penalty for poor performance, on the other hand, can be administered immediately and can easily be tracked as a penalty for non-compliance.

WCom's statistical consultants, John Jackson of Auburn University and former Sr. Economist George Ford (now with Z-TEL), have calculated that if Qwest delayed the growth of CLEC market share gain to 20% rather than 30% (similar to gain of market share by competitors in the long distance market against AT&T), over 10 years, Qwest would retain more than $228 million in profits from local services, new DSL-type services and long distance revenue after Qwest gains entry into the long distance market. This is based on per line monthly profit assumptions of $5 per local, $10 for DSL and $2.50 for long distance. Access line growth of 5% annually over 1998 levels also is assumed.

The FCC's 271 orders approving Bell Atlantic-New York's and Southwestern Bell-Texas' 271 applications concluded that ILEC plans that placed 36% of net local return at risk were adequate. But it also noted that these were not the only revenues that an ILEC would have an incentive to retain.[1] However, as later was determined, 36% was insufficient because of the

[1] In the Matter of the 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. CC Docket No. 99-295, Issued December 21, 1999, page 216, footnote 1133:

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specific problems WCom and other CLECs experienced in New York after the FCC approved Bell Atlantic's 271 filing. Bell Atlantic was fined additional amounts, resulting in 44% of net local return at risk. No matter what percentage is selected, returns for local, DSL and long distance services should be included in the calculation.

Types of Penalties: There should be two types of penalties to be paid by Qwest: one that would be paid to CLECs for poor performance and one payable to the state treasury.

While we are using net local revenue as a reference point or yardstick for comparison purposes, we do not suggest that local revenues constitute the only relevant figure. We recognize that Bell Atlantic may also derive benefits in other markets (such as long distance) from retaining local market share.

The FCC further noted that these additional incentives were counterbalanced by other remedies available in addition to the PAP. These included "federal enforcement action pursuant to section 271(d)(6); liquidated damages under 32 interconnection agreements; and remedies associated with antitrust and other legal actions." (Pages 215 and 216). Since BA-NY's 271 approval, the New York PSC has raised the cap on BA's plan beyond the $269 million that the FCC assessed to be 36% of net local return to $293 million. The PSC also assessed an additional $10 million fine outside the PAP for poor performance; and the FCC assessed an additional $3 million fine with additional fines up to $24 million possible.

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CONCLUSION

For the reasons stated, Qwest's PAP is woefully inadequate and must be modified. Such a comprehensive review of Qwest's PAP will be resource intensive and should take place in the ROC process, not in this proceeding.

Dated: July 10, 2000

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