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BEFORE THE

ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH § 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") served electronically on July 21, 2000, the following comments in response to the list of issues developed during the July 13, 2000 §271 workshop concerning Qwest's proposed Arizona Performance Assurance Plan (PAP). Pursuant to staff request of August 22, 2000, WCom is now formally filing and serving these comments on all parties listed on the attached service list.

GENERAL COMMENTS

WCom asks the Commission to consider the following competitive realities in the Arizona local exchange marketplace: (1) Competitive local exchange carriers' (CLECs') ability to enter the market is constrained by the reliability and quality of Qwest's operational processes and operational support systems; (2) Qwest possesses powerful incentives and ability to protect its near local market monopoly, its advanced digital services, and future long distance revenues; (3) Poor performance by Qwest can harm existing competitors' reputations in the market and greatly slow the entry of all new competitors; and (4) The impact of poor performance on competitors' reputations in the market is immediate and long-lasting. Given the fact of these competitive realities, WCom asks that any remedy plan ultimately adopted by the Commission provide a strong disincentive for Qwest to impede real and sustained competition for local services in Arizona. The consequences for failure to comply with the PAP must be severe enough to encourage compliance and cause Qwest to fix the problem rather than viewing it as simply a cost of doing business. To that end, the consequences must increase based on magnitude, confidence levels, and duration of poor performance. Additional consequences must also be imposed for industry-wide poor performance. Furthermore, any absolute caps on liability must be eliminated. Also, penalties must be paid directly to CLECs rather than accounted for as billing credits. Lastly, the PAP must be implemented prior to any grant of §271 authority. Accordingly, the Commission must order Qwest to revise its proposal consistent with the comments contained herein.

SPECIFIC COMMENTS ADDRESSING QWEST'S PERFORMANCE ASSURANCE PLAN

I. OBJECTIVES OF THE PERFORMANCE ASSURANCE PLAN

- The plan should build on Arizona/ROC performance measures and standards
- The plan should be easy to understand and administer (efficient)
- The plan should be comprehensive and achieve objectives laid out (meaningful)
- The plan should set meaningful penalties to assure compliance with the Performance Assurance Plan and local market competition (effective)

II. MODES OF ENTRY

The modes of entry that should be analyzed and that are available to the CLECs operating in the Qwest region include:

Resale

Interconnection

Purchase of Unbundled Network Elements (UNEs)

III. MODULES

- WCom is opposed to grouping several measurements into a module. WCom is concerned because Qwest has not revealed the size of its remedy consequences, which may leave some measures under-weighted. Qwest's proposal means that all metrics within a module would have to be missed before a monthly remedy is imposed.

- Each measurement should have its own remedy consequences. Some metrics that provide two views of the same parity issue—Missed Appointments for Loops and Average Interval for Loops may be grouped together with one remedy paid if one or both metrics are missed. Orders could be delivered on time but at much longer intervals than the ILEC provides to its own customers. Therefore, each metric are needs to be view independently for comprehensive view to determine disparity.

- Some metrics that ILECs call duplicative are actually determinant of the magnitude of a problem. An ILEC may make 90% of its appointments for CLEC trunks and retail trunks, but disparity exists if the CLEC is waiting an average of 30 days for its 10% while the ILEC is waiting an average of two days. In these circumstances delay day metrics are critical to include in remedy plans as well as the missed appointment metrics for the same product and both types of metrics should incur remedies if missed.

- Qwest should not be allowed to combine metrics that address accuracy, intervals, and status notices for the same product. These are issues that should carry their own consequences. Late service turn-ups with provisioning errors to boot are a double hit on CLEC reputations. Thus remedies should apply to each type of such metrics, even if for the same product. Weakness along any point in the customer relationship chain can harm a CLEC in the market, and Qwest should not be allowed to use modules to offset one area of weakness with compliance in another area for the product.

- WCom urges that Qwest efforts to limit liability by grouping metrics with one consequence due for missing them all or for leaving them out of the remedy plan should be rectified immediately.

IV. MEASUREMENTS

- Qwest should include all the ROC/Arizona test plan metrics that have parity or objective benchmarks along with current diagnostic measures that may be converted to either parity or benchmark in its remedy plan. There is no metric in the Performance Indicator Descriptions that is not part of the New York, Southwestern Bell Telephone Co.-Texas or Pennsylvania remedy plans adopted to date.

- For example, the modules are missing many key order status interval metrics—confirmations, rejections, jeopardies and completion notices—that are crucial to CLECs providing customers timely information on (1) when their orders will be delivered or (2) when the new provider owns resolution of the customers' problems and can send fulfillment information on use of features and start billing. Key metrics on trunk delivery, including responsiveness to inbound trunking requests are missing from the interconnection module. These are proactive areas that prevent CLEC customers from being subjected to blocking problems for both inbound and outbound calling. There are no metrics included for Daily Usage Feed accuracy, timeliness and formatting so critical to the launch of Mass Markets service delivery through resale or UNE Platforms.

Even the PIDs adopted to date are lacking in some key areas that WCom has first hand experience with harm from such deficiencies in ILEC performance. These are metrics covering change control practices that keep ILEC software changes from stalling development of new functionalities or shut down existing systems and query functions. At the very least measurements are needed to enforce the timely delivery of notices of software and ordering business rule changes and associated documentation. New York has a special part of its remedy plan—called the Change Control Assurance Plan—that includes these metrics that (1) captures whether Bell Atlantic would launch a change that causes CLEC test decks to fail and (2) how quickly it fixes software trouble tickets for problems with and without workarounds.

Qwest also lacks metrics that capture when status notices are missing. This was a problem found after the New York Carrier-to-Carrier metrics was completed. They only captured intervals for what actually was delivered. So if an ILEC received 50 orders and sent 50 confirmations or completion notices on time and did not send the other 50 notices at all, the metric would show perfect performance. Bell Atlantic had serious problems with missing notices that led to a $10 million separate fine and another $24 million added to the New York Performance Assurance Plan to cover new missing status notifier metrics added to the Carrier-to-Carrier Guidelines. This brought the overall cap on the New York plan to $293 million, more than the 36% of net local return that the FCC found sufficient.

V. STRUCTURE OF PENALTY

A. Penalties Should Increase with Magnitude and Duration

Qwest's PAP should set meaningful penalties to assure compliance with its parity and benchmark commitments. The penalties should be severe enough to deter misconduct rather then merely being part of Qwest's cost of doing business. WCom believes that the Qwest plan fails to adequately ensure against such conduct. WCom believes that the penalties should increase with the magnitude of the poor performance. For instance, there is a big difference in missing the "Commitments Met" metric 88% of the time versus less than 50%. Also, additional consequences should be imposed when poor performance is industry-wide, blocking competition on a wide-scale.

Another failing of Qwest's proposal is that it would allow Qwest to miss standards eight out of twelve months in a calendar year without penalty. Moreover, there is no increasing incentive to correct the problem. Even if Qwest does not have control over its workers to target every third month for a miss, randomly complaint performance could occur often enough in a process skewed against CLECs to keep consequences lower than the harm this spotty performance caused competitors. In addition, Qwest could make the business decision to continue to fail month after month because there is no increase in penalty. Thus, under the current Qwest plan, if it continues to fail, the penalty amount would remain the same. Neither the New York or Texas plans allow a miss at the 95% confidence level go without any scoring as a miss until it reaches the third month for CLEC-specific remedies. (Texas' Tier II paid to the state does adopt a three month miss scheme before remedies apply.) In fact, the New York plan's Mode of Entry component scores even modified z-scores of 0.8225 as a miss if the same level of failure is repeated once by the same or worse score in the quarter.

The Pennsylvania remedy plan adopted 12/31/99 requires a pro rata remedy the first month and then remedies of $2000 for the second and $4000 for the third on top of the pro rata amounts. At the fourth month, the PUC may levy up to an additional $25,000 fine, but it's not self-executing like the second and third month fines. Under this plan, Bell Atlantic-Pennsylvania must have two compliant months in a row before the duration penalties go down to the first month pro rata level again. This ensures that any fixes of disparate performance have staying power and are not a periodic spike in staffing or overtime to contain remedies.

WCom also is concerned about the approach described by Qwest at the last workshop for determining remedies. It sounds like a per occurrence plan that would require that Qwest pay penalties on a limited number of misses to bring the modified z score to the appropriate level—probably better than –2.33 and not even –1.645. WCom believes that such per occurrence remedy plans allow ILECs to keep CLEC market penetration from growing and keeping remedies down at the same time. A CLEC having problems with Qwest delivery of its first 100 loops is going to delay its plan to launch 10,000 loops in two months and create even more customer dissatisfaction. The per occurrence remedies would be a drop in the bucket compared to what Qwest gains from slowing the competitor's ramp-up plans. In fact, Qwest may even make a profit from the CLEC even if it paid for missing all of the 100 initial loop orders because of the monthly collocation charges that the CLEC pays whether or not loops ever connect paying customers to those collocations sites.

The ILEC may be given the chance to view a low-level first month, say less than 5% miss of parity or a benchmark, as a warning signal with only per occurrence amounts due. But at levels where the miss is greater than 5% and/or repeated, a per sub-metric remedy amount should be applied on top of the per occurrence amounts to provide an incentive to fix the problem. Regulators should not just look at the cost of the loop missed when the misses are severe and chronic. Qwest must be liable for high enough remedies in the second and especially third month that it would be in its economic best interest to hire the resources and expend the capital to ensure quality service is provided.

Remedies should be applied each month of a miss, with levels escalating with the magnitude, duration, and confidence that disparity exists.

B. Liability at Risk Should Not Be Viewed as Liquidated Damages

On the issue of the amount of liability at risk, WCom believes that no absolute caps should be set on Qwest's liability, but rather that a threshold 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 receive remedies due. Thus, rather than view the amount at stake as liquidated damages, *i.e.,* an amount certain that Qwest would incur as a result of repeated poor performance, the Commission must ensure that the Qwest plan offers Qwest no certainty as to the amount at risk. Thus, Qwest cannot easily weigh the cost of corrective action versus the cost of "worst case" remedy liability, thereby creating a greater incentive for Qwest to fix problems.

Even worse than the overall cap would be monthly or per-module caps. These would make the overall cap unlikely to be hit. If Qwest is compliant for the first half of a year and then discriminates severely the entire last half of the year, it has cut its liability for this egregious performance in half with the monthly and module caps. Caps on remedies paid to one CLEC also should not be set. A CLEC that makes a major effort to enter the Arizona market should not have a situation where the discrimination it has suffered the first half of the year, triggers an open season where Qwest can discriminate with no liability throughout the last half of the year.

As WCom noted in its preliminary statement, Qwest could retain considerable local market share and corner new digital subscriber line and future long distance revenue by merely slowing CLEC market share gains a small amount each year. The remedies must be an equal counterweight to that discrimination.

While the FCC concluded that 36% of net local return was sufficient in its first two 271 application approvals, it also noted that other remedies were available to CLECs in their contracts beyond these remedies to counter ILEC incentives to gain long distance as well as local profits. WCom believes that this is the only remedy offered in the Arizona, so the review cap should actually be set above the 36% net local return unless the commission is going to support the inclusion of additional remedies in contracts. Even in New York, where the PAP plan does not supersede remedies in Bell Atlantic's contract, the PSC has already increased the ceiling by $24 million and fined Bell Atlantic an additional $10 million as well. The FCC also has entered into a consent decree where Bell Atlantic has paid $3 million to the U.S. Treasury so and may be liable for additional remedies if performances on missing notice metrics are not improved. So you the Commission can see that New York and the FCC already have decided that more than a risk of 36% on net local return is warranted.

The New York missing notice issue also is evidence that the Arizona Corporation Commission should retain control over the plan to modify it by added metrics, changing remedy amounts, etc., upon notice and comment opportunity. This ensures that the plan remains forceful and in tune with market conditions. Leaving the plan in Qwest's control would not promote to target remedies to chronic problems not adequately covered or even covered at all in the plan.

VI. WEIGHTING OF MEASUREMENTS

- WCom opposes elaborate weighting schemes for metrics. Weighting only creates areas where ILECs can target poor performance at bargain prices. While competition can die of selective slashes of critical arteries, it can also fall prey to a death of a thousand small cuts. In order to include all needed metrics in a plan, WCom has compromised in the past in allowing some metric remedies to be decreased as new metrics are added to the plan while retaining a core set of metrics that would keep the same high level of remedies no matter. To do more pits CLECs with different market plans and priorities against each other in weighting measures

VII. CONFIDENCE LEVELS

Penalties Should Be Imposed For Each Month that Qwest Fails the Parity Standard of 95% Confidence

WCom believes penalties should be imposed for each month that performance fails the parity standard of 95% confidence and a modified -Z score of –1.645. As stated previously, both the New York and Texas performance incentive plans support imposing penalties for each month that performance fails at the 95% confidence level (See Above). As to Qwest's assertion that there is *a certainty* that 5% of the non-parity results are Type I errors resulting from a sampling of a random process, WCOM must stress that the likelihood of such Type I errors is merely a chance or probability. That does not mean that every month 5% of the misses will be due to random processes and even less likely if those misses occur two out of three months in a quarter. Any negative z - score (if the parity tests are designed so the negative result indicates disparity) is worse performance for the CLECs than the ILEC. A 95% confidence level already gives ILECs some allowed misses without a remedy. No further forgiveness by demanding a 99% confidence level before remedies are paid is required. Therefore, WCom contends that Qwest's bifurcated system for penalty thresholds is both unnecessary and serves as an inadequate yardstick for determining when penalties for poor performance should apply. While WCom supports an equal probability critical value for imposing remedies (an 85% confidence level—that AT&T's statistician Clarke Mont-Campbell calculated as the value at which Type I (ILEC service deemed disparate when not) and Type II (ILEC service found compliant when not) are balanced), WCom has compromised on a 95% confidence level if remedies are paid for each such miss, even in the first month, with no forgiveness. At the 95% confidence level, the risk of Type II errors is greater than Type I errors. The degree to which usually varies with ILEC and CLEC sample sizes. In the Nevada performance data studied by Mr. Mont-Campbell, he calculated that the chance of Type II errors was three times greater than Type I upon use of the –1.645 critical value.

The 95% level is such a high confidence level of disparity that repetition is not needed to confirm it. Even two month's repetition would put the confidence level at 99% that Qwest unreasonably seeks before paying any consequences.

WCom also recommends that the statistical tests be done on sample sizes down to 1. For low volumes, permutation-testing software can be used to determine whether parity exists. The Commission may have to designate decision rules on how many permutation tests should be run on samples to avoid the ILEC choosing to deem the metric compliant based on one test out of three showing compliant results. Also, the Commission should establish default benchmarks in cases where the ILEC occurrence is zero (this often occurs for delay days or maintenance metrics for some products) against which to judge whether the CLECs non-zero result was a parity failure. These zero occurrences have turned up occasionally in the Bell Atlantic statistical testing.

VIII. PAYMENT ISSUES

Price reductions and bill credits are inadequate means to serve as a deterrent for poor performance. Credits are hard to administer, can be delayed due to bill cycles, may be larger than the invoice, or delayed by the CLEC with holding payment to get the ILECs attention on adjustments needed for a continuing billing error. Direct payments, on the other hand, can be administered immediately and are easier to audit. Direct payments from Qwest also would more readily bring to top executive's attention that remedy payouts are increasing where credits would make this trend harder to discern in a timely manner.

WCom maintains that there should be two types of penalties to be paid by Qwest: one that would be paid to the CLECs and the other payable to the state treasury for poor performance. Such a framework provides an additional deterrent to Qwest because it's discrimination is not only customer affecting but also competition-affecting. WCom also believes that the state treasury account should in no way benefit Qwest such as a universal service fund. The remedies paid to CLECs would be based on individual CLEC results. The remedies paid to the state would be based on aggregated results for all CLECs.

IX. IMPLEMENTATION ISSUES

In order to better meet the objectives of the PAP, the plan should be implemented prior to any grant of §271 authority to Qwest. Massachusetts and Pennsylvania are among states that have adopted self-executing remedies to enforce section 251 requirements before 271 approval. Metrics and remedies are needed to ensure local markets are open, and Qwest's willingness to accept such plans before 271 approval should be a consideration of its eligibility for 271 approval.

WCom's experience in trying for months to negotiate a commission-ordered service level agreement with Qwest in Minnesota shows that Qwest will not willingly back up its service commitment to CLECs without regulatory intervention and even then it will drag its feet.

The Commission also should issue an order making the plan and remedies available to CLECs without having to incorporate them into their interconnection agreements. WCom has experienced delays in receiving benefits of remedy plans because of onerous conditions that ILECs have posed as part of the contract agreement, requiring an arbitration to settle these disputes and receive the benefits of the remedy plan. WCom still does not have the Texas plan incorporated into its contract. The New York and Pennsylvania plans do not require contract incorporation, thus not only immediately protecting all CLECs operating in Arizona but also relieving burdens on these respective commissions to approve such contract amendments.

Implementing the plan through an order also would enable the Commission to retain control over the remedy plan. As mentioned previously, this would help ensure that the remedies and metrics keep in step with new problem areas as market entry develops.

CONCLUSION

As stated herein, Qwest's PAP is woefully inadequate to ensure Qwest's compliance with the non-discrimination provisions under §251 of the Telecommunications Act of 1996. Therefore, the proposed PAP must be modified in accordance with the recommendations contained herein so that Arizona's local exchange market may become truly competitive.

DATED this 24th day of August, 2000.

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