BEFORE THE

ARIZONA CORPORATION COMMISSION

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CHAIRMAN

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COMMISSIONER

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COMMISSIONER

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

JOINT COMMENTS IN RESPONSE TO QWEST'S SEPEMBER 25, 2000 PERFORMANCE ASSURANCE PLAN COMMENTS

WorldCom, Inc. ("WCOM") along with Eschelon Telecom, Inc. ("Eschelon"), and Electric Lightwave, Inc.)"ELI"), served electronically on October 9, 2000, the following joint comments to the Arizona Corporation Commission ("ACC") outlining their joint comments in response to Qwest's comments presented on September 25, 2000. These joint comments are now being formally filed and served on all parties listed on the attached service list.

I. INTRODUCTION

On September 25, 2000, the participants of the Arizona §271 collaborative workshop were asked to provide new comments related to the plan structure and proposed measures each party wanted to see included in the plan. The comments below are being submitted to the Arizona Corporation Commission (ACC) and other parties involved in the Arizona §271 collaborative workshop per the Commission's request.

1. <u>Plan Structure</u>

A. Qwest's Lack of Minimum Payments: Per Occurrence plans may work when competition is robust and few new products are coming to market. However, for a market like Arizona's, where competition is still struggling for a foothold, a pre occurrence plan can easily become a cost Qwest will readily pay to keep the doors closed to competition. Per occurrence plans keep remedies the lowest when CLECs are just beginning to ramp up in a market or launching new services in competition with the ILECs. Per occurrence remedies need to be augmented by per measure remedies when disparity is severe or repeated. CLEC reputations and financial resources are most vulnerable in those early stages. Competitors could be driven out of the market long before per occurrence remedies would reach levels to motivate Qwest to spend money for human and capital resources to fix the problem, let alone offset Qwest 's powerful incentive to retain existing local, new high-margin advanced digital service profits, and eventually long distance profits.

New York and Pennsylvania have adopted remedies paid on a per measure basis. The New York plan even creates Special Measures, a super measurement-based remedy, focused on past performance weaknesses of Verizon ("VZ"). The special measures divide large remedy amounts ($2.5 million quarterly for flow through, $2 million monthly for hot cuts, $2 million monthly for missing notices, for example) among the CLEC community when benchmarks are missed for metric groups. The PSC believed that these were persistent problems that needed a very large incentive to outweigh the costs and competitive advantages of not fixing underlying operational problems. A combined per occurrence and per measure approach is best for opening new markets to competition and ensuring that CLECs' new service offerings are not crushed at introduction with no substantial financial risk to Qwest.

B. Qwest's Excessive Forgiveness's: Qwest's k table treats the CHANCE of a Type I error as a CERTAINTY every month.. If any forgiveness for randomness is due when a 1.645 critical value is used, it should occur for each sub-metric out of 100 only three times over a 5 - year period. Yet Qwest 's plan conceivably could forgive the same metrics month over month, much more than three times in a five-year period, even when sub-metric modified z scores represent confidence levels of disparity higher than 95%. Below is an excerpt from WCom's statistical consultant John Jackson, Professor of Economics at Auburn University, that debunks an even milder forgiveness proposal from SBC-Pacific Bell during 1999 California PUC collaboratives on remedies (See Attachment A). The California plan still is being litigated, but other states have adopted the no forgiveness approach.

The Pennsylvania Public Utility Commission chose to use the 1.645 critical value as a clear line for when per measure remedies for parity measures should be paid with no forgiveness's. New Jersey staff has just proposed a per occurrence plan with no forgiveness's. The New York plan provides no forgiveness's for its Critical Measures, Special Measures, Collocation Mode of Entry and Change Control Assurance Plan components. In the Resale, UNE and Interconnection Mode of Entry components some forgiveness is given through a minimum scoring threshold, but MoE scoring begins at a critical value of .8225 (repeated - equating to about a 90% confidence level).

If one accepted the k table concept, then CLECs should be able to demand an adjustment monthly for the 5% or greater chance of Type II errors through a similar table. But the best and cleanest approach is to reject the k table in its entirety.

C. **Inadequacy of low per-occurrence payments:** The base remedy amounts proposed are simply too low to provide an adequate incentive for Qwest to cooperate with its competitors in the local market. The remedy provisions of the plan, in Tier I, call for remedy amounts of only <u>$25, $75, and $150</u> per occurrence. These amounts would have little impact on a company the size of Qwest and do not provide significant incentive to comply with the designated performance standards. The impact of Qwest providing poor service to CLECs trying to compete for customers can have multiple effects. The impact to a CLEC would likely be that some of the customers would discontinue their relationship with the CLEC for local service, and other customers may discontinue using this CLEC for long distance and other services as well. Qwest's Tier II remedy payments are not triggered unless they have discriminated against the entire CLEC community <u>for three consecutive months</u>. The problem is that even one month of poor performance, such as during a CLECs ramp-up before it has established a reputation in the local market, can seriously erode prospects for local competition. Also, it is difficult to imagine that even two consecutive months of poor performance would not gravely impact any CLEC at any stage of market entry. Again, it is possible for Qwest to provide discriminative service 8 out of 12 months on an aggregate basis and still pay no penalty. In short, the Tier II remedies may rarely, if ever, be triggered, leaving Qwest with only the prospect of a small fine from the inadequate remedy amounts in Tier I.

D. Caps on remedy amounts further weaken plan: The Qwest plan is further weakened by the imposition of caps on the per-occurrence payments (in addition to the overall plan cap). To the extent that per-occurrence payments amount to an appreciable amount (possibly by an extended shut-down of all services for all CLECs), they would be reduced by the per-measurement caps reducing the impact to Qwest. Again, the reason that the CLECs object to a remedy cap is because a cap can reduce the effectiveness of the remedy plan with no offsetting benefits. A firm cap makes it easier for the ILEC to judge quickly whether the costs and benefits of not fixing the problem outweigh the remedies at risk.

E. Remedies do not increase for more severe violations, and increase insignificantly for repeated violations: Qwest's plan does not adequately account for duration and magnitude of poor performance. Qwest's plan only picks up the number of customers harmed not the degree to which they received poorer service than retail customers. It does not distinguish whether the standard was exceeded by 1 day for 100 people or 30 days for 100 people. In both instances the same remedy amount would apply.

Again, the penalty levels are set too low and do not provide significant incentive to comply with the designated performance standards. Under Tier I, the remedy amounts do increase, but are insignificant for repeated violations. The percentage increase in remedy amounts from month to month drops dramatically in the fourth month and beyond. Also, Qwest reduces its exposure by holding the payment steady at the sixth month and beyond. Moreover, under Tier II, Qwest pays the same amount of remedies each month even if it fails to correct a severe problem for months on end. So, Qwest's plan does not provide for greater payments for more severe misses, and only Tier I payments increase, albeit minimally, after repeated violations.

In addition, Qwest is even trying to reduce the cap set in the VZ-New York and SBC-TX 271 approvals by arguing that rate cases will dilute its net local earnings as reported to ARMIS. This factor was not a consideration in the VZ and SBC proceedings. In fact, New York required VZ to reduce rates as part of an alternative regulation plan requirement after 271 approval. Neither Verizon nor the PSC claimed that this should also reduce the cap. In fact, since 271 approval, the New York PSC has added another $24 million to the cap bringing it to about 44% of net local return for VZ-New York. On October 3, 2000, the GA commission also voted to set a cap at 44% of BST's net local return. Staff had proposed that this only be a review cap. Qwest's per measure and monthly caps also serve to limit its exposure under the plan. No per measure or per month cap should be set, which could easily be reached and give Qwest no incentive to improve performance beyond that point. Such caps also make it nearly impossible to trigger remedies that even approach the overall cap. If Qwest had provided adequate service for half the year that quickly deteriorates into broad scale, chronic poor performance, it would only have half of a capped plan to weigh the cost of fixing the problem against. Qwest should fear that the whole cap could be levied against it at the very least, and CLECs believe that 44% of net local return should only be a review cap so that the Commission could levy even higher remedies if its review finds that such additional remedies are needed.

F. Important functions are not subject to standards: Some vital local service functions are not covered by any standards in the Qwest region. For these, there are no self-executing remedies regardless how badly Qwest performs or discriminates. The most significant omission in the plan is change management. When an ILEC fails to adhere to change management notice requirements, it prevents CLECs from developing to the systems changes, which can delay entry or stop the operation of existing OSS interfaces. As noted in our September 25, 2000 comments, the Verizon (Bell Atlantic) performance plan includes several change management standards, including those relating to notification of system changes, software validation, resolution of problems discovered in Verizon's systems and change management timeliness.

G. The Performance Remedy Plan Will Not Serve Its Intended Purpose to Prevent Backsliding: The insignificant remedy amounts in Qwest's performance plan do not come close to counteracting the gain to Qwest from providing poor performance to its would-be competitors. Qwest can benefit enormously by discriminating against CLECs, including: (i) the benefit of retaining a customer's business, potentially for many years, when the customer loses confidence in a CLEC; (ii) the gain to Qwest from deterring further competitive entry by CLECs, including deterring CLECs from ramping up from low volumes used in initial entry; and (iii) Qwest's gain in market share as a source for a one stop shopping due to customers dissatisfaction with a competitor's service. The insignificant remedies in the performance plan, coupled with loopholes that will prevent the higher amounts from ever being triggered, do not come close to offsetting these long-term gains to Qwest from providing poor service to CLEC competitors.

II. QWEST'S LIMITATIONS

In general, CLECs are concerned with limitations of any kind that Qwest may attempt to utilize as loopholes in an attempt to avoid penalty payments for discriminatory service.

12.1 & 12.2: CLECs believe that the remedies should take place before §271 approval and by order of the Commission without the delay of getting them into contracts.

12.3: Qwest's comments regarding the "third party exclusion will not be raised more than three times within a calendar year" is unclear and CLECs request this be stricken.

12.4: CLECs completely disagree with this statement, as the results of the performance assurance plans are proof that Qwest is providing discriminatory service.

12.5: CLECs believe that any payments pursuant to this PAP are intended to be penalties.

12.6 & 12.7: CLECs reject these limitations. The results of these limitations are simply additional proof that Qwest has not adequately been forced to address and fix the discriminatory service.

12.8: This limitation appears to be a mechanism for Qwest to not only delay penalty payments but also acts as a trigger for Qwest to begin researching the cause of the discriminatory results. CLECs would hope that Qwest addresses all negative PAP results regardless of the size of the payments.

III. PERFORMANCE MEASURES

Qwest states there are several performance measures the joint CLECs have proposed that are diagnostic or parity by design and therefore are not appropriate for the inclusion. The joint CLECs have several issues with this statement and disagree that these measures should automatically be excluded.

The understanding is that diagnostic measures were developed with the thought in mind that when data became available these results could be evaluated to develop parity or benchmark standards.

There are performance measures that are listed in the PID as diagnostic but the Arizona monthly report shows data collected for CLECs and Qwest (i.e. - PO-2a).

In many instances there are only portions of the products that are diagnostic with the remaining products having parity with retail service (i.e. - OP-6, MR-4, MR-6).

Qwest's proposal also appears to exclude OP-13B, which measures the percentage of LSRs for coordinated cuts for unbundled loops that are started without CLECs' approval. Starting before the customer/CLEC is ready can be just as impacting as not completing cuts on time. Qwest's comments under footnote #1, talks about increasing the number of sub-measurements included in the PAP to 471 but does not specify if this includes all levels of disaggregation being offered. Again, the CLECs request at a minimum that the PAP remedies should include all products and levels of disaggregation currently being purchased in a given month with provisions made to incorporate any new products made available by Qwest.

CONCLUSION

In summary, the plan must by itself provide an adequate incentive for Qwest to provide reasonable, nondiscriminatory performance to CLECs on a day-to-day basis. A plan that provides sufficiently severe self-executing remedies for failure to meet performance standards for all key local service functions is far and away the best means of encouraging Qwest to continue to provide nondiscriminatory service. As noted above, there are a number of key areas of Qwest's plan that need to be reviewed. In addition, CLECs believe that the remedies should take place before §271 approval and by order of the Commission without the delay of getting them into contracts.

DATED this 13th day of October, 2000.

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A

CRITIQUE OF PAC BELL'S FORGIVENESS PLAN

Pac Bell presented its "Performance Remedies Plan" to the CPUC in a January 22,1999 filing. While MCIW believes numerous aspects of this plan to be inappropriate, it finds the material on pages 8-10 detailing Pac Bell's "forgiveness plan" particularly egregious.

We provide a critique of this plan below.

I. MCIW supports "Zero Forgiveness" for random variation

A. Pac Bell suggests that with a type I error probability of .05, 20 CLECs, 100 submeasures, and a penalty of $10,000 per parity violation as based on statistical evidence, it would be required to pay out $12,000,000 in penalties that were not justified (p.9) because 5% of the 24,000 tests conducted each year under this scenario would indicate that they are out of parity when, in fact, they are in parity.

B. Pac Bell ignores type II error

1. In an equal risk scenario, with type I (=type II) error set at 15%, each submeasure would be expected to have 9 false indications of nonparity during a 5 year period.

2. It is equally true that each submeasure would expect to have 9 false indications of parity during this period. That there would be 9 times when parity should have been rejected when ,in fact, it was not.

3. These two results taken together imply that, from a probabilistic perspective, random variation is a wash,i.e., it effects ILEC and CLECs by the same amount (this is the beauty of equal risk).

4. If the type I error is .05, as Pac Bell desires, then the probability of a type two error is perhaps several times higher than that of a type I error. This means that Pac Bell will be falsely judged as not providing parity about 3 times every five years for each submeasure. But they will escape being judged as providing at parity perhaps 15-20 times during that period. If anything, Pac Bell should be paying extra for random variation, at least from a probabilistic sense.

C. Pac Bell assigns zero value to type II error

1. Pac Bell values every potential occurrence of a type I error at some hypothetical fine value that would be levied against it, but by ignoring type II error, they implicitly assign it a value of zero to the CLECs.

That is, they implicitly assume that violations of parity that go undetected are costless to the CLEC.

2. Clearly violations of parity cost the CLEC more than the recurring and nonrecurring charges associated with the submeasure. They loose additional related business, reputation for good service, and perhaps even the ability to carve out a place for themselves in a market currently monopolized by the ILECs. Putting a monetary value on this loss is difficult and depends to a large degree on the submeasure. Late trunk provisioning, delayed provision if collocation cages, improper use of disconnect facilities can clearly cause CLECs much more harm

than a volume-based assessment alone would indicate. If the CLEC receives no compensation because these discriminatory practices go undetected statistically due to type two error, then the 1996 Telecommunications Act is being violated. The point is that Pac Bell's forgiveness plan pays no attention to this parallel and potentially equally important result of random variation that impacts only on the CLECs in its forgiveness plan.

3. Thus, far from being "the fairest plan" (p.9), Pac Bell's forgiveness plan is unforgivably unfair.

D. MCIW is simply following Pac Bell's lead in repudiating "forgiveness"

1. Later in the document (p.12), when requiring accurate and timely forecasts of product volumes from the CLECs, Pac Bell makes no reference to forgiveness in positing penalties that it feels are appropriate to inaccurate forecasts.

2. These forecasts can be viewed as hypothesis tests just as the parity tests are. The null hypothesis is that the forecast amount differs from the actual amount by no more than X%. As such the forecast/test has a type I and a type II error, and sometimes a true hypothesis will be rejected simply due to chance. Yet we do not observe Pac Bell suggesting that some of these line charges be forgiven because they might be due to random error.

II. Even if the idea of some type of forgiveness is accepted, Pac Bell's plan is completely inappropriate.

A. Pac Bell wants too many forgivenesses

1. Pac Bell wants 1 forgiveness per submeasure every six months, or 10 forgivenesses per submeasure over a 5 year period. As noted in B.1 above,an equal risk scenario with a probability of type I error equal to 15% would suggest that in about 9 occasions in a 5 year period we would falsely conclude a lack of parity. Even if we ignore all of the above arguments, this means Pac bell wants one free ride per submeasure - unjustified for any reason, except maybe rounding error-during a five year period.

2. Using the relevant numbers on I.A above, this means that Pac Bell would not have to pay $4,000,000 per year to the CLECs (i.e., $200,000 per CLEC) which it clearly owes to them for having violated parity, over and above any allowance for random variation.

B. Pac Bell does not appropriately tie the number of forgivenesses to the probability of a type I error.

1. The only conceivable rationale for forgivenesses must be based on type I error. That is, sometimes the ILEC will be deemed not to be meeting parity requirements when in fact it is doing so. The number of times this mistake will be made is determined by the probability of a type I error. In the above example, i.e. IA and IB.1, a type I error probability of .05, 20 CLECs, 100 submeasures, each submeasure would be expected to encounter a type I error about 3 times every 5 years for each CLEC. For a type I error probability of .15, 20 CLECs, 100

submeasures, each submeasure would be expected to encounter a type I error about 9 times every 5 years for each CLEC.

2. Thus if the type I error is 15%, implying a critical value of 1.04 for the Z statistic, it is at least ballpark to suggest one forgiveness every 6 months, (although this is still too high by the above argument) since this would anticipate 10 type I errors in a 5 year period whereas 9 would be expected. But with a type I error of each .05 each submeasure would be expected to encounter a type I error about 3 times every 5 years BUT PAC BELL WANTS 10 FORGIVENESSES for the same time period.

3. Clearly, there is no legitimate justification for the Pac Ball forgiveness plan, statistical or otherwise.

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