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BEFORE THE

ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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JAN 19 2001

DOCKETED BY 

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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

**COMMENTS OF WORLDCOM, INC. REGARDING STAFF'S COMPLIANCE  
REPORTS AND PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF  
LAW FOR CHECKLIST ITEMS 3, 7 AND 10**

WorldCom, Inc., on behalf of its regulated subsidiaries, ("WCom") submits these comments to Staff's Reports on US WEST's Compliance and Staff's proposed Findings of Fact and Conclusions of Law for Checklist Item Nos. 3, 7 and 10. In addition, Wcom supports the arguments and comments filed by AT&T Communications of the Mountain States, Inc. concerning these checklist items.



1 In addition, because these workshops occurred nearly one year ago, since that time  
2 WCom has raised additional new legal issues concerning Checklist Items 3, 7 and 10,  
3 which WCom believes are relevant here and are discussed below. These disputes were not  
4 raised in Arizona in the workshops conducted nearly a year ago.  
5

6 **CHECKLIST ITEM 3**  
7

8 **I. UNDER FCC RULES, QWEST IS REQUIRED TO GRANT OR DENY ALL  
9 REQUESTS FOR ACCESS TO POLES, DUCTS AND RIGHTS-OF-WAY  
10 WITHIN 45 DAYS. QWEST'S SGAT MUST BE MODIFIED TO REFLECT  
11 THIS REQUIREMENT BEFORE IT MAY BE FOUND TO COMPLY WITH  
12 CHECKLIST ITEM 3.**

13 WCom acknowledges that it agreed to Qwest's Exhibit D discussed below in the  
14 Arizona workshop process last year. However, since that time, WCom believes that in  
15 Section 10.8.4 of the SGAT, in general, and Exhibit D, which is specifically referenced in  
16 that section, Qwest has established an improper and limiting "standard inquiry" procedure  
17 outlining its obligations to respond to requests for access to poles, ducts and rights-of-way  
18 ("ROW"). The process is described in particularity in a table found in Section 2.2 of  
19 Exhibit D. In this table, Qwest describes the timeframes within which it will respond to a  
20 verification request for access to poles, ducts or ROW. The response times vary based  
21 upon the size of the access request.

22 Under the Act and relevant orders of the FCC, there is no basis for distinguishing a  
23 "standard inquiry" from a larger verification request. Qwest is required to respond to all  
24 requests for access to poles, ducts or ROW within 45 days. *See, In the Matter of Cavalier*  
25  
26

1 *Telephone, LLC v. Virginia Electric and Power Company*; 15 FCC Rcd. 9563, June 7,  
2 2000.

3 Section 47 CFR 1.1403(b) provides in pertinent part:  
4

5 Requests for access to a utility's poles, ducts, conduits or rights-of-way by a  
6 telecommunications carrier or cable operator must be in writing. If access is  
7 not granted within 45 days of the request for access, the utility must confirm  
8 the denial in writing by the 45<sup>th</sup> day. The utility's denial of access shall be  
9 specific, shall include all relevant evidence and information supporting its  
10 denial, and shall explain how such evidence and information relate to a  
11 denial of access for reasons of lack of capacity, safety, reliability or  
12 engineering standards.

13 The FCC rule contains no exception based on the size of the order. Therefore,  
14 Sections 10.8.4 must be modified by eliminating the standard inquiry limitation and by  
15 ensuring that Qwest responds to all requests for access within 45 days, irrespective of the  
16 size of the request.

17 In *Cavalier*, the FCC was asked to address the numerous delays Complainant had  
18 suffered in obtaining the utility's approval to attach to its poles. In answer to the electric  
19 utility's claim that Rule 1.1403 only required it to respond 45 days if it were going to deny  
20 the application, the FCC concluded that under its rules the responding utility must grant or  
21 deny all requests for access to poles within 45 days. The FCC then directed the electric  
22 utility to provide immediate access to all poles for which permit applications had been  
23 pending for greater than 45 days.  
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1 The FCC's interpretation of its rules in *Cavalier* is controlling here. Qwest's  
2 SGAT must be modified to require responses to all requests for access to poles, ducts and  
3 ROW within 45 days consistent with FCC Rule 1.1403.  
4

5 Qwest has argued that *Cavalier* should be read to permit it to respond to large  
6 requests in stages commencing within 45 days following its receipt of the completed  
7 application but continuing well beyond 45 days if necessary from Qwest's perspective.  
8 Qwest's view of the *Cavalier* decision is self-serving and inaccurate. The FCC's reference  
9 to large orders is contained within the following discussion in *Cavalier*:  
10

11 We have interpreted the Commission's Rules, 47 CFR § 1.1403(b), to mean that a  
12 pole owner "must deny a request for access within 45 days of receiving such a request or it  
13 will otherwise be deemed granted." We conclude that Respondent is required to act on  
14 each permit application submitted by Complainant within 45 days of receiving the request.  
15 To the extent that a permit application includes a large number of poles, Respondent is  
16 required to approve access as the poles are approved, so that Complainant is not required  
17 to wait until all poles included in a particular permit are approved prior to being granted  
18 any access at all. Respondent shall immediately grant access to all poles to which  
19 attachment can be made permanently or temporarily, without causing a safety hazard, for  
20 which permit applications have been filed with Respondent for longer than 45 days.

21 The FCC did not permit the utility to respond to large orders outside the 45 day  
22 period. Rather, it directed the utility to begin approving access to poles throughout the 45-  
23 day period as the utility approved access to a particular pole, so as to provide the  
24 Complainant with access as soon as possible. In other words, if the utility approved 10  
25 poles on day 3, it was to provide notice of the approval on or near day 3, and not wait until  
26 day 45. Nowhere did the FCC suggest it would tolerate any exception to the rule that all  
requests for access must be granted or denied within 45 days.

1 Finally, Qwest also charges CLECs a fee for each application and the Standard  
2 Order limitation would cost CLECs multiple fees for a large order.

3 Because Qwest's SGAT contains the standard inquiry limitation that would  
4 improperly extend the 45 day response time required by the FCC's Rules, it is not in  
5 compliance with Section 251 and 271 of the Act, and therefore, Checklist Item No. 3 has  
6 not been fully satisfied.  
7

8  
9 **II. QWEST'S IMPOSITION OF RECIPROCAL OBLIGATIONS FOR ACCESS TO**  
10 **RIGHTS-OF-WAY IS UNLAWFUL.**

11 In the SGAT, Qwest attempts to impose upon CLECs a reciprocal obligation to  
12 provide access to poles, ducts, conduits and ROW. Specifically, Section 10.8.1.4 specifies  
13 that: "[p]ursuant to 47 U.S.C. Section 251(b)(4), each party shall have the duty to afford  
14 access to its poles, ducts conduits and rights-of-way of telecommunications services to the  
15 other party . . ." The Act and the FCC's implementing rules and orders obligate Qwest to  
16 provide access to poles, ducts, conduits and ROW. They do not obligate the CLECs to do  
17 the same.  
18

19  
20 Section 251(b)(4) of the Act imposes on each LEC "the duty to afford access to the  
21 poles, ducts, conduits, and rights-of-way of such carrier to competing providers of  
22 telecommunications services on rates, terms, and conditions that are consistent with  
23 section 224 of this title." Section 224(a)(5) of the Act states for purposes of § 224, "the  
24 term 'telecommunications carrier' (as defined in § 153 of this title) does not include any  
25  
26

1 incumbent local exchange carrier as defined in § 251(h) of this title.” (Emphasis added).

2 Although WCom and Qwest are both telecommunications carriers as defined in 47 U.S.C.  
3 § 153, under Section 224(a)(5), CLECs are telecommunications carriers, but Qwest is not.

4  
5 This is precisely the position articulated by the FCC in its Rules and in paragraph  
6 1231 of the *Local Competition Order*.<sup>2</sup> Specifically, Section 51.219 of the Rules provides  
7 that “[t]he rules governing access to rights of way are set forth in part 1, subpart J of this  
8 chapter.” Under the part 1, subpart J of the FCC’s Rules only a “telecommunications  
9 carrier” is entitled to reciprocal access (*id.* § 1.1403(a)), and “the term telecommunications  
10 carrier . . . does not include . . . incumbent local exchange carriers.” *Id.* § 1.1402(h).

11  
12 Similarly, in paragraph 1231 of the *Local Competition Order*, the FCC states:

13  
14 In addition, incumbent LECs cannot use section 251(b)(4) as a means  
15 of gaining access to the facilities or property of a LEC. A LEC's  
16 obligation under section 251(b)(4) is to afford access "on rates, terms,  
17 and conditions that are consistent with section 224." Section 224  
18 does not prescribe rates, terms, or conditions governing access by an  
19 incumbent LEC to the facilities or rights-of-way of a competing LEC.  
20 Indeed, section 224 does not provide access rights to incumbent  
21 LECs. We cannot infer that section 251(b)(4) restores to an  
22 incumbent LEC access rights expressly withheld by section 224. We  
23 give deference to the specific denial of access under section 224 over  
24 the more general access provisions of section 251(b)(4).  
25 Accordingly, no incumbent LEC may seek access to the facilities or  
26 rights-of-way of a LEC or any utility under either section 224 or  
section 251(b)(4).

23 In a recent decision, the Ninth Circuit concluded that, under the Hobbs Act, it was  
24 bound by the interpretation of the FCC found in paragraph 1231 of the *Local Competition*

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<sup>2</sup> See 47 C.F.R. §§ 1.1403(a), 1.1402(h), § 51.219 and *Local Competition Order*, ¶ 1231.

1 *Order*.<sup>3</sup> Under the Hobbs Act, 28 U.S.C. ¶ 2342, exclusive jurisdiction to review orders of  
2 the FCC is vested in the Courts of Appeals. Such review of the *Local Competition Order*  
3 was conducted by the Eighth Circuit. No RBOC appealed the determination made by the  
4 FCC in Paragraph 1231 regarding reciprocal access to rights of way. Accordingly, the  
5 interpretation in paragraph 1231 of the *Local Competition Order* is legally binding.  
6  
7 Qwest's SGAT is inconsistent with the conclusion of the FCC that the obligations of  
8 Section 251(b)(4) of the Act are not reciprocal.  
9

10 Thus, Qwest is wrong in asserting that it is lawful to impose reciprocal access  
11 provisions on the CLECs. Under the plain terms of the Act, the FCC's Rules and Order,  
12 Qwest does not have the right to require CLECs to afford to Qwest reciprocal access to  
13 their poles, ducts, and rights-of-way.  
14

15 Qwest has the ability to overwhelm CLECs with requests for access on their poles,  
16 ducts, and rights-of-way. Qwest has extensive poles, ducts, and rights-of-way that it has  
17 acquired over its 100-year history under a monopoly environment and Qwest has been  
18 able to effectively and efficiently obtain ROW agreements throughout its territory.  
19 Historically as a monopoly, Qwest enjoyed significant advantages in acquiring these rights  
20 through its ability to leverage the threat of an eminent domain proceeding to acquire  
21 advantageous ROW terms quickly and efficiently. CLECs, on the other hand, have  
22 relatively few poles, ducts, and rights-of-way and placing those structures and obtaining  
23 the requisite rights-of-way is typically a time-consuming and expensive proposition. Once  
24  
25

26 \_\_\_\_\_  
<sup>3</sup> U S WEST Communications v. Hamilton, 2000 WL 1335548 (9<sup>th</sup> Cir. Sept. 13, 2000).

1 obtained it would be anti-competitive and contrary to the development of local  
2 competition contemplated by the Act to empower Qwest to overwhelm the CLEC limited  
3 structure with Qwest's service, when Qwest has so much of its own to utilize. Qwest has  
4 every business incentive to take such action. Thus, the FCC rule makes perfect sense.  
5

6 Accordingly, Section 10.8.1.4 of the SGAT must be revised to remove all  
7 requirements for reciprocal access.  
8

9 **CHECKLIST ITEMS 7 AND 10**

10 **QWEST IS IMPROPERLY RESTRICTING CLECS' ACCESS TO DA LIST**  
11 **INFORMATION, CONTRARY TO THE REQUIREMENTS OF**  
12 **CHECKLIST ITEM NO. 7**

13 Directory Assistance List ("DAL") information and databases are an unbundled  
14 network element that refers to the residential, business and government subscriber records  
15 used by the Incumbent Local Exchange Carriers ("ILECs") to create and maintain  
16 databases for the provision of live or automated DA services. DAL data is information that  
17 enables telephone exchange carriers to swiftly and accurately respond to requests for  
18 directory information, including, but not limited to, name, address, and phone numbers.

19 Under the provisions of the Act and the FCC's Interconnection Orders, Qwest must  
20 provide CLECs with just, reasonable, and non-discriminatory access on an unbundled  
21 basis to the DA data obtained as a result of their positions as regulated monopolies.  
22

23 Exchange carriers may use the data for any telecommunications service, including, but not  
24  
25  
26

1 limited to, local and long distance voice Directory Assistance and CLEC Directory  
2 Assistance access services.

3           The DAL database is considered a UNE under Section 251(c)(3) of the Act by  
4 virtue of the FCC's Local Competition First Report & Order and subsequent decisions,  
5 including the FCC's UNE Remand Order. Moreover, the Arizona Corporation  
6 Commission has held that DAL databases are a UNE as is reflected in Section 50.5.1. In  
7 approving the arbitrated interconnection agreement between MCImetro and then U S  
8 WEST Communications, the ACC directly addressed the question of whether the DAL  
9 database was a UNE and whether the pricing provisions of the Act should apply.  
10

11           The FCC's UNE Remand Order did not remove DAL databases from the list  
12 of UNE's. While the FCC stated that OS/DA services might not be considered UNEs if  
13 the ILEC made customized routing available to the CLEC, this exception was not applied  
14 to the DAL databases.  
15

16           In its executive summary of the 319 Remand Order, the FCC in a section  
17 titled "Network Elements that Must be Unbundled" specifically stated: "LEC's must also  
18 offer unbundled access to call-related databases, including but not limited to, the Line  
19 Information database (LIDB), Toll Free Calling database, Number Portability database,  
20 Calling Name (CNAM) database, Operator Services/Directory Assistance databases..."  
21 UNE Remand Order, Executive Summary. The Commission's Local Competition First  
22 Report & Order defined call-related databases as "databases, other than operations support  
23 systems, that are used in signaling networks for billing and collection or the transmission,  
24  
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1 routing, or other provision of telecommunications service.” Local Competition First  
2 Report and Order at fn. 1126; *see also*, FCC UNE Remand Order at 403 (emphasis  
3 added).

4  
5 Further, the Commission did not single out DAL databases when it created the  
6 customized routing exception for OS/DA. In fact, it specifically excluded DAL databases,  
7 or listing updates, as part of the definition of OS/DA. The Commission stated, “We  
8 decline to expand the definition of OS/DA, as proposed by some commenters, to include  
9 an affirmative obligation to rebrand OS/DA and to provide directory assistance listing  
10 updates in daily electronic batch files. We find such modifications unnecessary because, as  
11 mentioned above, these obligations already exist under section 251(b)(3), and the relevant  
12 rules promulgated thereunder.” UNE Remand Order at 444 (footnotes omitted).

13  
14  
15 Notwithstanding the Act’s prohibition on providing discriminatory access to  
16 network elements, under the Act’s dialing parity provisions, Qwest’s terms are  
17 discriminatory and too restrictive because they prevent a CLEC from using the data in the  
18 same manner as Qwest.

19  
20 In addition, in other state workshops, WCom objected to Sections 10.4.2.4,  
21 10.5.1.1.2 and 10.6.2.1 of Qwest’s SGAT, that state that both Qwest and the CLEC  
22 (Section 10.4.2.4) will grant one another a “license” to use end user listings and the  
23 directory assistance list information. A license is ordinarily considered to be a privilege to  
24 perform an act on the land or with the property of another. The licensor generally owns or  
25 controls the property. With regard to the expression of information, one's interest  
26

1 (ownership or control) is protected by copyright and the owner of the copyright gives a  
2 license to publish or use its expression.

3 Qwest does not have the right to claim a copyright of mere facts. The names,  
4 telephone numbers and addresses of Qwest's customers are simply facts, which are not  
5 subject to protection as intellectual property. Thus, licensing of these pieces of factual  
6 data is not legally protected and would not be in the public interest. Moreover, as between  
7 the parties to the SGAT, as a contractual matter, each party owns its respective end user  
8 and directory assistance listing data, and it is improper for Qwest to claim an intellectual  
9 property right in such data supplied by the other party to the Agreement. Therefore,  
10 Qwest's attempt to claim licensing rights to the other party's data is inappropriate.  
11

12 In the case of *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S.  
13 340, 111 S.Ct. 1282 (1991), the U S Supreme Court held that names, towns and telephone  
14 numbers of telephone utility's subscribers in the white pages of the utility's directory were  
15 not copyrightable facts, as these bits of information were not original to the utility even if  
16 the utility had been first to discover and report the data. The rationale for that holding is  
17 applicable here. The nature of the information is the same. In that case, Rural Telephone  
18 refused to license its white pages listings to Feist for a directory that provided directory  
19 information for 11 different telephone service areas. Feist extracted the listings it needed  
20 from Rural's directory without Rural's consent and Rural sued for copyright  
21 infringement. The District Court granted summary judgment in favor of Rural and the  
22 Court of Appeals affirmed. The Supreme Court reversed, holding that Rural's white pages  
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1 are not entitled to copyright, and therefore, Feist's use of them does not constitute  
2 infringement.

3           The Supreme Court, relying on Article 1, §8, cl. 8 of the Constitution which  
4 mandates originality as a prerequisite for copyright protection, concluded that Rural's  
5 white pages did not meet the constitutional or statutory requirements for copyright  
6 protection. The Court stated that while Rural had a valid copyright in the directory as a  
7 whole because it contained some forward text and some original material in the yellow  
8 pages advertisements, there was nothing original in Rural's white pages. Thus, the Court  
9 concluded that raw data was not copyrightable, and the way in which Rural selected,  
10 coordinated and arranged those facts was not original in any way, stating "there is nothing  
11 remotely creative about arranging names alphabetically in a white pages directory." 499  
12 U.S. at 346.

13           By using the concept of a "license," Qwest is improperly restricting CLECs' access  
14 to the DA List information, contrary to the requirements of Checklist Item No. 7.

15           Because Qwest's SGAT language found in Section 10.5 and 10.6 imposes improper  
16 limitations upon the use of Directory Assistance List database and Directory List  
17 information, WCom recommends that language found in Part A, Section 50.5 of  
18 MCImetro's existing interconnection agreement approved by this Commission be added to  
19 Qwest's SGAT and that Sections 10.5 and 10.6 be deleted where they are inconsistent with  
20 Section 50.5, as follows:  
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1 Qwest grants to CLEC access to the Directory List information as an  
2 Unbundled Network Element. Directory List information may be used in the  
3 provision of Directory Services. Such provisioning and use of the Directory List  
4 information will be consistent with the Federal Communications Commission's  
5 requirements and the federal Telecommunications Act of 1996, including but not  
6 limited to 47 USC 251(b)(3) and (c)(3).

#### 5 50.5 Directory Assistance Data

6 50.5.1 This Section refers to the residential, business, and government Customer  
7 records used by Qwest to create and maintain databases for the provision of  
8 live or automated operator assisted Directory Assistance. Directory  
9 Assistance data is information that enables telephone exchange carriers to  
10 swiftly and accurately respond to requests for directory information,  
11 including, but not limited to, name, address and phone numbers. Under the  
12 provisions of the federal Telecommunications Act of 1996 and the FCC's  
13 Interconnection Order, Qwest shall provide unbundled and non-  
14 discriminatory access to the residential, business and government Customer  
15 records used by Qwest to create and maintain databases for the provision of  
16 live or automated operator assisted Directory Assistance. CLEC may  
17 combine this element with any other Network Element for the provision of  
18 any Telecommunications Service.

13 50.5.2 Qwest shall provide an initial load of Customer records and Customer list  
14 information to CLEC in a mutually-agreed -to format, via electronic transfer,  
15 within thirty (30) calendar days of the Effective Date of this Agreement. The  
16 initial load shall include all data resident in the Qwest Databases and/or  
17 systems used by Qwest for housing Directory Assistance data and/or  
18 Customer listing data. In addition, the initial load shall be current as of the  
19 prior Business Day on which the initial load is provided.

17 50.5.3 Qwest shall provide CLEC daily updates to the Customer records and  
18 Customer list information in a mutually-agreed-to format via electronic  
19 transfer.

19 50.5.4 Qwest shall provide the ability for CLEC to electronically query the Qwest  
20 Directory Assistance Database and listings Database in a manner at least  
21 consistent with and equal to that which Qwest provides itself or any other  
22 Person.

21 50.5.5 Qwest shall provide CLEC a complete list of ILECs, CLECs, and  
22 independent telephone companies that provided data contained in the  
23 database.

23 50.5.6 On a daily basis, Qwest shall provide updates (end user and mass) to the  
24 listing information via electronic data transfer. Updates shall be current as of  
25 one (1) Business Day prior to the date provided to CLEC.

25 50.5.7 Qwest shall provide CLEC access to Directory Assistance support databases.  
26 For example, CLEC requires access to use restriction information including,  
but not limited to, call completion.

1 50.5.8 Directory Assistance data shall specify whether the Customer is a residential,  
2 business, or government Customer.

3 50.5.9 Directory Assistance data shall be provided on the same terms, conditions,  
4 and rates that Qwest provides such data to itself or other third parties.

5 50.5.10 Qwest shall provide complete refresh of the Directory Assistance data  
6 upon request by CLEC.

7 50.5.11 Qwest and CLEC will cooperate in the designation of a location at which  
8 the data will be provided.

9 **ONLY BY REQUIRING QWEST TO PROVIDE BULK TRANSFER OF  
10 THE CNAM DATABASE WITH UPDATES, CAN THE COMMISSION  
11 ASSURE THE NONDISCRIMINATORY ACCESS TO THIS UNE THAT  
12 THE ACT REQUIRES.**

13 The federal Act specifically requires Qwest to provide CLECs with  
14 nondiscriminatory access to its calling name assistance (“CNAM”) database as an  
15 unbundled network element (“UNE”). *See* 47 U.S.C. § 251(c)(3); *id.* § 153(29) (defining  
16 “network element” to include “databases”); *see also Local Competition Order* §§ 484 and  
17 485; *UNE Remand Order*, FCC 99-238, § 406. The reason for this is apparent -- to win  
18 customers, CLECs must be able to provide not only basic local service, but also related  
19 services that are at least equal in quality to those provided by Qwest. Indeed, the Act and  
20 the FCC’s regulations contemplate that new entrants will go further, leasing given  
21 unbundled network elements, and using them in innovative ways. *See, e.g.,* 47 C.F.R. §  
22 51.309(a). Consumers will thus be given the benefit of more choice, and competitors will  
23 be given a meaningful opportunity to compete by offering consumers new products, or by  
24 offering better service on existing products.

1 Qwest proposes to limit CLECs' access to the CNAM database to individual  
2 queries in Section 9.17 of its SGAT, as opposed to obtaining bulk transfer of all of the  
3 database. In the case of the CNAM database, however, "per dip" or "per query" access is  
4 grossly inferior to the access Qwest itself enjoys and will create discriminatory advantages  
5 for Qwest. CLECs cannot effectively use the CNAM database unless they are able to  
6 populate and maintain their own database, in the way that Qwest does for itself. Bulk  
7 access to the CNAM database would allow CLECs to structure their databases to suit their  
8 customers' needs as contemplated by the Act. The query-only access makes CLECs  
9 dependent on Qwest's systems and prevents CLECs from structuring their own calling  
10 name databases to provide efficient, equal-in-quality service to their customers. Only by  
11 requiring bulk transfer of the CNAM database with updates can the Commission assure  
12 the nondiscriminatory access to this UNE that the Act requires.

16 Qwest incorrectly claims that Rule 51.319 limits access to a per dip or per query  
17 basis. In formulating Rule 319, the Commission concluded that complete and global  
18 access to a LEC's CNAM database was not "technically feasible" over a signaling  
19 network.<sup>4</sup> Thus, in the First Report and Order and again in the UNE Remand Order<sup>5</sup> the  
20 FCC directed ILECs to provide "nondiscriminatory access to their call-related databases,  
21 including but not limited to, the CNAM database . . . by means of physical access at the  
22 signaling transfer point linked to the unbundled databases."<sup>6</sup> However, nowhere in its  
23  
24

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25 <sup>4</sup> Local Competition First Report & Order, ¶ 485.

26 <sup>5</sup> UNE Remand Order, FCC 99-238 at ¶ 410.

<sup>6</sup> Id.

1 rules or its discussion of the calling name databases, did the FCC limit access to only that  
2 access that can be provided by means of the signaling network.

3 Here, WCom is *not* seeking access to the database over the signaling network, the  
4 type of access that the FCC addressed in its Local Competition and UNE Remand Orders  
5 and that Rule 51.319 seeks to regulate. Global access *is* technically feasible by means  
6 other than the signaling network in much the same way WCom populates its directory  
7 assistance databases.<sup>7</sup> Accordingly, Qwest must provide access to the entire database in  
8 order to satisfy the Act's nondiscriminatory access requirement.  
9  
10

11 The access WCom seeks would permit it to provide Caller ID service to its  
12 customers with the same level of efficiency as Qwest. Limiting WCom to per-query or  
13 "dip" access prevents WCom from controlling the service quality, management of the  
14 database, or from adding new features, thereby allowing only the provision of inferior  
15 service.  
16

17 CNAM allows the called customer premises equipment, connected to a switching  
18 system via a conventional line, to receive a calling party's name and the date and time of  
19 the call during the first silent interval in the ringing cycle. This is a very limited time  
20 frame within which to determine the name associated with the calling number. As the call  
21 reaches the terminating switch and a Caller ID request is made, the request must route  
22  
23

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24 <sup>7</sup> Qwest also claims that WCOM misuses the term "technical feasibility" in light of the Supreme Court and Eighth  
25 Circuit Court of Appeals pronouncement that it is used in Section 251(c)(3) to refer to "where" rather than "what".  
26 However, Qwest misconstrues WCOM's arguments with respect to technical feasibility. WCOM is not relying on  
technically feasibility as justification for providing access to the entire CNAM data base. Rather, WCOM submits

1 through the network to reach the database holding the “name” information. WCom must  
2 first determine which LEC owns the number, then route the call out to that LEC and back  
3 to make the “dip”. If the LEC does not have the name, then exception handling  
4 procedures must be used to find the name and the result is finally returned to the called  
5 party. The time it takes to route the number request to the correct LEC’s database to make  
6 the dip, return the request, and provide exception handling when the number is not found  
7 in the database cannot always be completed within the short ring cycle required. If,  
8 however, WCom could maintain its own database, via global access to the LEC’s  
9 database, a lengthy step of the process could be eliminated, allowing WCom to provide  
10 service at least as well as Qwest provides for itself.

11  
12  
13 Thus, by enjoying superior access to its CNAM data—data that cannot be accessed  
14 or used anywhere else except on a per query basis—Qwest limits WCom to an inferior  
15 service that Qwest can provide more efficiently, quickly, and cheaply. For these reasons,  
16 Qwest’s refusal to supply WCom’s with full access of its CNAM database is  
17 discriminatory under Section 251(b)(3) of the Act and must be remedied before Qwest is  
18 found to have complied with its obligations under Checklist No. 10.

## 21 CONCLUSION

22  
23 For all the reasons described herein, at this time, and until Qwest revises its SGAT  
24 to be compliant with the Act and the FCC’s rules and implementing orders, provides the

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25  
26 *that if nondiscriminatory access cannot be provided on the SS7 network, then non-discriminatory access should be offered off the network at another point where it is technically feasible.*

1 required access to poles, ducts, conduits and rights-of-way, eliminates licensing  
2 requirements and grants bulk access to its CNAM database, Qwest has not satisfied and  
3 cannot satisfy Checklist Items 3, 7, and 10.

4  
5 DATED this 19<sup>th</sup> day of January, 2001.

6  
7 LEWIS AND ROCA

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11 Phoenix, Arizona 85007

12 - AND -

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17 303-390-6206

18 Attorneys for WorldCom, Inc.

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20  
21 ORIGINAL and ten (10)  
22 copies of the foregoing filed  
23 this 19<sup>th</sup> day of January, 2001,  
24 with:

25 Arizona Corporation Commission  
26 Docket Control – Utilities Division  
1200 W. Washington Street  
Phoenix, Arizona 85007

1 COPY of the foregoing hand-  
2 delivered this 19<sup>th</sup> day of January,  
2001, to:

3 Maureen Scott  
4 Legal Division  
5 Arizona Corporation Commission  
6 1200 W. Washington Street  
7 Phoenix, Arizona 85007

8 Jane Rodda, Acting Chief Administrative Law Judge  
9 Arizona Corporation Commission  
10 1200 W. Washington Street  
11 Phoenix, Arizona 85007

12 Deborah Scott, Director  
13 Utilities Division  
14 Arizona Corporation Commission  
15 1200 W. Washington Street  
16 Phoenix, Arizona 85007

17 COPY of the foregoing mailed  
18 this 19<sup>th</sup> day of January, 2001, to:

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