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1 **LEWIS**
2 AND
3 **ROCA**
4 LLP
5 **LAWYERS**

6 **BEFORE THE**
7 **ARIZONA CORPORATION COMMISSION**

8 **WILLIAM A. MUNDELL**
9 **CHAIRMAN**

10 **JIM IRVIN**
11 **COMMISSIONER**

12 **MARC SPITZER**
13 **COMMISSIONER**

Arizona Corporation Commission
DOCKETED

MAR 26 2001

DOCKETED BY 

14 **IN THE MATTER OF U S WEST**
15 **COMMUNICATIONS, INC.'S COMPLIANCE**
16 **WITH § 271 OF THE**
17 **TELECOMMUNICATIONS ACT OF 1996.**

DOCKET NO. T-00000A-97-0238

18 **BRIEF OF WORLDCOM ADDRESSING LINE SHARING AND PACKET**
19 **SWITCHING IMPASSE ISSUES**

20 In accordance with Staff's directives, WorldCom, Inc., on behalf of its regulated
21 subsidiaries, ("WCom") submits its brief addressing line sharing and packet switching
22 impasse issues. All references to language found in Qwest's Statement of Generally
23 Available Terms ("SGAT") are to the 4th Revision issued for Arizona by Qwest on
24
25
26

1 February 12, 2001. WCom will address two issues here, namely the use of individual case
2 basis (“ICB”) pricing for the provision of Network Elements or other services and line
3 sharing using a fiber loop.

4 Qwest has proposed ICB pricing for unbundled packet switching. Therefore,
5 WCom is addressing the issue here. However, this issue is not limited to pricing for
6 unbundled packet switching, and has broader application than the narrow impasse issue for
7 unbundled packet switching. In addition, WCom supports the arguments made by
8 Rhythms in Utah regarding line sharing using a fiber loop.

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10
11 **ARGUMENT**

12 **A. Whether Qwest should be permitted to price unbundled packet**
13 **switching on an individual case basis.**

14
15
16 Qwest’s SGAT Section 9.20.3.4 provides as follows:

17 9.20.3.4 The rates for each of the aforementioned Packet Switching rate
18 elements are set forth in Exhibit A. To the extent the Packet Switching rates
19 are interim, the rates will be subject to true up based on either mutually
20 agreed to permanent rates or permanent rates established in a cost
21 proceeding conducted by the Commission. In the event interim rates are
22 established by the Commission before permanent rates are set, the rates in
23 Exhibit A will be modified to reflect any interim rates established by the
24 Commission. No true-up of rates will occur until permanent rates are
25 established, unless mutually agreed to by CLEC and Qwest or otherwise
26 ordered by the Commission.

27 The current Exhibit A referenced in Section 9.20.3.4 contains no specific pricing
28 for unbundled packet switching stating pricing will be on an individual case basis (“ICB”).

1 Qwest has advised that it is developing prices for unbundled packet switching and that
2 ICB pricing will be used on an interim basis.

3
4 WCom has consistently expressed concern over ICB pricing. Like incorporating
5 Qwest documents into its SGAT by reference, allowing Qwest to establish rates on an ICB
6 gives Qwest unilateral control over ICB pricing. Presumably, if a CLEC does not agree to
7 the ICB price proposed by Qwest, it has two options, 1) pay the price and file a complaint
8 at the Commission where it may have the burden of proving the ICB price to be
9 unreasonable; or 2) not pursue unbundled packet switching from Qwest in order to serve a
10 potential or existing CLEC customer. Neither option benefits consumers and both options
11 interpose uncertainty and delay for CLECs trying to serve customers.
12

13
14 Obviously, not knowing the wholesale price a CLEC will be charged by Qwest
15 when the CLEC is attempting to serve a customer makes it difficult, if not impossible, to
16 set a retail price for the CLEC customer. In addition, not serving a customer because the
17 ICB price is in dispute or is too high, does not allow customers choices or allow CLECs
18 to offer a full range of services if some of those services are priced on an ICB. Having to
19 wait until Qwest sets its ICB prices adds more delay that CLECs and their customers must
20 endure. While Qwest has not established an ICB process in its SGAT, it is likely that
21 Qwest will require time to provide its ICB price that will add further delay for CLECs and
22 their customers.
23

24
25 Qwest has agreed that it will address ICB pricing and the processes it will use to set
26 ICB prices in a future workshop when parties discuss the bona fide request process and the

1 special request process. However, the issue here is more fundamental. Establishing an
2 ICB process does not eliminate delay and uncertainty for CLECs. Therefore, the
3 Commission must carefully scrutinize the use of the ICB pricing process by requiring
4 Qwest to establish standard offerings for packet switching and not allow Qwest to
5 unilaterally set prices on an ICB.
6

7 Qwest should not be permitted to set prices using an ICB except in very rare cases
8 and only where Qwest demonstrates it cannot provide a service as a standard offering.
9 Qwest has not done that here. Therefore, until Qwest sets specific prices for unbundled
10 packet switching, Qwest has not complied with the requirements of Section 271 by
11 providing unbundled packet switching using just and reasonable prices.
12

13 In the event Qwest is permitted to use ICB pricing under limited circumstances,
14 WCom recommends that when the ICB process is addressed, the process should include
15 the following language:
16

- 17 1. As indicated by the acronym "ICB", which stands for "individual case
18 basis", contained in Exhibit A of this Agreement addressing Rates,
19 rates for some Network Elements or services ("ICB Rates") have not
20 been approved by the Commission as of the Effective Date of this
21 Agreement. With respect to all ICB Rates, prior to CLEC ordering
22 any Network Element or service with an ICB Rate identified in
23 Exhibit A to this Agreement, the Parties shall meet, at CLEC's
24 request, to establish applicable interim rates.
- 25 2. During such meeting and upon CLEC request, Qwest shall provide
26 CLEC, without limitation, with its TELRIC-based cost analysis and
related supporting detail for the Network Element or service that
CLEC wishes to order. Such cost analysis and supporting
documentation shall be treated as confidential information if

1 requested by Qwest under the non-disclosure sections of this
2 Agreement.

- 3 3. If no agreement on a rate is reached within thirty (30) days of CLEC's
4 request for a meeting, the Parties shall propose rates for the Network
5 Element or service in question to the Commission in an appropriate
6 proceeding. The Parties agree that they will jointly seek an
7 expeditious resolution and final decision from the Commission in the
8 proceeding in which the rates in question will be set. In the
9 proceeding, Qwest shall have the burden of proving that its proposed
10 prices are just and reasonable and compliant with TELRIC principles.
11
12 4. In the interim, prior to the issuance of a final Commission decision,
13 Qwest shall provide the Network Element or service and shall set the
14 price(s) for the Network Element or service based on its TELRIC.
15
16 5. Qwest shall track and record all quantities provisioned, durations, and
17 amounts of payment for the Network Element or service ordered by
18 CLEC.
19
20 6. If the Commission-determined price is lower than the price set by
21 Qwest, Qwest shall refund to CLEC all payments in excess of the
22 Commission established price, with simple interest at Qwest's
23 weighted cost of capital, within 30 days of the issuance of the final
24 Commission decision.
25
26 7. If the Commission-determined price is higher than the price set by
Qwest, CLEC shall be responsible for payment of the difference
between the prices, with simple interest at Qwest's weighted cost of
capital, within 30 days of the issuance of the final Commission
decision.

**B. Whether Qwest should be required in its SGAT to provide line
sharing over a fiber loop.**

Qwest's SGAT Section 9.4.1.1¹ provides as follows:

9.4.1.1. Line sharing occurs on the copper portion of the loop (i.e.,
copper loop or shared copper distribution). Qwest provides CLECs with the

¹ The fourth revision to Qwest's SGAT filed February 12, 2001, does not include Section 9.4.1.1; however, it is WCom's understanding that this section will be included in the Arizona SGAT. The language cited above is found in the SGAT filed recently in the multi-state workshops.

1 network elements to transport data from Qwest Remote Terminals including
2 unbundled dark fiber, DS1 capable loop, and OCN. Qwest also provides
3 CLECs with the ability to commingle its data with Qwest's pursuant to
4 Section 9.20 with unbundled packet switching. To the extent additional line
5 sharing technologies and transport mechanisms are identified, and Qwest has
6 deployed such technology for its own use, and Qwest is obligated by law to
7 provide access to such technology, Qwest will allow CLECs to line share in
8 that same manner, provided, however, that the rates, terms and conditions
9 for line sharing may need to be amended in order to provide such access.

10 FCC Decision 01-26 issued in CC Docket Nos. 96-98 and 98-147, provides in
11 pertinent part as follows:

12 We clarify that the requirement to provide line sharing applies to the
13 entire loop, even where the incumbent has deployed fiber in the loop (*e.g.*,
14 where the loop is served by a remote terminal). Our use of the word
15 "copper" in section 51.319(h)(1) was not intended to limit an incumbent
16 LEC's obligation to provide competitive LECs with access to the fiber
17 portion of a DLC loop for the provision of line-shared xDSL services. As
18 noted above, incumbent LECs are required to unbundle the high frequency
19 portion of *the local loop* even where the incumbent LEC's voice customer is
20 served by DLC facilities. The local loop is defined as a transmission facility
21 between a distribution frame (or its equivalent) in an incumbent LEC central
22 office and the loop demarcation point at an end user customer premises,
23 including inside wire owned by the incumbent LEC. By using the word
24 "transmission facility" rather than "copper" or "fiber," we specifically
25 intended to ensure that this definition was technology-neutral. (Emphasis
26 supplied-footnotes omitted)²

* * *

27 We clarify that where a competitive LEC has collocated a DSLAM at
28 the remote terminal, an incumbent LEC must enable the competitive LEC to
29 transmit its data traffic from the remote terminal to the central office. The
30 incumbent LEC can do this, at a minimum, by leasing access to the dark
31 fiber element or by leasing access to the subloop element. We also
32 recognize that there are other ways in which line sharing may be
33 implemented where there is fiber in the loop and we do not mandate any
34 particular means in this Order. Solutions largely turn on the inherent
35 capabilities of equipment that incumbent LECs have deployed, and are
36 planning to deploy, in remote terminals. A competitive LEC's choice of

² See FCC Decision No. 01-26, para. 10, released January 19, 2001.

1 various line-sharing arrangements may also be influenced by whether it has
2 already collocated, or is capable of collocating at a remote terminal. For
3 these reasons, we are initiating a *Third Further Notice of Proposed*
4 *Rulemaking* today in the Advanced Services docket and a *Sixth Further*
5 *Notice of Proposed Rulemaking* in the Local Competition docket that
6 requests comment on the feasibility of different methods of providing line
7 sharing where an incumbent LEC has deployed fiber in the loop. (footnotes
8 omitted)³

9 All indications are that fiber deployment by incumbent LECs is
10 increasing, and that collocation by competitive LECs at remote terminals is
11 likely to be costly, time consuming, and often unavailable. We provide this
12 clarification because we find that it would be inconsistent with the intent of
13 the *Line Sharing Order* and the statutory goals behind sections 706 and 251
14 of the 1996 Act to permit the increased deployment of fiber-based networks
15 by incumbent LECs to unduly inhibit the competitive provision of xDSL
16 services. This clarification promotes the 1996 Act's goal of rapid
17 deployment of advanced services because it makes clear that competitive
18 LECs have the flexibility to engage in line sharing using DSLAM facilities
19 that they have already deployed in central offices rather than having to
20 duplicate those facilities at remote terminals. In addition, our ruling in the
21 instant Order ensures that in situations where there is no room in the remote
22 terminal for the placement of competitive LEC facilities, competitors
23 nevertheless are able to obtain line sharing from the incumbents. (footnotes
24 omitted)⁴

25 WCom believes that reading these paragraphs from the FCC's order demonstrates
26 that the Qwest language in Section 9.4.1.1 is not consistent with the order as was argued
by Rhythms in the multi-state transcript that has been included in this record. WCom
agrees that this section should reflect that Qwest will provide for line sharing over fiber
when it becomes available from Qwest.

³ *Id.* at para. 12.

⁴ *Id.* at para. 13.

CONCLUSION

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2
3 For the reasons stated, WCom believes that Qwest is not meeting its legal
4 obligations in its SGAT regarding the use of ICB pricing and because is will not
5 agree to provide line sharing over fiber when it becomes available from Qwest.
6

7 Dated: March 26, 2001

8 LEWIS AND ROCA LLP

9
10 

11 Thomas H. Campbell
12 40 N. Central Avenue
13 Phoenix, Arizona 85007
14 (602) 262-5723

15 - AND -

16 Thomas F. Dixon
17 707 -17th Street, #3900
18 Denver, Colorado 80202
19 (303) 390-6206

20 Attorneys for WorldCom, Inc.

21 ORIGINAL and ten (10)
22 copies of the foregoing filed
23 this 26 day of March, 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-
delivered this 26 day of March,
2 2001, to:

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

6 Jane Rodda, Administrative Law Judge
Arizona Corporation Commission
7 1200 W. Washington Street
Phoenix, Arizona 85007

8 Deborah Scott, Director
9 Utilities Division
Arizona Corporation Commission
10 1200 W. Washington Street
Phoenix, Arizona 85007

11 COPY of the foregoing mailed
12 this 26 day of March, 2001, to:

13 Mark J. Trierweiler
Vice President – Government Affairs
14 AT&T Communications of the
Mountain States
15 111 West Monroe, Suite 1201
Phoenix, Arizona 85003

16 Scott Wakefield
17 Residential Utility Consumer Office
2828 N. Central Avenue
18 Phoenix, Arizona 85004

19 Maureen Arnold
US West Communications, Inc.
20 3033 N. Third Street
Room 1010
21 Phoenix, Arizona 85012

22 Mark Dioguardi
Tiffany and Bosco PA
23 500 Dial Tower
1850 N. Central Avenue
24 Phoenix, Arizona 85004

25
26

LEWIS
AND
ROCA
LLP
LAWYERS

- 1 Thomas L. Mumaw
Snell & Wilmer
2 One Arizona Center
Phoenix, Arizona 85004-0001
- 3 Andrew O. Isar
4 TRI
4312 92nd Avenue N.W.
5 Gig Harbor, Washington 98335
- 6 Darren S. Weingard
Stephen H. Kukta
7 Sprint Communications Co., L.P.
1850 Gateway Drive, 7th Floor
8 San Mateo, CA 94404-2567
- 9 Timothy Berg
Fennemore, Craig, P.C.
10 3003 N. Central Avenue
Suite 2600
11 Phoenix, Arizona 85012-3913
- 12 Thomas M. Dethlefs
Charles Steese
13 US West, Inc.
1801 California Street, Ste. 5100
14 Denver, Colorado 80202
- 15 Joan S. Burke
Osborn & Maledon
16 2929 N. Central Avenue
21st Floor
17 Phoenix, Arizona 85067-6379
- 18 Richard S. Wolters
AT&T & TCG
19 1875 Lawrence Street
Suite 1575
20 Denver, Colorado 80202
- 21 Michael M. Grant
Todd C. Wiley
22 Gallagher & Kennedy
2727 E. Camelback Road
23 Phoenix, Arizona 85016-9225
- 24 Richard M. Rindler
Morton J. Posner
25 Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
26 Washington, D.C. 20007-5116

LEWIS
AND
ROCA
LLP
LAWYERS

- 1 Mary Tee
Electric Lightwave, Inc.
2 4400 NE 77th Avenue
Vancouver, Washington 98662
- 3 Raymond S. Heyman
4 Michael Patten
Roshka Heyman & DeWulf
5 Two Arizona Center
400 Fifth Street
6 Suite 1000
Phoenix, Arizona 85004
- 7 Diane Bacon, Legislative Director
8 Communications Workers of America
5818 North 7th Street
9 Suite 206
Phoenix, Arizona 85014-5811
- 10 Charles Kallenback
11 ACSI
131 National Business Parkway
12 Annapolis Junction, Maryland 20701
- 13 Bradley Carroll, Esq.
Cox Arizona Telcom, L.L.C.
14 1550 West Deer Valley Road
Phoenix, Arizona 85027
- 15 Joyce Hundley
16 United States Department of Justice Antitrust Division
1401 H Street, N.W.
17 Suite 8000
Washington, D.C. 20530
- 18 Daniel Waggoner
19 Davis Wright Tremaine
2600 Century Square
20 15011 Fourth Avenue
Seattle, Washington 98101-1688
- 21 Alaine Miller
22 NextLink Communications, Inc.
500 108th Avenue NE, Suite 2200
23 Bellevue, Washington 98004
- 24 Carrington Phillips
Cox Communications
25 1400 Lake Hearn Drive N.E.
Atlanta, Georgia 30319
- 26

LEWIS
AND
ROCA
LLP
LAWYERS

1 Mark N. Rogers
2 Excell Agent Services, LLC
3 2175 W. 14th Street
4 Tempe, Arizona 85281

5 Traci Grundon
6 Davis Wright Tremaine LLP
7 1300 S.W. Fifth Avenue
8 Portland, Oregon 97201

9 Mark P. Trincherro
10 Davis Wright Tremaine LLP
11 1300 S.W. Fifth Avenue, Suite 2300
12 Portland, Oregon 97201

13 Gena Doyscher
14 Global Crossing Local Services, Inc.
15 1221 Nicollet Mall
16 Minneapolis, Minnesota 55403-2420

17 Penny Bewick
18 New Edge Networks, Inc.
19 P.O. Box 5159
20 Vancouver, WA 98668

21 Jon Loehman
22 Managing Director-Regulatory
23 SBC Telecom, Inc.
24 5800 Northwest Parkway
25 Suite 135, Room I.S. 40
26 San Antonio, TX 78249

17 M. Andrew Andrade
18 5261 S. Quebec Street
19 Suite 150
20 Greenwood Village, CO 80111

21 Douglas Hsiao
22 Rhythms Links Inc.
23 6933 S. Revere Parkway
24 Englewood, CO 80112

22 Karen Clauson
23 Eschelon Telecom, Inc.
24 730 2nd Avenue South
25 Suite 1200
26 Minneapolis MN 55402

1 Andrea P. Harris
2 Senior Manager, Regulatory
3 Allegiance Telecom, Inc. of Arizona
4 2101 Webster, Suite 1580
5 Oakland, CA 94612

6

7

M. Koonsman

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26