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May 25, 2001

VIA HAND DELIVERY

Arizona Corporation Commission
Utilities Division – Docket Control
1200 West Washington Street
Phoenix, AZ 85007

Re: In the Matter of US West Communications, Inc.'s Compliance with
Section 271 of the Telecommunications Act of 1996
Docket No: T-00000A-97-0238

Attached for filing is the testimony of Michael Schneider on behalf of
WorldCom, Inc. in the above captioned matter.

Very truly yours,

LEWIS AND ROCA LLP

Michael T. Hallam

MTH/bjg
Attachments

cc: Maureen Scott, Legal Division
Jane Rodda, Chief Administrative Law Judge
Deborah Scott, Director

Arizona Corporation Commission
DOCKETED

MAY 25 2001

DOCKETED BY

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL

Chairman

JIM IRVIN

Commissioner

MARC SPITZER

Commissioner

**IN THE MATTER OF U S WEST)
COMMUNICATIONS, INC.'S)
COMPLIANCE WITH SECTION 271 OF THE) DOCKET NO. T-00000A-97-238
TELECOMMUNICATIONS ACT OF 1996)
_____)**

**PREFILED SUPPLEMENTAL TESTIMONY OF
MICHAEL SCHNEIDER**

**ON BEHALF OF WORLDCOM, INC.
General Terms and Conditions**

May 25, 2001

1 **Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.**

2 **A.** My name is Michael W. Schneider. I am a commercial attorney for WorldCom,
3 Inc. ("WorldCom"). My business address is 2400 N. Glenville Dr., Richardson, Texas
4 75082.

5 **Q. PLEASE DESCRIBE YOUR RESPONSIBILITIES AS A COMMERCIAL**
6 **ATTORNEY FOR WORLDCOM.**

7 **A.** I am responsible for negotiating interconnection agreements with various Bell
8 Operating Companies for WorldCom. In that capacity, I review and address, among
9 other things, what are referred to as general terms and conditions for interconnection
10 agreements negotiated in accordance with the federal Telecommunications Act of 1996
11 ("federal Act").

12 **Q. HAVE YOU PARTICIPATED IN THIS PROCEEDING PREVIOUSLY?**

13 **A.** Yes, I was involved in the negotiation of language addressing checklist item 3
14 concerning access to poles, ducts and rights of way found generally in Section 10.8 of
15 Qwest's Statement of Generally Available Terms ("SGAT"). In addition I filed direct
16 testimony addressing General Terms and Conditions earlier for this workshop.

17 **Q. PLEASE DESCRIBE YOUR RELEVANT EXPERIENCE WITH**
18 **WORLDCOM.**

19 **A.** I have been employed by WorldCom for over six years as a commercial attorney.
20 For five years of those years I was assigned to network and facilities. For the remainder,
21 I have been to carrier transactions. Carrier Transactions is responsible for legal support
22 for negotiations for interconnection agreements with Bell Operating Companies.

1 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

2 **A.** I have reviewed the direct and supplemental testimony filed by Larry Brotherson
3 addressing general terms and conditions found in the Qwest Arizona SGAT, which was
4 attached to his testimonies. I will address both Mr. Brotherson's Direct and
5 Supplemental testimony filed in this proceeding. I am not addressing Section 12 of the
6 SGAT. That section will be addressed by another WorldCom witness. However, I have
7 incorporated my earlier direct testimony in this supplemental testimony so that the parties
8 can work off one document.

9 **Q. PLEASE ADDRESS MR. BOTHERSON'S DIRECT TESTIMONY.**

10 **A.** In my opinion, I believe Qwest's general terms and conditions are insufficient. I
11 attached to my direct testimony two documents that are taken from WorldCom's model
12 interconnection agreement. The first document is identified as MWS-1 and is a
13 document comparing language taken from WorldCom's model "Part A, General Terms
14 and Conditions" with Qwest's corresponding language. It addresses many of the same
15 subjects identified in Qwest's SGAT, but not all and provides language not included in
16 Qwest's SGAT. The second document identified as MWS-2 is entitled "Part B,
17 Definitions". It addresses some of the same definitions contained in Section 2 of Qwest's
18 SGAT, but also defines many terms that are not defined in Qwest's SGAT but are
19 relevant here.

20 **Q. DO YOU NEED TO EXPLAIN ANY OF THE PROVISIONS CONTAINED**
21 **IN THESE TWO DOCUMENTS?**

22 **A.** No. The language contained in these documents speaks for itself. However, as is
23 evident from the material contained in these documents, the WorldCom documents in

1 many instances more thoroughly address the subject matter of this workshop or address
2 matters not addressed in Qwest's SGAT that should be adopted here. I consider the
3 WorldCom language to be the type of standard general terms and conditions that would
4 be relevant to any interconnection agreements. The definitions are based on terms used
5 within the industry or where definitions have been provided by the federal Act, the
6 Federal Communications Commission ("FCC") or other industry forums

7 **Q. DO YOU HAVE ANY SPECIFIC CONCERNS ABOUT THE PORTION**
8 **OF THE SGAT BEING ADDRESSED IN THIS WORKSHOP?**

9 **A.** Yes, I do. I have incorporated portions of the SGAT Lite provided by Mr.
10 Brotherson. He has made changes to the SGAT that are reflected in blue, and my
11 changes are in any other color. Although I prefer the language I have provided in MWS-
12 I, I have also provided a "redlined" version of sections within Qwest's SGAT below.

13 **Q. PLEASE EXPLAIN WORLDCOM'S CONCERNS.**

14 **A.** I believe Qwest's SGAT should be modified as follows:

15 (1) Section 1

16 **II. SECTION 1.0 - GENERAL TERMS**

17 1.1 This Statement of Generally Available Terms and Conditions ("SGAT")
18 for Interconnection, unbundled network elements, Ancillary Services, and Resale of
19 Telecommunications Services is filed by Qwest Corporation ("Qwest"), a Colorado
20 Corporation with offices at 1801 California Street, Denver, Colorado 80202, pursuant to
21 Section 252(f) of the Telecommunications Act of 1996, for purposes of fulfilling Qwest's
22 obligations under Sections 222, 251(a), (b), and (c), 252, 271, and other relevant
23 provisions of the Act and the rules and regulations promulgated thereunder.¹

24
25 1.2 If this document, or portions thereof, is being used as the basis for
26 negotiations of an Interconnection Agreement, it is between _____,

¹ Note – Throughout this document, the term "U S WEST" has been replaced with the term "Qwest". While all other changes in this document are shown with revision marks, the change of U S WEST to Qwest has not been shown with revision marks, only because of the substantial volume of the changes.

1 (“Competitive Local Exchange Carrier” or “CLEC”) a _____ corporation and Qwest
2 Corporation (“Qwest”), a Colorado corporation, pursuant to Section 252(f) of the
3 Telecommunications Act of 1996, for purposes of fulfilling Qwest’s obligations under
4 Sections 222, 251(a), (b), and (c), 252, 271, and other relevant provisions of the Act and
5 the rules and regulations promulgated thereunder.
6

7 1.3 This Agreement sets forth the terms, conditions and pricing under which
8 Qwest will offer and provide to any requesting CLEC network Interconnection, access to
9 unbundled network elements, separately or in any technically feasible combination,
10 Ancillary services, and Telecommunications Services available for resale within the
11 geographical areas in which both Parties are providing local Exchange Service at that
12 time, and for which Qwest is the incumbent Local Exchange Carrier within the State of
13 Arizona for purposes of providing local Telecommunications Services. This Agreement
14 is available for the term set forth herein.
15

16 1.4 Individual CLECs may adopt this SGAT, in whole or in part, in lieu of, or
17 in addition to, entering into an individual Interconnection agreement, by signing the
18 Signature Page in Section 22 of this SGAT and by delivering a signed copy of this SGAT
19 to Qwest, pursuant to the notification provision of this SGAT contained in Section 5.21,
20 or by opt in notification.- Upon adoption of the SGAT, or any portion thereof, by CLEC,
21 the SGAT becomes an Interconnection agreement between Qwest and CLEC, or a part of
22 an interconnection agreement between Qwest and CLEC.-
23

24 1.5 This SGAT, once it is approved or permitted to go into effect by the
25 Commission, offers CLECs an alternative, or an additional option, to negotiating an
26 individual Interconnection agreement with Qwest, purchasing from the Arizona Local
27 Network Interconnection and Service Resale Tariff or adopting an existing approved
28 Interconnection agreement between Qwest and another CLEC pursuant to Section 252(i)
29 of the Act. In this respect, neither the submission nor approval of this SGAT, nor any
30 provision herein, shall affect Qwest’s willingness to negotiate an individual agreement
31 with any requesting carrier pursuant to Section 252 of the Telecommunications Act of
32 1996.
33

34 1.6 Qwest may modify this SGAT prior to the date it is approved or permitted
35 to go into effect. If Qwest files a modification, the section modified shall be considered
36 withdrawn, and the section as modified will be approved or permitted to go into effect
37 pursuant to the Schedule for Review set forth in 252(f) of the Act. For the purposes of
38 the Schedule for Review set forth in section 252(f) of the Act, the sixty (60) day
39 timeframe for this SGAT to take effect shall commence from the filing of this SGAT and
40 shall not be affected by the filing of any modification.
41

42 1.7 Following the date this SGAT is approved or allowed to take effect, Qwest
43 may file amendments to this SGAT, which shall be approved or permitted to take effect
44 pursuant to the Schedule for Review set forth in Section 252(f) of the Act. At the time
45 any amendment is filed, the section amended shall be considered withdrawn, and no

1 CLEC may adopt the section considered withdrawn following the filing of any
2 amendment, even if such amendment has not yet been approved or allowed to take effect.
3

4 **Section 2**

5 In Section 2, Qwest does not specifically include Arizona state rules, regulations
6 and laws within the definition of "Existing Rules" although state rules, regulations and
7 laws are not specifically excluded. The definition of Existing Rules should specifically
8 include state rules and regulations and state laws. The SGAT should also reflect in this
9 section that this Agreement is in compliance with Existing Rules, as opposed to "based
10 upon" Existing Rules. In addition, Section 2.2 identifies some specific rulings, but
11 obviously not all. The references to specific rulings should be deleted for more generic
12 language.

13 Finally, language regarding the incorporation of Tariffs, IRRG product
14 descriptions, Technical Publications and other documents outside of the Agreement
15 which address matters set forth in the Agreement, should be revised so that Qwest cannot
16 do a "back-door", unilateral amendment this Agreement by revising such documents or
17 filing a conflicting Tariff. Qwest should not be allowed to undercut or supercede
18 provisions of the SGAT, or interconnection agreement resulting from all or a portion of
19 the SGAT, by filing similar yet inconsistent provisions in Qwest tariffs. For the SGAT or
20 interconnection agreement to have a meaningful commercial purpose, the CLEC must be
21 able to rely on its terms and conditions and know that they cannot be unilaterally changed
22 by Qwest through otherwise unrelated tariff filings. This is an essential premise of a
23 contractual relationship and why Congress chose interconnection agreements - and not
24 interconnection tariffs - as the basis for ILEC/CLEC relationships under the Act.

1 The filing of a tariff to supercede the SGAT or interconnection agreement is
2 fundamentally at odds with the requirement of the Act that the parties "negotiate the
3 particular terms and conditions of agreements" to fulfill the duties described in the Act.
4 The Act contemplates that the detailed terms and conditions will be set forth in the
5 interconnection agreement between the parties. Section 251(c)(1) of the Act requires
6 Qwest to "negotiate in good faith ... the particular terms and conditions" of an
7 interconnection agreement. The tariff is a document prepared by Qwest; it is not a
8 product of negotiation by two parties. Any attempt to avoid obligations arising under an
9 individualized contract by referring to non-negotiable tariffs is a clear violation of the
10 Act. WorldCom proposes the following revisions to Section 2.

11 III. SECTION 2.0 - INTERPRETATION AND CONSTRUCTION

12 2.1 This Agreement includes this Agreement and all Exhibits appended hereto,
13 each of which is hereby incorporated by reference in this Agreement and made a part
14 hereof. All references to Sections and Exhibits shall be deemed to be references to
15 Sections of, and Exhibits to, this Agreement unless the context shall otherwise require.
16 The headings used in this Agreement are inserted for convenience of reference only and
17 are not intended to be a part of or to affect the meaning of this Agreement. Unless the
18 context shall otherwise require, any reference to any agreement, other instrument
19 (including Qwest or other third party offerings, guides or practices), statute, regulation, or
20 ~~rule or Tariff~~ applies to such agreement, instrument, statute, regulation or, ~~rule or Tariff~~
21 as amended and supplemented from time to time (and, in the case of a statute, regulation
22 or, ~~rule or Tariff~~, to any successor provision).
23

24 2.2 The provisions in this Agreement are based, in large part, on the existing
25 state of the law, rules, regulations and interpretations thereof, as of the date hereof (the
26 "Existing Rules"). Among the Existing Rules are the results of arbitrated decisions by
27 the Commission which are currently being challenged by Qwest or CLEC. Among the
28 Existing Rules are certain FCC rules and orders that are the subject of, or affected by, the
29 opinion issued by the Supreme Court of the United States in AT&T Corp., et al. v. Iowa
30 Utilities Board, et al. on January 25, 1999. Many of the Existing Rules, including rules
31 concerning which Network Elements are subject to unbundling requirements, may be
32 changed or modified during legal proceedings that follow the Supreme Court opinion.
33 Among the Existing Rules are the FCC's orders regarding Bell Operating Companies'
34 (BOCs)' applications under Section 271 of the Act. Qwest is basing the offerings in this
35 Agreement on the Existing Rules, including the FCC's orders on BOC 271 applications.
36 Nothing in this Agreement shall be deemed an admission by Qwest or CLEC concerning

1 the interpretation or effect of the Existing Rules or an admission by Qwest or CLEC -that
2 the Existing Rules should not be vacated, dismissed, stayed or modified. Nothing in this
3 Agreement shall preclude or estop Qwest or CLEC from taking any position in any forum
4 concerning the proper interpretation or effect of the Existing Rules or concerning whether
5 the Existing Rules should be changed, dismissed, stayed or modified. To the extent that
6 the Existing Rules are changed, vacated, dismissed, stayed or modified, then this
7 Agreement and all contracts adopting all or part of this Agreement shall be amended to
8 reflect such modification or change of the Existing Rules. ~~Where the Parties fail to agree
9 upon such an amendment within sixty (60) days from the effective date of the
10 modification or change of the Existing Rules, it shall be resolved in accordance with the
11 Dispute Resolution provision of this Agreement.~~ It is expressly understood that this
12 Agreement will also be amended ~~corrected~~ to reflect the outcome of generic proceedings
13 or dockets initiated under or pursuant to the Act by the Commission for pricing, service
14 standards, or other matters covered by this Agreement. This Agreement does not
15 incorporate the rates, terms and conditions of any tariff. If Qwest files or is required to
16 file a tariff or makes or is required to make a similar filing that would otherwise be
17 governed by this Agreement, Qwest shall: (i) consult with CLEC reasonably in advance
18 of the filing about the form and substance of the filing; (ii) provide to CLEC its proposed
19 filing and obtain CLEC's agreement on the form and substance prior to the filing; and
20 (iii) take all steps reasonably necessary to ensure that the tariff or other filing imposes
21 obligations upon Qwest that are as close as possible to those provided in this Agreement
22 and preserves for CLEC the full benefit of the rights otherwise provided in this
23 Agreement. Qwest may not otherwise file any tariff or similar filing that purports to
24 govern the services provided under this Agreement that is inconsistent with the terms and
25 conditions (including rates) set forth in this Agreement. ~~Where the Parties fail to agree
26 upon such an amendment within sixty (60) days from the effective date of the
27 modification or change of the Existing Rules or Commission order, it shall be resolved in
28 accordance with the Dispute Resolution provision of this Agreement.~~ This Section 2.2
29 shall be considered part of the rates, terms and conditions of each Interconnection,
30 service and network element arrangement contained in this Agreement, and this Section
31 2.2 shall be considered legitimately related to the purchase of each Interconnection,
32 service and network element arrangement contained in this Agreement.

33
34 ~~2.3 In cases of conflict between Qwest's IRRG product descriptions, methods
35 and procedures, or a Technical Publication, and this Agreement, the rates, terms and
36 conditions of this Agreement shall prevail over such IRRG product descriptions, methods
37 and procedures, or a Technical Publication.~~

38 In cases of conflict between Qwest's 1.) IRRG product descriptions, 2.) methods
39 and procedures, [or a] 3.) Technical Publications or 4.) any other Qwest information
40 or documentation, including but not limited to Product Notifications, that purport
41 to address matters that are addressed in this Agreement, and this Agreement, then
42 the rates, terms and conditions of this Agreement shall prevail over such IRRG product
43 descriptions, methods and procedures, [or a] Technical Publications or any other
44 Qwest documentation. In addition, no Qwest documentation shall add terms and
45 conditions that are not already contained in this Agreement. If Qwest believes that
46 any rate, term or condition contained in this Agreement needs further

1 clarifications, Qwest will submit such proposed clarifications to CLEC under the co-
2 provider change management process ("CICMP") described in Section of this
3 Agreement for negotiation and approval. In the event, Qwest and CLEC cannot
4 agree, Qwest may seek to amend this agreement if it desires to clarify the rates,
5 terms or conditions of this Agreement. Further, in the event, Qwest and CLEC
6 cannot agree, it shall be resolved in accordance with the Dispute Resolution
7 provision of this Agreement. In no event shall Qwest modify this Agreement or any
8 document referenced in this Agreement without CLEC approval or Commission
9 approval.
10

11 WorldCom has the right under Section 252 of the federal Act to negotiate the rates,
12 terms and conditions of its interconnection agreements with incumbent LECs. On this
13 point, there is no dispute. There is nothing in the federal Act that even implies that this
14 statutory right may be exercised only where the incumbent has not filed tariffs for various
15 telecommunications services or network elements. In fact, Section 252 is the proverbial
16 exception to the rule. It requires parties to negotiate in a regulatory environment that has
17 been otherwise strictly governed by the "filed rate doctrine." Public Utilities Commissions
18 have alluded to this unique circumstance, noting that while the rate of a telephone company
19 duly filed is generally the only lawful charge, the federal Act created an exception to that
20 regulatory structure.²

21 WorldCom's right under the federal Act would be devoid of any meaning if Qwest
22 were permitted to simply cross-reference its filed state tariffs on the subject. Allowing
23 tariff prices and conditions to "float" with the tariff would allow Qwest to enjoy an undue,
24 improper and very nearly unilateral control over a fundamental and critical component of
25 the interconnection agreement -- pricing.³ Defaulting to filed tariffs gives Qwest the

² See Docket No. 00-09-33, Petition of CTC for a Declaratory Ruling Regarding Migration Fees (Jan. 4, 2001) at p. 4.

³ See First Report and Order, at paragraph 618, in which the FCC noted that "the prices of interconnection and unbundled elements, along with prices of resale and transport and termination, are critical terms and conditions of any interconnection agreement."

1 power to change the interconnection agreement with WorldCom without WorldCom's
2 consent or approval, thereby depriving WorldCom of its lawful rights as well as the
3 business certainty that is derived from having fixed prices for the life of the contract.

4 While Qwest may argue that WorldCom's participation in cost proceedings
5 provides WorldCom with the opportunity to "influence" the rates, a generic cost docket is
6 hardly the appropriate forum for amending an interconnection agreement between two
7 parties. Moreover, the tariffs litigated in such proceedings represent the general rates,
8 terms and conditions available to the population of Arizona CLECs. The tariffs are neither
9 intended nor designed to address the needs of individual CLECs with particularity.

10 Certainly, it has not been WorldCom's experience that ILEC's discuss or negotiate such
11 proposed tariff rates, or changes to those rates, with its interconnection partners prior to
12 submitting such rates or rate modifications to the Commission for approval. The Act
13 provides for these particular needs to be addressed through negotiation of the
14 interconnection agreement between the parties. Qwest's tariffed rates should apply only
15 where the parties to an interconnection agreement or the SGAT have expressly agreed that
16 a tariffed offering should be applied to the provision of a service covered under their
17 interconnection agreements.

18 CLEC's are entitled to certainty and predictability in their contractual terms and
19 contractual relationships. Adopting WorldCom's proposed language would ensure such
20 certainty.

21 These changes to Sections 2.2 and 2.3 are intended to prevent Qwest from
22 unilaterally attempting to modify the Agreement by modifying material incorporated by
23 reference in the SGAT. Since material incorporated by reference is a part of the SGAT,
24

1 Qwest cannot have unilateral control of such material. Qwest's proposed Section 2.3
2 only addresses a portion of the problems discussed I earlier workshops. Finally, based
3 upon the record in this proceeding, Qwest's product notifications have on occasion
4 appeared to contradict and take precedence over existing interconnection agreements.
5 The language above is intended to preclude such unilateral and unlawful action.

6 This language is consistent with Qwest's stipulation recited below:

7 Qwest agrees that, within 45 days of closing a workshop, it will
8 update its technical publications, product catalog (also known as the
9 IRRG), and product documentation for CLECs to reflect the agreements
10 made in the workshop and to make Qwest's documentation consistent with
11 its SGAT. Qwest will then submit the updated technical publications,
12 product catalog, and product documentation to the Change Management
13 Process (CICMP). When Qwest submits the documents to CICMP, Qwest
14 will file a notice in this proceeding indicating that the documents have
15 been updated and how to obtain copies. Qwest will take affirmative action
16 following the close of a workshop to communicate to appropriate
17 personnel and to implement the agreements made in such workshop.
18 Qwest acknowledges that any commission order or report recommending
19 that Qwest meet a checklist item will be conditioned on Qwest's
20 compliance with this commitment.

21
22 As stated above, CLECs are entitled to certainty and predictability in their
23 contractual terms and contractual relationships.

24 **Section 3**

25 **Implementation Schedule**

26 Qwest's proposed Section 3 is another golden opportunity for Qwest to delay
27 entry into the market. In order for WorldCom to complete Qwest's CLEC Questionnaire
28 in a timely manner Qwest must participate in the completion of the Questionnaire within
29 one business day of CLEC's request.

30 Also with regard to Section 3, the proposed "negotiation of an Interconnection
31 Implementation schedule" is another Qwest method of delay and is simply unnecessary.

1 Early in 2000 WorldCom began negotiations required by Qwest for the ordering of UNE
2 combinations, even though the interconnection agreement expressly required Qwest to
3 provide UNE combinations. Today, more than a year later, the "negotiations" are not
4 complete and Qwest will not allow the ordering of UNE combinations. Obviously, this
5 delay benefits Qwest and only hurts WorldCom.

6 The completion of the CLEC Questionnaire provides Qwest with the information
7 that it needs to begin provisioning interconnection, unbundled network elements and
8 combinations thereof, ancillary services, resale and any other product and services set
9 forth in the Agreement. Qwest has agreed to provision those products, facilities and
10 services in accordance with its standard intervals. Therefore, Section 3 should be further
11 revised as follows:

12 **SECTION 3.0 - IMPLEMENTATION SCHEDULE CLEC QUESTIONNAIRE**

13
14 3.1 Except as otherwise required by law, Qwest will ~~not promptly~~ provide or
15 establish Interconnection, unbundled network elements, ancillary services and/or resale
16 of Telecommunications Services in accordance with the terms and conditions of this
17 Agreement, ~~or portions thereof, prior to following~~ CLEC's execution of this Agreement
18 or an interconnection agreement. The date on which CLEC signs and delivers an
19 executed copy of this Agreement or an interconnection agreement, in accordance with
20 Section 1, shall hereafter be referred to as the "Effective Date" of the Agreement between
21 Qwest and CLEC. Thereupon, the Parties shall complete Qwest's "CLEC
22 Questionnaire," ~~and negotiate an Interconnection implementation schedule as it applies to~~
23 CLEC's obtaining of Interconnection, unbundled network elements, ancillary services,
24 and/or resale of Telecommunications Services hereunder.

25
26 3.2 Prior to placing any orders for services under this Agreement, the Parties
27 will jointly complete Qwest's "CLEC Questionnaire." Qwest personnel shall be
28 available to participate in the completion of the CLEC Questionnaire upon oral request of
29 CLEC within one business day from such request. This questionnaire will then be used
30 to:

- 31
32 Determine geographical requirements;
33 Identify CLEC Identification Codes;
34 Determine Qwest system requirements to support CLEC's specific activity;
35 Collect credit information;

1 Obtain billing information;
2 Create summary bills;
3 Establish input and output requirements;
4 Create and distribute Qwest and CLEC contact lists; and
5 Identify CLEC hours and holidays.
6

7 ~~3.3 Prior to placing any orders for services under this Agreement, the Parties~~
8 ~~will finalize an Interconnection implementation schedule. Upon completion of the CLEC~~
9 ~~Questionnaire Qwest shall process CLEC orders in accordance with Qwest's standard~~
10 ~~provisioning intervals. Subject to the terms and conditions of this Agreement, each Party~~
11 ~~shall exercise reasonable efforts to adhere to the Interconnection implementation~~
12 ~~schedule.~~
13

14 ~~3.4 Intentionally Left Blank. CLEC will provide an initial two (2) year forecast~~
15 ~~prior to placing any orders for service under this Agreement. During the first year of the~~
16 ~~term of this Agreement, the forecast shall be updated and provided to Qwest on a~~
17 ~~quarterly basis. During the remaining term of this Agreement, CLEC will provide~~
18 ~~updated forecasts from time to time, as requested by Qwest. The information provided~~
19 ~~pursuant to this paragraph shall be considered Proprietary Information under the~~
20 ~~Nondisclosure Section 5.16 of this Agreement. The initial forecast will minimally~~
21 ~~provide:~~
22

23 ~~3.4.1 The date service will be offered (by city and/or state);~~

24 ~~3.4.2 The type and quantity of service(s) which will be offered;~~

25 ~~3.4.3 CLEC's anticipated order volumes; and~~

26 ~~3.4.4 CLEC's key contact personnel.~~
27
28
29
30

31 Section 4

32 Mr. Brotherson does not address Section 4 which contains Qwest's definitions.

33 It is my understanding that some definitions have been addressed and agreed upon.

34 However, WorldCom's Part B – Definitions (Exhibit MWS-2) contains many

35 definitions that are omitted in Qwest's SGAT. These definitions should be included

36 because they are relevant to the terms and conditions contained in the SGAT. Further

37 to the extent a definition has not been previously agreed upon, and has not been

38 discussed, WorldCom's definition should be used and Qwest's replaced.

1 WorldCom has the following initial comments regarding Qwest's definitions.

2

3 The term "Affiliate" is used throughout the SGAT, the following Affiliate

4 definition should be inserted:

5 "AFFILIATE" is an entity that directly or indirectly owns or controls, is owned or
6 controlled by, or is under common ownership or control with, another entity. For the
7 purposes of this paragraph, "own" or "control" means to own an equity interest (or
8 equivalent) of at least 10%, or the right to control the business decisions, management
9 and policy of another entity.

10

11 The phrase "Basic Exchange Feature" found in Section 4.6 should be deleted

12 because WorldCom is unable to locate "Basic Exchange Feature" in the SGAT.

13 The definition of "Bona Fide Request" should be modified as follows:

14

15 4.8 "Bona Fide Request" or "BFR" means ~~a request for a new~~
16 ~~interconnection or for an unbundled element not already available in this Agreement for~~
17 ~~the provision of local Telecommunications Services. Any request that requires an~~
18 analysis of technical feasibility shall be treated as a Bona Fide Request (BFR), and will
19 follow the BFR Process set forth in this Agreement. The BFR process shall be used for,
20 among other things, the following:

21

22 a. Requests for access to an unbundled network element that has not been
23 defined by the FCC or the State Commission as a network element to which
24 Qwest is obligated to provide unbundled access,

25

26 b. Requests for UDIT and EEL above the OC-192 level, unless existing in
27 Qwest's network and technically feasible,

28

29 c. Requests for combinations of Unbundled Network Elements that are not
30 ordinarily combined in the Qwest network.

31

32 Exchange Message Record found in Section 4.21 is not the most current

33 standard for the exchange of telecommunications message information. The

34 most current standard is Exchange Message Interface ("EMI"). EMI is defined

35 as:

36 "Exchange Message Interface" or "EMI" means the format used for exchange of
37 Telecommunications message information among Telecommunications Carriers.

1 Alliance for Telecommunications Industry Solutions (ATIS) document that defines
2 industry guidelines for the exchange of message records."

3 In Section 4.22 entitled "Exchange Service" Qwest indicates that Exchange
4 Service is limited to traffic that is originated and terminated within the local calling area.
5 This broad "termination" language may create opportunity for Qwest to exclude ISP
6 traffic from Exchange Service, as it does not technically "terminate" in the calling area,
7 rather is dumped into a modem bank. ISP traffic should be included in the definition of
8 Exchange Service, and the definition should be altered to include calls going into a
9 modem bank.

10 In Section 4.30 entitled "Exchange Access" (IntraLATA Toll), Qwest excludes
11 Toll provided using Switched Access purchased by an IXC. Qwest is trying to redefine
12 what Exchange Access is by adding an exclusion of toll provided using Switched Access
13 provided by IXC. Qwest should use the definition of Exchange Access found in the
14 federal Act (section 3 Definitions of the Telecom Act), and leave any limitations to what
15 it provides within that service to the sections where it is referenced, for fair consideration.

16 Section 4.32 entitled "Local Interconnection Service Entrance Facility" should
17 not be included in the SGAT. Entrance facilities should be determined and designated by
18 the network engineers in designing the Interconnection. The architecture does not
19 necessarily work within this vague definition for entrance facilities. For example, in
20 Seattle, the switch for WorldCom is a greater distance from the collocation, which also
21 transits the traffic. Under this definition, WorldCom would be susceptible to pay a
22 lengthy distance of Entrance facilities to the switch. Similarly, the language needs to be

1 clear that the POI would be that designated at the CLEC's option for the purposes of
2 determining entrance facilities.

3 Regarding Section 4.39 entitled "Meet Point Billing", Meet Point Billing only
4 applies to Circuit Switching. Qwest puts an overreaching definition that includes
5 references to ISP traffic. This paragraph should be modified to delete those references
6 and should read as follows:

7 "Meet-Point Billing" or "MPB" or "Jointly Provided Switched Access"
8 refers to an arrangement whereby two LECs (Including a LEC and CLEC)
9 jointly provide Switched Access Services with each LEC (or CLEC)
10 receiving appropriate share of the revenues from the IXC as defined by
11 their effective access Tariffs.

12 Further, a language "including phone to phone interexchange traffic that is transmitted
13 over a carrier's packet switched network using protocols such as TCP/IP to and
14 Interexchange Carrier" should be deleted.

15 Regarding Section 4.49 entitled "Ready for Service" Qwest uses RFS dates as the
16 starting point for billing of products/services. Therefore, the ready for service date
17 should not commence when Qwest unilaterally decides the product is ready, but rather
18 when the CLEC has also checked and approved the deliverable. If there is dispute as to
19 whether the product is really ready, CLEC is not subjected to mistake on the part of
20 Qwest, nor liable for costs when the product is not satisfactory.

21 The Special Request Process which is used in the SGAT should be defined as
22 follows:

23 Special Request Process - The Special Request Process shall be used for the following
24 requests:
25

- 1 a. Requesting specific product feature(s) be made available by Qwest that are
2 currently available in a switch, but which are not activated.
3
4 b. Requesting specific product feature(s) be made available by Qwest that are
5 not currently available in a switch, but which are available from the switch
6 vendor.
7
8 c. Requesting a combination of Unbundled Network Elements that is a
9 combination not currently offered by Qwest as a standard product and:
10
11 i. that is made up of UNEs that are defined by the FCC or the
12 Commission as a network element to which Qwest is obligated to
13 provide unbundled access, and; (This has been agreed to by Qwest)
14
15 ii. that is made up of UNEs that are ordinarily combined in the Qwest
16 network.
17
18 d. Requesting an Unbundled Network Element that has been defined by the
19 FCC or the State Commission as a network element to which Qwest is
20 obligated to provide unbundled access, but for which Qwest has not
21 created a standard product, including OC-192 UDIT and EEL between
22 OC-3 and OC-192.
23

24 **Section 5**

25 Matters addressed in Section 5.0 should be replaced where the language conflicts
26 with or is inconsistent with WorldCom's model language addressing the same subject
27 matter which is generally identified by the titles.

28 Section 5.1.1 should be deleted for the reasons stated earlier regarding Qwest's
29 Implementation Schedule.

30 Section 5.3 entitled "Proof of Authorization" should be deleted in its entirety
31 because the proof of authorization rules are already addressed by the FCC, set forth in 47
32 CFR Section 64.100 et seq., and it is not necessary to attempt to paraphrase certain
33 portions thereof in Section 5.3. Further, Qwest's proposed imposition of a \$100 charge is
34 not cost-based or contained in Exhibit A and not required by 47 CFR 64.100.

35 In the alternative, Section 5.3 should simply state that:

1 The Parties agree to abide by the FCC rules regarding Changes in subscriber carrier
2 selections set forth in 47 CFR Section 64.100 et seq. An executing carrier shall not
3 verify the submission of a change in a subscriber's selection of a provider of
4 telecommunication service received from a submitting carrier. For an executing carrier,
5 compliance with the procedures prescribed in 47 CFR Section 64.100 et seq. shall be
6 defined as prompt execution, without any unreasonable delay, of changes that have been
7 verified by a submitting carrier.

8
9 Section 5.5 should be revised as follows:
10

11 5.5 Taxes

12
13 5.5.1 Each Party purchasing services hereunder shall pay or otherwise be
14 responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or
15 similar taxes, fees or surcharges levied against or upon such purchasing Party by law (or
16 the providing Party when such providing Party is permitted to pass along to the
17 purchasing Party such taxes, fees or surcharges), for the purchase of the services, except
18 for any tax on either Party's corporate existence, status or net income. Whenever
19 possible, these amounts shall be billed as a separate item on the invoice. To the extent a
20 sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the
21 providing Party a proper resale tax exemption certificate as authorized or required by
22 statute or regulation by the jurisdiction providing said resale tax exemption. Until such
23 time as a resale tax exemption certificate is provided, no exemptions will be applied.
24

25 Section 5.6 entitled "Insurance" should be reciprocal because the CLEC needs to
26 be assured that Qwest also has insurance in place. Qwest's limits for excess Umbrella
27 insurance are unnecessarily high. WorldCom proposes the revised limits below. Further,
28 the last two sentences of Section 5.6.1.5 should be deleted. The statement that CLEC
29 may elect to purchase business interruption insurance lends nothing to the Agreement and
30 should be deleted. The statement that Qwest has no liability for loss of profit due to an
31 interruption of service is limitation of liability language, and therefore, improper in the
32 insurance section, is contrary to the WorldCom limitation of liability language, and is
33 also improper since it absolves Qwest of all liability for the interruption of service even if
34 caused by the acts of Qwest, whether they be negligent, grossly negligent or even
35 intentional. This section should be revised as follows:

1 **5.6 Insurance**

2
3 5.6.1 Each Party ~~CLEC~~ shall at all times during the term of this Agreement, at its
4 own cost and expense, carry and maintain the insurance coverage listed below with
5 insurers having a "Best's" rating of B+XIII.

6
7 5.6.1.1 Workers' Compensation with statutory limits as required in the
8 state of operation and Employers' Liability insurance with limits of not less than
9 \$100,000 each accident.

10 5.6.1.2 Commercial General Liability insurance covering claims for bodily
11 injury, death, personal injury or property damage occurring or arising out of the
12 use or occupancy of the premises, including coverage for independent
13 contractor's protection (required if any work will be subcontracted), premises-
14 operations, products and/or completed operations and contractual liability with
15 respect to the liability assumed by ~~CLEC~~ each Party hereunder. The limits of
16 insurance shall not be less than \$1,000,000 each occurrence and \$2,000,000
17 general aggregate limit.

18 5.6.1.3 Comprehensive automobile liability insurance covering the
19 ownership, operation and maintenance of all owned, non-owned and hired motor
20 vehicles with limits of not less than \$1,000,000 per occurrence for bodily injury
21 and property damage.

22 5.6.1.4 Umbrella/Excess Liability insurance in an amount of ~~\$10,000,000~~
23 \$4,000,000 excess of Commercial General Liability insurance specified above.
24 These limits may be obtained through any combination of primary and excess or
25 umbrella liability insurance so long as the total limit is ~~\$11,000,000~~ \$5,000,000.

26 5.6.1.5 "All Risk" Property coverage on a full replacement cost basis
27 insuring all of ~~CLEC~~ a Party's personal property situated on or within the
28 premises. ~~CLEC may elect to purchase business interruption and contingent~~
29 ~~business interruption insurance. Qwest has no liability for loss of profit or~~
30 ~~revenues should an interruption of service occur.~~

31
32 5.6.2 ~~CLEC~~ Each Party shall provide certificate(s) of insurance evidencing
33 coverage, and annually thereafter within ten (10) calendar days of renewal of any
34 coverage maintained pursuant to this Section. Such certificates shall (1) name ~~Qwest~~ the
35 other Party as an additional insured under commercial general liability coverage as
36 respects ~~Qwest's~~ such other Party's interests; (2) provide ~~Qwest~~ the other Party thirty
37 (30) calendar days prior written notice of cancellation of, material change or exclusions
38 in the policy(s) to which certificate(s) relate; (3) indicate that coverage is primary and not
39 excess of, or contributory with, any other valid and collectible insurance purchased by
40 ~~Qwest~~ the other Party; and (4) provide severability of interest/cross liability coverage.

1 Section 5.8 entitled "Limitation of Liability" should be reciprocal. WorldCom's
2 language found in MWS-1 is fair and is the standard limitation of liability language used
3 in commercial contracts. Mr. Brotherson in his supplemental affidavit states the Qwest's
4 limitation of liability language is "universally used in services offered on the interstate
5 level in FCC tariffs." Mr. Brotherson is mixing apples and oranges. This SGAT is not
6 similar to a tariff between Qwest and its millions of end users, but is a commercial
7 contract between carriers.

8 Knowing that it provides essentially all products and services under this SGAT,
9 on which the CLEC depends for essentially any and all revenues from local services,
10 Section 5.8.2 is carefully crafted by Qwest to absolve it of any liability for lost profits
11 regardless of the form of action or its negligence of any kind. Qwest's Section 5.8.2 is
12 unconscionable and should be replaced with WorldCom's proposed language.

13 Section 5.8.3. Qwest attempts to place a cap on its direct damages resulting from
14 its acts or omissions on the performance of this Agreement, which is the amount that
15 would have been charged for the service. While this cap may be acceptable for an end
16 user tariff, it is improper and completely inadequate in this context and amounts to a
17 small slap on the hand for failing to abide by this Agreement and the law. Qwest is well
18 aware that its poor service pursuant to this Agreement may completely sink CLEC's
19 competitive entry into the local market

20 Qwest's exception in 5.8.4 is limited to only willful or intentional misconduct,
21 therefore, absolving Qwest of liability for its egregious, grossly negligent acts and
22 repeated breaches of the material obligations of the Agreement, and is therefore,
23 improper.

1 While Qwest argues that its language is universally used, I have yet to see
2 standard limitation of liability language contain a fraud provision. The fraud provision is
3 improper and any language dealing with fraud is more properly contained in WorldCom's
4 20.2 Revenue Protection language.

5 Regarding Section 5.9 entitled "Indemnification", the WorldCom indemnity
6 language is standard indemnity language, reciprocal, fair, and clear, and should be used
7 in place of the Qwest language. Mr. Brotherson states that Qwest's language is standard,
8 but in fact it is not. Qwest's language is heavily weighted in its favor and contains many
9 strategically placed exceptions that absolve it from responsibility for its own actions.

10 Section 5.9.1.1 is a prime example of Qwest's strategic, self-serving and improper
11 exceptions. The first sentence excepts indemnity for claims made by end users of one
12 Party against the other Party based on defective or faulty services provided by the other
13 Party to the one Party. Qwest is well aware that this exception only benefits Qwest as it
14 provides essentially all the services under the Agreement. Further, it allows Qwest to
15 absolve itself of indemnity responsibility resulting for claims that are the result of
16 Qwest's negligent or grossly negligent conduct. It basically allows Qwest to provide
17 shoddy services for the benefit of WorldCom end users and leaves WorldCom holding
18 the bag. The WorldCom language has no such self-serving exception and should be used.

19 Section 5.9.1.2 attempts to throw the CLEC a bone by reinstating the Qwest
20 indemnity obligation only for intentional and malicious conduct. Again, the Qwest
21 language continues to absolve Qwest for its responsibility for its negligent or even
22 grossly negligent conduct, and allows Qwest to provide shoddy services which flow
23 through to the CLEC end users and leaves the CLEC holding the bag. The WorldCom

1 language has no such self-serving exception. The WorldCom language is fair and
2 comprehensive and has each Party indemnify the other for claims resulting from the other
3 Party's acts or omissions or the failure to perform its obligations under the Agreement.
4 Simply put, if a Party's acts or omissions cause a loss, it should be held responsible.

5 Section 5.9.1.3 is confusing and unnecessary and is already covered by the
6 WorldCom language. The example given by Qwest is a libel, slander or invasion of
7 privacy claim based on the content of a Party's transmission. As stated, the WorldCom
8 language covers this situation by making the transmitting Party liable for its acts or
9 omissions that gave rise to the claim.

10 Section 5.9.1.4 is yet another example of nonstandard, confusing and unnecessary
11 language that is already covered by the WorldCom language. As with separate facilities,
12 separate bandwidths are completely separate and distinct, and each Party is a separate and
13 distinct service to its end user on its bandwidth. WorldCom's language that each Party
14 indemnifies the other for claims resulting from the acts or omissions of the Indemnifying
15 Party would cover this situation. This is analogous to Parties having their separate cables
16 side by side in the same trench or cable bundle, which would not necessitate a separate
17 section such as 5.9.1.4.

18 The WorldCom language regarding notice, authority to defend and settle is
19 standard language, and more clearly written than the Qwest version in 5.9.2. The Qwest
20 language seems to contradict itself by first stating that indemnification IS conditioned on
21 prompt notice of claim by the indemnified Party to the indemnifying Party, then stating
22 that indemnification is NOT COMPLETELY conditioned on such notice, but then again

1 it IS conditioned to the extent the failure to promptly notify prejudices the indemnifying
2 Party's ability to defend the claim.

3 Qwest's warranty language in Section 5.11 is inadequate. WorldCom proposes
4 language that is complete and appropriate. Further, under the nondiscrimination
5 provisions of the Act, Qwest may not disclaim that the services that it provides under the
6 Act are identical to the services that it provides to itself.

7 Similarly, Section 5.16 concerning nondisclosure is inadequate and incomplete by
8 not identifying who can see confidential or proprietary material as is discussed in
9 WorldCom's proposed language addressing this matter.

10 Qwest's dispute resolution language in Section 5.18 is inadequate and incomplete.
11 WorldCom's language is more complete and should be adopted.

12 Section 5.24 concerning referenced documents suffers from the same problems
13 discussed in regard to Section 2, namely Qwest's apparent unilateral ability to modify
14 documents incorporated into the SGAT. This section should be deleted as written for the
15 reasons stated in my discussion of Section 2.

16 Section 5.32 has been replaced by Section 1.7 that is more specific and should
17 be deleted.

18 **Section 11**

19 My exhibit, MWS-1 provides alternative language addressing network security
20 that should be considered where matters are omitted from Qwest SGAT, or are
21 inconsistent in the SGAT.

22 **Section 17**

23 Section 17, entitled "Bona Fide Request Process" should be revised. In addition

1 to Section 17, the Bona Fide Request (BFR) Process is also discussed in the Special
2 Request Process Exhibit F, and the BFR process language in Section 17 must be
3 consistent with the BFR process language in Exhibit F. In addition, Qwest's bona fide
4 request process is fraught with unreasonable delay. This section should be revised as
5 follows:

6 **SECTION 17.0 - BONA FIDE REQUEST PROCESS**

7
8 17.1 Any request for Interconnection or access to an unbundled network element
9 or ancillary service that does is not already available as described in other sections of this
10 Agreement occur anywhere in the Qwest network shall be treated as a Bona Fide Request
11 (BFR). Qwest shall use the BFR Process to determine the terms and timetable for
12 providing the requested Interconnection, access to UNEs or ancillary services, if such
13 requested Interconnection, access to UNEs or ancillary services, or something
14 substantially similar thereto does not occur anywhere in the Qwest network available, and
15 the technical feasibility of new/different points of Interconnection. The term "technical
16 feasibility" refers solely to technical or operational concerns, rather than economic,
17 space, or site considerations. The obligations imposed by sections 251(c)(2) and
18 251(c)(3) include modifications to Qwest's facilities to the extent necessary to
19 accommodate interconnection or access to network elements and the Act bars
20 consideration of costs in determining technical feasible points of interconnection or
21 access. Preexisting interconnection or access at a particular point evidences the technical
22 feasibility of interconnection or access at substantially similar points. If CLEC disputes
23 the technically feasible determination of Qwest, CLEC may immediately take the matter
24 to the Commission and Qwest must prove to the Commission that the particular
25 interconnection or access point the subject of the BFR request is not technically feasible.
26 Qwest will administer the BFR Process in a non-discriminatory manner.

27
28 17.2 A BFR shall be submitted in writing and on the appropriate Qwest form for
29 BFRs. CLEC and Qwest will work together to prepare the BFR form and Qwest shall
30 provide such assistance in preparing the BFR form within 24 hours of CLEC's oral
31 request for same. This form shall be accompanied by the non-refundable Processing Fee
32 specified in Exhibit A of this Agreement. The form will request, and CLEC will need to
33 provide, the following information, as well as, and may also provide any additional
34 information that may be helpful in describing and analyzing CLEC's request:

35
36 (a) a technical description of each requested Network Element or
37 new/different points of Interconnection or ancillary services, that are not offered
38 to any other carrier or are not found in the Qwest network;

39 (b) the desired interface specification;

- 1 (c) each requested type of Interconnection or access;
- 2 (d) a statement that the Interconnection or Network Element or ancillary
3 service will be used to provide a Telecommunications Service;
- 4 (e) the quantity requested;
- 5 (f) the specific location requested;
- 6 (g) if the requested unbundled network element is a proprietary element as
7 specified in Section 251(d)(2) of the Act, ~~or CLEC must submit documentation~~
8 ~~that demonstrates that access to such Network Element is necessary, that the~~
9 ~~failure to provide access to such Network Element would impair the ability of~~
10 ~~CLEC to provide the services that it seeks to offer, and that CLEC's ability to~~
11 ~~compete would be significantly impaired or thwarted without access to such~~
12 ~~requested proprietary element; and~~
- 13 (h) if the requested Unbundled Network Element is a non-proprietary element
14 as specified in Section 251(d)(2) of the Act, and the requested element is not
15 required by the FCC or the Commission to be offered as a UNE, either Party may
16 take the request to the Commission for expedited resolution of the request and
17 Qwest having the burden of proof regarding the proprietary nature of the UNE.
18 ~~CLEC must submit documentation that demonstrates that denial of access to such~~
19 ~~non-proprietary unbundled network element would impair the ability of CLEC to~~
20 ~~provide the services that it seeks to offer, and that CLEC's ability to compete~~
21 ~~would be significantly impaired or thwarted without access to such unbundled~~
22 ~~network element.~~

23 17.3 Within fifteen (15) calendar days of its receipt, Qwest shall acknowledge
24 receipt of the BFR and in such acknowledgment advise CLEC of missing information, if
25 any, necessary to process the BFR. Thereafter, Qwest shall promptly advise CLEC of the
26 need for any additional information required to complete the analysis of the BFR.
27

28 17.4 Within fifteen (15) calendar days of its receipt of the BFR and all
29 information necessary to process it, Qwest shall provide to CLEC a preliminary analysis
30 of the BFR. The preliminary analysis shall specify Qwest's conclusions as to whether or
31 not the requested Interconnection or access to an unbundled network element complies
32 with the unbundling requirements of the Act.
33

34 17.5 If Qwest determines during the fifteen (15) day period that a BFR does not
35 qualify as an unbundled network element or Interconnection or ancillary service that is
36 required to be provided under the Act, Qwest shall advise CLEC as soon as reasonably
37 possible of that fact, and Qwest shall promptly, but in no case later than ten (10) calendar
38 days after making such a determination, provide a detailed written report setting forth the
39 basis for its conclusion.
40

41 17.6 If Qwest determines during the fifteen (15) day period that the BFR

1 qualifies under the Act, it shall notify CLEC in writing of such determination within ten
2 (10) calendar days.
3

4 17.7 As soon as feasible, but in any case within forty-five (45) calendar days
5 after Qwest notifies CLEC that the BFR qualifies under the Act, Qwest shall provide to
6 CLEC a BFR quote. The BFR quote will include, at a minimum, a description of each
7 Interconnection, Network Element, and ancillary service, the quantity to be provided, any
8 interface specifications, and the applicable rates (recurring and nonrecurring) including
9 the separately stated development costs and construction charges of the Interconnection,
10 unbundled network element or ancillary service and any minimum volume and term
11 commitments required, and the timeframes the request will be provisioned.
12

13 17.8 A CLEC has ~~sixty (60) thirty (30)~~ business days upon receipt of the BFR
14 quote, to either agree to purchase under the quoted price, cancel its BFR, or seek
15 mediation or arbitration resolve the issue in accordance with the Dispute Resolution
16 provisions of the Agreement.
17

18 17.9 If CLEC has agreed to minimum volume and term commitments under the
19 preceding paragraph, CLEC may cancel the BFR or volume and term commitment at any
20 time, ~~but in the event of such cancellation CLEC will pay Qwest's reasonable~~
21 ~~development costs incurred in providing the Interconnection, Unbundled Network~~
22 ~~Element, or ancillary service to the extent that those development costs are not otherwise~~
23 ~~amortized.~~
24

25 17.10 ~~If either Party believes that the other Party is not requesting, negotiating or~~
26 ~~processing any BFR in good faith, or disputes a determination or quoted price or cost, it~~
27 ~~may seek arbitration pursuant to the Dispute Resolution provision of this Agreement. If~~
28 ~~CLEC believes that Qwest is not negotiating or processing a BFR in good faith, is failing~~
29 ~~to act in accordance with the Act, or CLEC disputes a determination of feasibility or~~
30 ~~availability or a price/cost quote, CLEC may seek immediate mediation or arbitration by~~
31 ~~the Commission, including the use of any available expedited procedures. The relief~~
32 ~~sought can include, but is not limited to, a determination that Qwest be required to~~
33 ~~provide the requested method, arrangement, or Network Element Combination. The full~~
34 ~~burden of proof in any such hearing, mediation, or arbitration is on Qwest to prove~~
35 ~~technical infeasibility.~~
36

37 17.11 All time intervals within which a response is required from one Party to another
38 under this Section are maximum time intervals. Each Party agrees that it will provide all
39 responses to the other Party as soon as the Party has the information and analysis required
40 to respond, even if the time interval stated herein for a response is not over.
41

42 17.12 In handling a BFR pursuant to this section 17, Qwest shall, to the extent possible,
43 utilize information from previously developed BFRs in order to shorten response times.
44

45 17.13 Once a BFR has been fully completed and Qwest has delivered the requested item
46 or service sought, CLEC and Qwest agree that future requests by CLEC for the same item

1 or services shall not require a BFR, the Special Request Process or an amendment to the
2 Agreement.

3
4 17.14 Unless the Parties agree otherwise, a BFR under this section 17 must be priced in
5 accordance with section 252(d)(1) of the Act, and any applicable FCC or Commission
6 rules, regulations or orders.

7
8 17.15 The total cost charged to CLEC shall not exceed the BFR quoted price.
9

10 In accordance with its negotiated interconnection agreement (“ICA”) with
11 WorldCom, Qwest has agreed that to the extent it is not required by the terms of that
12 agreement to provide database or other network related information, and to the extent
13 Qwest does not ordinarily provide such information to its affiliates, customers, other
14 carriers or any other person, Qwest shall allow use of the BFR process to request access
15 to such databases and/or network information. Qwest shall not deny CLECs access to
16 information relevant to provision of service to its (CLEC's) own customers.

17 SGAT Section 17.1 should be modified to reflect that the BFR process will
18 support requests for such data base access.

19 WorldCom opposes the requirements found in Subsection 17.2 (g) and (h).
20 WorldCom’s ICAs do not have these requirements. This information is not necessary for
21 Qwest provide access to an unbundled network element. A CLEC should only be
22 required provide the technical details needed for more a detailed assessment or quote.

23 In accordance with its negotiated ICA with WorldCom, Qwest has agreed to
24 acknowledge receipt of a BFR request within forty-eight hours of receipt, also Qwest will
25 review such request for initial compliance with the ICA section addressing BFR contents
26 (Section 17.2 above) and, in its receipt acknowledgment, will advise WorldCom of any
27 missing information reasonably necessary to move the Request to the preliminary

1 analysis. Given this prior commitment on Qwest's part, the proposed SGAT timeframes
2 in section 17.3 are an unreasonable delay to CLECs attempting to complete the BFR
3 process.

4 Regarding Section 17.4, 17.5 and 17.6, this activity should be completed within
5 15 calendar days, not 21 days, and should include a cost estimate. Further in accordance
6 with its negotiated ICA with WorldCom, Qwest has agreed to provide weekly status
7 updates, which are not offered here. The proposed SGAT timeframes constitute another
8 unreasonable delay to CLECs using the BFR process.

9 In accordance with its negotiated ICA with WorldCom, Qwest has agreed, to the
10 extent possible, to utilize information from previously developed BFRs to address similar
11 arrangements in order to shorten the response times for the currently requested BFR.

12 Language reflecting agreement between Qwest and WorldCom should be added to SGAT
13 Section 17.7 as follows:

14 In the event a CLEC has submitted a Request for an Interconnection, a Network
15 Element or any combination thereof and Qwest determines in accordance with the
16 provisions of this Section 17 that the request is technically feasible, subsequent requests
17 or orders for the identical type of interconnection, network element or combination by
18 that CLEC shall not be subject to the BFR or the Special Request Process. To the extent
19 Qwest has deployed an identical network element or combination under a previous BFR,
20 a subsequent BFR or Special Request Process shall be not required. Qwest may only
21 require CLEC to complete a CLEC questionnaire before ordering such network elements
22 or combinations thereof. For purposes of this Section 17.7, an "identical" request shall
23 be one that is materially identical to a previous request with respect to the information
24 provided pursuant to Subsections (a) through (e) of Section 17.2 above.
25

26 **Special Request Process**

27

28 WorldCom proposes the following revisions to Exhibit F:

1 EXHIBIT F –

2 SPECIAL REQUEST PROCESS

- 3
- 4 1. The Special Request Process shall be used for the following requests:
- 5
- 6 a. Requesting specific product feature(s) be made available by Qwest that are
- 7 currently available in a switch, but which are not activated.
- 8
- 9 b. Requesting specific product feature(s) be made available by Qwest that are
- 10 not currently available in a switch, but which are available from the switch
- 11 vendor.
- 12
- 13 c. Requesting a combination of Unbundled Network Elements that is a
- 14 combination not currently offered by Qwest as a standard product and:
- 15
- 16 i. ii. that is made up of UNEs that are defined by the FCC or the
- 17 Commission as a network element to which Qwest is obligated to
- 18 provide unbundled access Qwest as products, and; (This has been
- 19 agreed to by Qwest)
- 20
- 21 ii. that is made up of UNEs that are ordinarily combined in the Qwest
- 22 network.
- 23
- 24 d. Requesting an Unbundled Network Element that has been defined by the
- 25 FCC or the State Commission as a network element to which Qwest is
- 26 obligated to provide unbundled access, but for which Qwest has not
- 27 created a standard product, including OC-192 UDIT and EEL between
- 28 OC-3 and OC-192.
- 29
- 30 2. Any request that requires an analysis of technical feasibility shall be treated as a
- 31 Bona Fide Request (BFR), and will follow the BFR Process set forth in this
- 32 Agreement. The BFR process shall be used for, among other things, the
- 33 following:
- 34
- 35 ~~a. Requests for Interconnection not already available as described in this~~
- 36 ~~Agreement;~~
- 37
- 38 ~~b.c.~~ Requests for access to an unbundled network element that has not been
- 39 defined by the FCC or the State Commission as a network element to which
- 40 Qwest is obligated to provide unbundled access,
- 41
- 42 ~~e.d.~~ Requests for UDIT and EEL above the OC-192 level, unless existing in
- 43 Qwest's network and technically feasible.
- 44
- 45 ~~d. Requests for combinations of Unbundled Network Elements that include UNEs~~
- 46 ~~that are not defined by Qwest as products, and~~

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e. Requests for combinations of Unbundled Network Elements that are not ordinarily currently combined in the Qwest network.

3. A Special Request shall be submitted in writing and on the appropriate Qwest form, which is located on Qwest's website. The form must be completely filled out.

4. Qwest shall acknowledge receipt of the Special Request within five (5) business days of receipt.

5. Qwest shall respond with a preliminary analysis, including costs and timeframes, within fifteen (15) business days of receipt of the Special Request. In the case of UNE combinations, the preliminary analysis shall include whether the requested combination is a combination of elements that are ordinarily combined in the Qwest network. If the request is for a combination of elements that are not ordinarily combined in the Qwest network, the preliminary analysis shall indicate to CLEC that it should use the BFR process if CLEC elects to pursue its request.

6. All timeframes will be met unless extraordinary circumstances arise. In such a situation, CLEC and Qwest will negotiate a reasonable response timeframe.

Individual Case Basis ("ICB") Pricing and Provisioning

Mr. Brotherson's supplemental testimony comments upon Sections 8 & 9 of the SGAT, dealing with ICB provisioning. WorldCom has consistently expressed concern over ICB pricing and provisioning in the Checklist Items Workshops. Like incorporating Qwest documents or a tariff into its SGAT by reference, allowing Qwest to establish rates or provision services on an ICB gives Qwest unilateral control over ICB pricing and provisioning.

Presumably, if a CLEC does not agree to the ICB price proposed by Qwest, it has two options, 1.) pay the price and file a complaint at the Commission where it may have the burden of proving the ICB price to be unreasonable; or 2.) not pursue unbundled packet switching from Qwest in order to serve a potential or existing CLEC customer.

Neither option benefits consumers and both options interpose uncertainly and delay for

1 CLECs trying to serve customers. Likewise, with ICB provisioning, CLECs have no
2 alternatives.

3 Obviously not knowing the wholesale price a CLEC will be charged by Qwest
4 when the CLEC is attempting to serve a customer makes it difficult, if not impossible, to
5 set a retail price for the CLEC customer. In addition, not serving a customer because the
6 ICB price is in dispute or is too high, does not allow customers choices or allow CLECs
7 to offer a full range of services if some of those services are priced on an ICB. Having to
8 wait until Qwest sets its ICB prices adds more delay that CLECs and their customers
9 must endure. While Qwest has not established an ICB process in its SGAT, it is likely
10 that Qwest will require time to provide its ICB price that will add further delay for
11 CLECs and their customers. Likewise, ICB provisioning creates the similar problems.

12 Having an ICB pricing and provisioning process creates delay and uncertainty for
13 CLECs. Therefore, the Commission must carefully scrutinize the use of the ICB pricing
14 and provisioning process by requiring Qwest to establish standard offerings and not allow
15 Qwest to unilaterally set prices or provisioning intervals on an ICB.

16 Qwest should not be permitted to set prices or provision services using ICB,
17 except in very rare cases and only where Qwest demonstrates it cannot provide a service
18 as a standard offering. Qwest has failed to describe its ICB processes and has not
19 justified why any particular service must be priced or provisioned on an ICB. In the event
20 Qwest is permitted to use ICB pricing under limited circumstances, WorldCom
21 recommends that when the ICB pricing process is addressed, the process should include
22 the following language as follows:

- 23 1. As indicated by the acronym "ICB", which stands for "individual
24 case basis", contained in Exhibit A of this Agreement addressing

1 Rates, rates for some Network Elements or services ("ICB Rates")
2 have not been approved by the Commission as of the Effective
3 Date of this Agreement. With respect to all ICB Rates, prior to
4 CLEC ordering any Network Element or service with an ICB Rate
5 identified in Exhibit A to this Agreement, the Parties shall meet, at
6 CLEC's request, to establish applicable interim rates.

7 2. During such meeting and upon CLEC request, Qwest shall provide
8 CLEC, without limitation, with its TELRIC-based cost analysis
9 and related supporting detail for the Network Element or service
10 that CLEC wishes to order. Such cost analysis and supporting
11 documentation shall be treated as confidential information if
12 requested by Qwest under the non-disclosure sections of this
13 Agreement.

14 3. If no agreement on a rate is reached within thirty (30) days of
15 CLEC's request for a meeting, the Parties shall propose rates for
16 the Network Element or service in question to the Commission in
17 an appropriate proceeding. The Parties agree that they will jointly
18 seek an expeditious resolution and final decision from the
19 Commission in the proceeding in which the rates in question will
20 be set. In the proceeding, Qwest shall have the burden of proving
21 that its proposed prices are just and reasonable and compliant with
22 TELRIC principles.

23 4. In the interim, prior to the issuance of a final Commission
24 decision, Qwest shall provide the Network Element or service and
25 shall set the price(s) for the Network Element or service based on
26 its TELRIC.

27 5. Qwest shall track and record all quantities provisioned, durations,
28 and amounts of payment for the Network Element or service
29 ordered by CLEC.

30 6. If the Commission-determined price is lower than the price set by
31 Qwest, Qwest shall refund to CLEC all payments in excess of the
32 Commission established price, with simple interest at Qwest's
33 weighted cost of capital within 30 days of the issuance of the final
34 Commission decision.

35 7. If the Commission-determined price is higher than the price set by
36 Qwest, CLEC shall be responsible for payment of the difference
37 between the prices, with simple interest at Qwest's weighted cost
38 of capital within 30 days of the issuance of the final Commission
39 decision.

40 **Q. DOES THIS CONCLUDE YOUR TESTIMONY AT THE TIME?**

41 **A.** Yes, it does.

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2 copies of the foregoing filed
3 this 25th day of May, 2001,
4 with:

5 Arizona Corporation Commission
6 Docket Control – Utilities Division
7 1200 W. Washington Street
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9 COPY of the foregoing hand-
10 delivered this 25th day of May, 2001,
11 to:

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13 Legal Division
14 Arizona Corporation Commission
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16 Phoenix, Arizona 85007

17 Jane Rodda, Chief Administrative Law Judge
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26 COPY of the foregoing mailed
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