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BEFORE THE ARIZONA CORPORATION COMMISSION **RECEIVED**

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Arizona Corporation Commission

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AZ CORP COMMISSION
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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)
 _____)

DOCKETED BY 

**BRIEF OF WORLDCOM, INC. ADDRESSING GENERAL TERMS AND
 CONDITIONS AND PUBLIC INTEREST IMPASSE ISSUES**

WorldCom, Inc., on behalf of its regulated subsidiaries, ("WorldCom") submits this brief addressing impasse issues that relate to general terms and conditions found in the SGAT. All references in this brief regarding General Terms and Conditions issues are to Colorado exhibits and transcripts except where noted otherwise, that have been incorporated into the Arizona record. In addition, the issues numbers come from both the Arizona issues list and the Colorado issues list.

Reference to SGAT language is to that found in Colorado Exhibit 6 Qwest-61, an SGAT Lite, except where Qwest provided different language through another exhibit, in which case the relevant SGAT language is that stated in a particular exhibit, such as Colorado Exhibit 6 Qwest-62 which modified Section 2.1, for example, from the language found in Colorado Exhibit 6 Qwest-61.

In addition, WorldCom submits this post-hearing brief on the public interest issues considered in Workshop 7. Qwest has essentially testified that it has met the

public interest requirement because it has completed or is about to complete all of the checklist items required to obtain approval of its 271 application by the Arizona Corporation Commission (“Commission”). WorldCom rejects Qwest’s underlying assumption that completion of the 271 checklist is all that is required to meet the public interest criteria of 271.

GENERAL TERMS AND CONDITIONS IMPASSE ISSUES

A. Issue G-5: Section 1.7 and AT&T proposed Section 1.7.2 – Should the rates, terms and conditions for new products be substantially the same as the rates, terms and conditions for comparable products and services that are contained in the SGAT?

AT&T argued that Qwest’s existing language relating to a CLEC’s purchase of new products and services, which requires the CLEC to accept Qwest’s proposal and pursue negotiation/arbitration as to disagreements, was an unnecessarily lengthy process. AT&T proposed instead that Qwest agree that the rates, terms and conditions of new service offerings be substantially the same as those for comparable services and products in the SGAT.¹ Further, Qwest would retain the burden of proof that the services/products are not comparable. For the reasons set forth by AT&T in writing and at the workshops, WorldCom concurs with AT&T’s proposed language for Section 1.7.2 and asks the Commission to adopt that language.

B. Issue G-8B: Section 5.16.9 – Should aggregated forecasts be treated as confidential?

AT&T raised an issue with regard to whether language should be added to the SGAT to ensure that CLEC forecasts are treated confidentially. Apparently Qwest has been releasing aggregate CLEC data without protections afforded confidential data. WorldCom concurs with AT&T’s concerns on this issue and joins in AT&T’s brief

requesting that language be added to the SGAT that protects even aggregated CLEC forecast data from unnecessary disclosure. Qwest would not be receiving such highly confidential CLEC forecasting information, but for requirements under the SGAT, and in order to provide Qwest information it has requested to properly augment and construct its network. It is patently unfair for Qwest to then use aggregated forecasting data for any unintended purpose.

In WorldCom's opinion, Section 5.16.9 as written does not actually allow such disclosure, and, if fact, precludes such disclosure with the reference to preventing disclosure "in any form," yet Qwest has taken the position that it can disclose aggregated confidential forecasting data from CLECs nonetheless. WorldCom requests the Commission not change Section 5.16.9, but rather provide Qwest with its interpretation of that section to preclude Qwest from disclosing aggregated CLEC forecasting data.

C. Issue G-10: Section 5.9 – What is the appropriate scope of indemnification in the SGAT?

Qwest addresses indemnification in Section 5.9. WorldCom proposes that the Commission instead adopt WorldCom's proposed language, set forth in Exhibit 6 WorldCom-9, MWS-1², relating to indemnification. WorldCom's language is standard contract indemnity language that is reciprocal, fair and clear. Qwest's language, on the other hand, is heavily weighted in its favor and contains many strategically placed exceptions that absolve it from responsibility for its own actions.³

¹ See, Colorado Exhibit 6 AT&T-70.

² See, Direct Testimony of Michael W. Schneider, Arizona Exhibit 6 WorldCom-1, MSW-1, at page 16, WorldCom's Section 12 language entitled "Limitation of Liability".

³ See, Supplemental Testimony of Michael W. Schneider, Arizona Exhibit 6 WorldCom-2, at pages 20-21.

After WorldCom filed its testimony on this section of the SGAT, Qwest amended its proposal to attempt to remedy some of WorldCom's concerns. While the changes alleviate some of WorldCom's initial concerns, not all are addressed. Thus, regardless of the changes to Qwest's initial language, WorldCom continues to advocate that the Commission adopt its proposed language for this section.

As stated in the Direct Testimony of Mr. Schneider, Qwest's Section 5.9.1.4 is nonstandard, confusing and unnecessary language that is already covered by the WorldCom language. As with separate facilities, separate bandwidths are completely separate and distinct and each Party is a separate and distinct service to its user on its bandwidth. WorldCom's language that each Party indemnifies the other for claims resulting from the acts or omissions of the Indemnifying Party would cover this situation. This is analogous to Parties having separate cables side by side in the same trench or cable bundle, which would not necessitate a separate section like 5.9.1.4.

Similarly, the WorldCom language regarding notice, authority to defend and settle is standard language and more clearly written than Qwest Section 5.9.2. The Qwest section seems to contradict itself by first stating that indemnification is conditioned on prompt notice of a claim, then stating that indemnification is not completely conditioned on such notice, but then again, it is conditioned to the extent the failure to promptly notify prejudices the indemnifying Party's ability to defend the claim.

WorldCom also concurs with the issues that AT&T raised in its testimony and during the workshops relating to Qwest's proposed indemnification language and joins in its comments on these issues.

D. Issue G-11: Sections 17.12, Exhibits F and I – Bona Fide Request Process, Special Request Process and Individual Contract Basis.

- (a) Should Qwest provide notice of substantially similar BFRs?
- (b) When Should Qwest productize BFRs?
- (c) Should Qwest expand the scope of the SRP beyond those UNE and UNE combinations list in Qwest Exhibit F, paragraphs 1a-1d?

WorldCom concurs with the concerns raised by AT&T and Covad in the testimony and during the workshops on these issues. Therefore, WorldCom joins in AT&T's and Covad's briefs on these issues.

While Qwest adopted Section 17.12 at WorldCom's request, it refuses to address the practical issue of how a CLEC will know whether it is requesting a service that has already been the subject of a "substantially similar" BFR. Absent notice, a CLEC will have to rely upon Qwest to tell the CLEC that its apparent new request is substantially similar to that proposed by another CLEC. Qwest does not have the incentive to help its competitors. While it might not intentionally mislead its competitors, it may not be as diligent in ensuring its competitors do not have to use the BFR process when a substantially similar BFR has been previously made. After all, the BFR process adds to the CLECs' expenses and increases Qwest's revenues because of fees that must be paid for a CLEC to exercise the BFR process, all of which works to Qwest's economic benefit.

Moreover, since Qwest has sole discretion as to when it will "productize" BFRs, it does so with no known or described objective criteria. WorldCom and the other CLECs have simply asked for objective criteria to be inserted in the SGAT that will be applied so that if Qwest receives some number of substantially similar BFRs for a service, at some point using objective criteria that service will be treated as a product or

service so that CLECs are not required to use the BFR process and its inherent delays and expense.

E. ISSUE G-22: Section 1.8 – Whether SGAT provisions expire upon expiration of terms for SGAT or other interconnection agreements if provisions are selected through “pick and choose” process for incorporation into new or existing interconnection agreements?

AT&T argued that it should be able to pick and choose a provision from the SGAT or an interconnection agreement and that the chosen provision would be effective for the period of the “chooser’s” interconnection agreement, not effective for the term of the agreement from which the provision was chosen. WorldCom agrees with the arguments made by AT&T in this regard. From a business perspective, CLECs will have an enormous problem of having interconnection agreements, which have provisions that have differing expiration dates because of exercising the right to pick and choose provisions under Section 252(i) of the federal Act.

F. Issue G-23: Section 2.1 - Should Qwest’s tariffs or changes in regulation automatically amend SGAT?

In Section 2.1⁴, Qwest incorporates “statutes, regulations, rules, tariffs, other third party offerings, guides or practices, as amended and supplemented from time to time” into its SGAT. WorldCom proposes that Qwest delete that language from Section 2.1.

Incorporating applicable law is unnecessary. Incorporating tariffs, IRRG product descriptions, technical publications and other documents outside of the SGAT into the matters set forth in the SGAT, allows Qwest to unilaterally amend the SGAT simply by its revising such documents or filing a conflicting tariff. For the SGAT to have meaningful commercial purpose, the CLEC must be able to rely on its terms and conditions and know that the terms cannot be unilaterally changed by Qwest through

tariff filings and internal Qwest memoranda.⁵ This is an essential premise of a contractual relationship and why Congress chose interconnection agreements rather than tariffs as the basis for the ILEC/CLEC relationship under the Act.

Moreover, the filing of a tariff to supercede the SGAT is fundamentally at odds with the requirement that the parties “negotiate the particular terms and conditions of agreements” to fulfill the duties described in the Act. The Act contemplates that the detailed terms and conditions will be set forth in the interconnection agreement between the parties. Section 251(c)(1) requires Qwest to “negotiate in good faith . . . particular terms and conditions” of an interconnection agreement. The tariff is a document prepared by Qwest, not a product of negotiation. Any attempt to avoid obligations arising under individualized contracts by referring to non-negotiable tariffs is a clear violation of the Act. Accordingly, with regard to Section 2.1, WorldCom proposes that all language beginning with the words, “Unless the context shall otherwise require . . .” and continuing to the end of the paragraph should be deleted from the paragraph and Section 2.1 should read as follows in its entirety:

2.1 This Agreement includes this Agreement and all Exhibits appended hereto, each of which is hereby incorporated by reference in this Agreement and made a part hereof. All references to Sections and Exhibits shall be deemed to be references to Sections of, and Exhibits to, this Agreement unless the context shall otherwise require. The headings used in this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning of this Agreement.

⁴ See, Colorado Exhibit 6 Qwest-62.

⁵ See, Supplemental Testimony of Michael W. Schneider, Arizona Exhibit 6 WorldCom-2, at 6-11, wherein Mr. Schneider details the reasons for eliminating Qwest’s proposal to incorporate other documents that may subject the Qwest’s unilateral control. In that testimony, Mr. Schneider also presents evidence where Qwest has unilaterally changed procedures in a manner contrary to interconnection agreements in the past.

G. Issue G-24: Section 2.2 – What is the appropriate process for updating the Agreement when there is a change in law?

In Section 2.2⁶, Qwest establishes a process for updating the SGAT because of a change in law. Part of Qwest's process includes creation of an interim operating agreement if the parties cannot agree on the amendment. After 60 days of negotiation if the parties have failed to agree to an amendment, the dispute is to be resolved under the dispute resolution process and that the first matter to be resolved will implementation of an interim operating agreement which presumably would be effective and govern the parties conduct until the dispute was formally resolved.

Under the SGAT, an interim operating agreement is unnecessary. First, the parties agreed to the language that states: "To the extent that the Existing Rules are vacated, dismissed, stayed, or modified, then this Agreement shall be amended to reflect such legally binding modification or change of the Existing Rules. Where the Parties fail to agree upon such an amendment within sixty (60) days after notification from a Party seeking an amendment due to a modification or change . . . , it shall be resolved in accordance with the Dispute Resolution provision of this Agreement."

Section 5.18, parties have the right to seek dispute resolution before the Colorado Public Utilities Commission. The Commission addresses complaints in an expedited fashion, usually in less than 90 days. While this Commission has not formally adopted accelerated complaint procedures, the Commission has that power. For example, in Colorado, the Colorado Public Utilities Commission has formally adopted accelerated complaint procedures in that Commission's Rules of Practice and Procedure found at 4 CCR-723-1. That accelerated complaint procedure requires hearings for disputes

⁶ See, Colorado Exhibit 6 Qwest-61.

concerning interconnection agreements begin within 45 days after a complaint has been filed.⁷ However, even with the current complaint process, once a complaint is filed, focusing on an interim agreement during the first 15 days would make the complaint process more complex. In addition, under the agreed upon language found in Section 2.2, an amendment to the Agreement is deemed effective on the effective date of the legally binding change or modification of the Existing Rules, unless otherwise ordered. Therefore, there is no incentive to delay amending the SGAT. Finally, if a party was found to be negotiating in bad faith, it is highly unlikely that the Commission would not deem an appropriate amendment effective on the date of the change or modification of the Existing Rules.

Accordingly, Section 2.2 should read as follows in its entirety:

2.2 The provisions in this Agreement are intended to be in compliance with and based on the existing state of the law, rules, regulations and interpretations thereof, including but not limited to state rules, regulations, and laws, as of the date hereof (the "Existing Rules"). Nothing in this Agreement shall be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the Existing Rules or an admission by Qwest or CLEC that the Existing Rules should not be changed, vacated, dismissed, stayed or modified. Nothing in this Agreement shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of the Existing Rules or concerning whether the Existing Rules should be changed, dismissed, vacated, stayed or modified. To the extent that the Existing Rules are changed, vacated, dismissed, stayed or modified, then this Agreement and all contracts adopting all or part of this Agreement shall be amended to reflect such modification or change of the Existing Rules. Where the Parties fail to agree upon such an amendment within sixty (60) days after notification from a Party seeking an amendment due to a modification or change of the Existing Rules or if any time during such sixty (60) day period the Parties shall have ceased to negotiate new terms for a continuous period of fifteen (15) days, it shall be resolved in accordance with the

⁷ See, 4 CCR 723-1-61(k). While Rule 61(k) relates to disputes under interconnection agreements, this SGAT will become an interconnection agreement if a CLEC signs Section 22. Therefore, the terms of the SGAT, once adopted as an interconnection agreement, are subject to the accelerated complaint procedures.

Dispute Resolution provision of this Agreement. It is expressly understood that this Agreement will be amended as set forth in Section 2.2, to reflect the outcome of generic proceedings by the Commission for pricing, service standards, or other matters covered by this Agreement. Any amendment shall be deemed effective on the effective date of the legally binding change or modification of the Existing Rules for rates, and to the extent practicable for other terms and conditions, unless otherwise ordered. During the pendency of any negotiation for an amendment pursuant to Section 2.2, the Parties shall continue to perform their obligations in accordance with the terms and conditions of this Agreement.

H. Issue 25. Section 2.3 - How should conflicts between the SGAT and other Qwest documents and tariffs be treated?

Section 2.3⁸ discusses how conflicts between Qwest's internal memoranda and the SGAT should be handled. After much discussion, Qwest agreed to amend the section to state that the SGAT prevails in case of any conflict in language.⁹ Section 2.3.1 continues discussing the process to be followed if a CLEC believes a Qwest publication affects the CLEC's rights and obligations under the SGAT. It provides that during the pendency of the Dispute Resolution Process, the parties have certain rights and obligations and creates an interim operating agreement similar to that Qwest proposed in Section 2.2.

WorldCom proposes that such language be stricken from this section of the SGAT. The Dispute Resolution Process found in Section 5.18 and discussed above states the rights and obligations of the parties during the process. Setting it out here as well injects confusion into the SGAT to the extent that its terms conflict in any way with that general section of the SGAT.

⁸ See, Colorado Exhibit 6 Qwest-63.

⁹ See, Colorado Exhibit 6 Qwest-63.

Also Qwest's proposed language uses the term "SGAT" whereas the standard protocol is to use the term "Agreement" when referring to the SGAT. Accordingly

Sections 2.3 and 2.3.1 should read in their entirety as follows:

2.3 In cases of conflict between this Agreement and Qwest's Tariffs, PCAT, methods and procedures, technical publications, policies, product notifications or other Qwest documentation relating to Qwest's or CLEC's rights or obligations under this Agreement, then the rates, terms and conditions of this Agreement shall prevail. To the extent another document purports to abridge or expand the rights or obligations of either Party under this Agreement, the rates, terms and conditions of this Agreement shall prevail.

2.3.1 If CLEC believes, in good faith, that a change in Qwest's Tariffs, PCAT, methods and procedures, technical publications, policies, product notifications or other Qwest documentation relating to Qwest's or CLEC's rights or obligations under this Agreement purports to abridge or expand its rights or obligations under this Agreement, the Parties will resolve the matter under the Dispute Resolution process. Any amendment to this Agreement that may result from such Dispute Resolution process shall be deemed effective on the effective date of the change for rates, and to the extent practicable for other terms and conditions, unless otherwise ordered.

Qwest has agreed to strike Section 5.24 and modify Section 5.31.¹⁰ Those modifications are acceptable to WorldCom and adoption of WorldCom's proposed language in Sections 2.1, 2.2 and 2.3 will not require further modifications to Sections 5.24 (stricken) and 5.31 as now drafted. In fact, WorldCom's proposed language is consistent with and complements Sections 5.24 and 5.31. Qwest also modified Section 5.30¹¹ and that modification will not be affected by WorldCom's proposed language for Sections 2.2 and 2.3 and is consistent with WorldCom's proposals for those sections.

¹⁰ See, Colorado Exhibit 6 Qwest-62.

¹¹ See, Colorado Exhibit 6 Qwest-61.

I. Issue 30: Sections 5.2.1 and 5.2.2 – What should be the term of the Agreement?

Qwest proposed a three-year term for the Agreement as earlier requested by WorldCom.¹² During the Colorado workshops the three-year term was withdrawn by Qwest over a dispute involving Section 5.2.2 language and Qwest returned to its earlier position that the term should be two years. After the Colorado workshops, Qwest, AT&T and WorldCom agreed that Section 5.2.2 should be modified to read:

5.2.2. Upon expiration of the term of this Agreement, this Agreement shall continue in full force and effect until superseded by a successor agreement in accordance with this Section 5.2.2. Any Party may request negotiation of a successor agreement by written notice to the other Party no earlier than one hundred sixty (160) days prior to the expiration of the term, or the Agreement shall renew on a month-to-month basis. The date of this notice will be the starting point for the negotiation window under Section 252 of the Act. This Agreement will terminate on the date a successor agreement is approved by the Commission.¹³

Thus, WorldCom believes the issue to be resolved since the language proposed for Section 5.2.2 has been agreed upon and therefore, the three-year term would also be retained in the SGAT in Section 5.2.1.

J. Issue 27: Section 4 - Whether Qwest's proposed definition of "legitimately related" is sufficient?

WorldCom concurs in AT&T concerns about the definition of "Legitimately Related" found in Section 4¹⁴ and agrees with AT&T's proposed modifications to that definition.¹⁵ AT&T proposed striking the second and third sentences that read: "These rates, terms and conditions are those that, when taken together, are the necessary rates, terms and conditions establishing the business relationship between the Parties as to that

¹² See, Colorado Exhibit 6 Qwest-61.

¹³ See, Colorado Exhibit 6 Qwest-93.

¹⁴ See, Colorado Exhibit 6 Qwest-76.

¹⁵ See, Colorado Transcript dated August 22, 2001, at Page 24, Line 24 through Page 77, Line 13.

particular interconnection, service or element. These terms and conditions would not include General Terms and Conditions to the extent that the CLEC's Interconnection Agreement already contains the requisite General Terms and Conditions."

As was argued by AT&T at the Colorado workshop, the language objected to by AT&T and WorldCom takes license with what the FCC has written or more properly, has not actually written, about what is meant by "legitimately related." Qwest's definition has the potential to narrow the FCC's interpretation of the term.

K. Issue G-35: Section 5.8 – Should liability for losses related to performance under the Agreement be limited to the total charges billed to CLEC during the contract year except for willful misconduct?

Qwest's exception to its Limitation of Liability section is stated at Section 5.8.4, "[n]othing contained in this Section 5.8 shall limit either Party's liability to the other for willful misconduct." This is too restrictive as it improperly absolves Qwest of liability for egregious, grossly negligent acts and repeated breaches of the material obligations of the Agreement. To avoid this problem and provide CLECs with adequate protection from potential improper conduct of Qwest, the Commission should replace "willful misconduct" with "gross negligence, willful misconduct and repeated breaches of material obligations of the Agreement."

WorldCom also concurs with AT&T's arguments as to required changes to Section 5.8.

L. Issue G-38: Section 5.12.1 – Should AT&T's proposed restrictions on Qwest's sale of exchanges in the Assignment Clause be adopted?

AT&T proposed new Section 5.12.2¹⁶ to address the effect a Qwest sale of an exchange has on CLEC interconnection agreements. AT&T's language proposes that the

¹⁶ See, Colorado Exhibit 6 AT&T-72.

interconnection agreement be assigned for the entire term of the agreement and that Qwest would require the purchaser of an exchange to agree to such condition. AT&T proposed this language in part, based on Qwest's commitments in previous sales of exchanges. Qwest objects to AT&T's proposal.

WorldCom concurs with AT&T's position on this issue. Such mandatory assignment is necessary to provide certainty and stability to the CLEC community. Without it, CLECs are discouraged from providing service in those exchanges Qwest is likely to sell. This will further hinder competitive development in rural exchanges where competition is already hampered due to the high cost of providing service in those areas. Adopting AT&T's proposal here would be consistent with the purpose and intent of the Act, which is to encourage competition in all local markets.

Moreover, when WorldCom's subsidiary, MCImetro, was granted a certificate and operational authority to serve customers throughout what then was U S WEST's service territory, MCImetro's territory was defined as of that date, and not based upon Qwest's changing service territory.

A third-party contract, such as an agreement to sell exchanges to a rural telephone company, as that term is used in the federal Act, cannot abridge the rights of parties who are not parties to the contract. In other words, rural telephone companies that buy Qwest exchanges take them subject to the interconnection agreements and operating authorities that may address those exchange areas. By selling a rural exchange, Qwest cannot abridge or diminish MCImetro's right to serve an exchange area sold to a rural telephone company under its operating authority or under its interconnection agreement with Qwest. The rural telephone company must honor the provisions of the Qwest/U S WEST

interconnection agreement for the sold exchange area still within MCImetro's operating territory granted in 1997.

M. Issue G-50D: Section 11.34 – Whether Qwest's SGAT has adequate revenue protection language.

After the Colorado workshops, Qwest, Sprint, AT&T and WorldCom agreed that the language to the effect, should be added (referencing "CLEC" rather than "Sprint"):

X. Revenue Protection - Qwest shall make available to Sprint all present and future fraud prevention or revenue protection features. These features include, but are not limited to, screening codes and call blocking. Qwest shall additionally provide partitioned access to fraud prevention, detection and control functionality within pertinent Operations Support Systems and signaling which include but are not limited to LIDB Fraud monitoring systems.

X.1 Uncollectable or unbillable revenues resulting from, but not confined to, provisioning, maintenance, or signal network routing errors shall be the responsibility of the party causing such error or malicious acts, if such malicious acts could have reasonably been avoided.

X.2 Uncollectable or unbillable revenues resulting from the accidental or malicious alteration of software underlying Network Elements or their subtending operational support systems by unauthorized third parties that could have reasonably been avoided, shall be the responsibility of the party having administrative control of access to said Network Element or operational support system software.

X.3 Qwest shall be responsible for any direct uncollectable or unbillable revenues resulting from the unauthorized physical attachment to loop facilities from the Main Distribution Frame up to and including the Network Interface Device, including clip-on fraud, if Qwest could have reasonably prevented such fraud.

X.4 To the extent that incremental costs are directly attributable to a Sprint requested revenue protection capability, those costs will be borne by Sprint.

X.5 To the extent that either Party is liable to any toll provider for fraud and to the extent that either Party could have reasonably prevented such fraud, the causing Party must indemnify the other for any fraud due to compromise of its network (e.g., clip-on, missing information digits, missing toll restriction, etc.).

Thus, WorldCom believes the issue to be resolved since the language proposed above has been agreed upon. If this language is approved, WorldCom would withdraw its request that its language found in MWS-1 of the Direct Testimony of Michael W. Schneider¹⁷ be included in Section 11.34.

N. Issue G-51: Sections 18.1.1, 18.1.2 and 18.3 – What is the appropriate scope of audits?

WorldCom concurs with the concerns raised by AT&T on these sections of the SGAT. Thus, WorldCom joins in AT&T's briefs on the appropriate contract language relating to audits. In particular, WorldCom appreciates that Qwest made changes to this section at the request of WorldCom; however, Qwest has refused to expand the scope of the parties' audit powers that is a fundamental issue for WorldCom.

O. Issues CM-1 through CM-18: Section 12.2.6 - Qwest's Change Management Process.

WorldCom addressed its concerns with Qwest's Co-Provider Industry Change Management Process ("CICMP") now known as its Change Management Process ("CMP") in the comments to Qwest provided by Elizabeth M. Balvin.¹⁸ There are 18 issues on the Colorado CICMP Issues Log, of which 16 remain open. Issues 14 and 15 regarding Exhibits G and H to the SGAT are at impasse. At the last workshop, Qwest advised that CMP was being "redesigned" and that it made no sense to discuss CMP while it was undergoing a redesign. Qwest further stated that the redesign should take place within the CMP forum, not in the 271 workshops. Qwest agreed to provide a status report in October to the Colorado Commission which it also should provide to this

¹⁷ See, Direct Testimony of Michael W. Schneider, Arizona Exhibit 6 Qwest-1, MWS-1at page 45, WorldCom's Section 20.2 language entitled "Revenue Protection".

¹⁸ See, Colorado Exhibit 6 WorldCom-67.

Commission, upon which CLECs will be able to comment. WorldCom agreed to allow Qwest and the members of the CMP forum to redesign the CMP, but still reserved the right to address CMP in the 271 process through workshops or otherwise.

The parties agreed that the 16 remaining issues found in the Colorado CICMP Issues Log will be discussed in the ongoing CMP process and brought back to the Commission during the Section 271 proceeding if unresolved. Consequently, WorldCom will not brief those issues at this time.

However, Qwest cannot be found to comply with the Section 271 checklist until WorldCom's and others' issues are satisfactorily resolved. Change management is an integral part of this SGAT and the FCC's requirements. Moreover, appropriate change management is critical to keeping local markets open so that CLECs are kept aware of Qwest's relevant rules and have a voice in establishing or modifying those business rules and processes through the change management process.

For example, earlier in the UNE workshops Qwest stipulated to the following:

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

Qwest has also not provided language in its SGAT implementing the concepts of its stipulation recited above, which presumably would be found in the SGAT or an exhibit to the SGAT.

Therefore, the only impasse issue remaining to be addressed at this time is that fact that the SGAT does not now have exhibits addressing change management process and escalation procedures. Previously in the first GT&C workshop, Qwest had distributed proposed Exhibits G and H that addressed these issues. However, in the last workshop, Qwest deleted all references to Exhibit G and H in Section 12.2.6¹⁹ of the SGAT that addressed change management and CMP escalation procedures. WorldCom believes these exhibits are critical and should be part of the SGAT.

In a recent hearing before the Colorado Hearing Commissioner assigned to the 271 proceeding, Qwest agreed to include Exhibits G and H to the SGAT. Therefore, WorldCom believes that the impasse issue has been resolved because Qwest has agreed to include Exhibits G and H. However, like the change management process, the contents of Exhibits G and H will still need to be reviewed after Qwest drafts those exhibits and provides them to CMP.

P. Issue OSS-23: Section 12.2.11 – Whether this section is sufficient?

WorldCom agrees with AT&T's concerns regarding this section.²⁰ It is not clear from the way this section is presently drafted whether Qwest could impose OSS rates by filing a complete SGAT with an Exhibit A price list containing OSS rates that have never been fully litigated or agreed to by the CLECs. The intent of the language in WorldCom's opinion was not to allow for OSS related-rates to be effective without the

¹⁹ See, Colorado Exhibit 6 Qwest-61.

²⁰ See, Colorado Exhibit 6 Qwest-61.

opportunity for CLECs to fully litigate the initial rates. To the extent that is not clear, WorldCom requests the Commission prevent Qwest from imposing OSS-related charges and rates without giving CLECs the opportunity to fully litigate any initial or first-time OSS rates.

PUBLIC INTEREST IMPASSE ISSUES

A. The Purpose and Text of Section 271 of the 1996 Act is to Promote Competition.

The central purpose of the 1996 Act is to promote competition in all telecommunications markets, including the local residential market that is the heart of a section 271 application. The Federal Communications Commission (“FCC”) has repeatedly recognized that “[t]he overriding goals of the 1996 Act are to open all telecommunications markets to competition by removing operational, economic, and legal barriers to entry, and ultimately, to replace government regulation of telecommunications markets with the discipline of the market.”²¹ By precluding Bell Operating Companies (“BOCs”), like Qwest, from providing in-region long distance service until they have opened their local markets, section 271 not only prevents re-monopolization of the long distance market, it also “creates a critically important incentive for BOCs to cooperate in introducing competition in their historically monopolized local telecommunications markets,” an incentive that is eliminated with premature entry.²² “Congress further recognized that, until the BOCs open their local

²¹ See, *In re Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLata Services in Michigan* (“Ameritech Michigan Order”), CC Docket No. 970137, Memorandum Opinion and Order, 12 F.C.C.R. 20543 (1997) at ¶386.

²² Id., at ¶¶ 14-15.

markets, there is an unacceptable danger that they will use their market power to compete unfairly in the long distance market” and to re-monopolize that market.²³

With respect to implementation of the pro-competitive policies that formed the basis of the Act, the State of Arizona is at a crossroads. Arizona is a major state within Qwest’s 14-state region where competitive providers, including WorldCom, have expressed a desire to enter and compete in the residential local exchange market, but where the economic conditions have acted as a barrier to entry. The most obvious economic barrier to entry into Arizona is Qwest’s control over extensive bottleneck facilities which, in many areas, Competitive Local Exchange Carriers (“CLECs”) will be unable to duplicate. The FCC understood this when, with great specificity, it laid out the methodology that states must employ to derive their rates, and subsequently has made clear that for purposes of checklist compliance under section 271, rates must conform to the FCC mandated methodology, and so should fall within a reasonable range whose outer bounds are set by the local conditions that would lead costs to vary from state to state.

As the FCC has recently emphasized, total element long run incremental cost (“TELRIC”) is not designed to guarantee a profit to any particular CLEC.²⁴ The act does not require any ILEC to lease network elements at below-cost rates in order to facilitate entry. At the same time, the impact of proposed unbundled network element (“UNE”)

²³ See, *In re Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long-distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana* (“BellSouth Louisiana”), CC Docket No. 98-121, Memorandum Opinion and Order, 13 F.C.C.R. 20599 (1998) at ¶3.

²⁴ See, *In re Application of SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma* (“Kansas-Oklahoma Order”), ¶92.

rates on the prospects for competition is relevant to whether these rates are cost-based, and to whether BOC entry into long-distance promotes the public interest. The FCC has repeatedly made clear that checklist compliance is not a sterile, academic exercise, but a legislative test to assure that local markets are open for competition. In sum, while the effect of pricing rules on any particular competitor and its plans to enter a market is irrelevant under section 271, the effect of pricing on competition in general relates directly to whether prices are cost-based and whether BOC provision of in-region long-distance service is in the public interest. The act is not pro-competitor, but it is most decidedly pro-competition.²⁵

B. Qwest has not met the public interest requirements in Arizona.

WorldCom's desire and ability to sell local service to residential customers is reflected in the markets it has entered. In New York, Texas, Pennsylvania, Michigan, Illinois, and Georgia, where the state commissions have done much of the necessary work to set rates at or close to TELRIC, and where the BOCs have complied or are seeking to comply with the FCC's other market opening rules, WorldCom has responded by offering residential local service to the extent possible in the state. Consumers have greatly benefited from open local markets, but enjoy those benefits only in states where the pricing set for UNEs is cost-based, or at least permits significant entry while state commissions complete the work of bringing rates down to cost so that CLECs profitably can enter the residential local market. Recently, in Ohio, MCI WorldCom also

²⁵ See, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996* ("Local Competition Order"), First Report and Order in CC Docket No. 96-98, FCC Order No. 96-325, released August 8, 1996, ¶ 618.

committed to entering the market if the Public Utilities Commission of Ohio could set reasonable prices so that the company could enter the market and provide service.²⁶

The FCC has stated that, in making its public interest assessment, compliance with the 271 checklist items alone is not sufficient to open a BOC's telecommunications markets to competition.²⁷ The public interest analysis is an independent element of the statutory checklist requiring an independent determination.²⁸ At the same time, in recent comments before an American Bar Association antitrust enforcement panel, the Chair of the FCC signaled that he will not be as aggressive in enforcing the public interest standard.²⁹ Therefore, as WorldCom's expert witness, Don Price testified, absent federal interest, this Commission must satisfy itself that Qwest's entry into the long distance market serves the public interest in Arizona.³⁰

Initially, it should be noted that Qwest has not even met the 271 checklist requirements in Arizona or any other Qwest state. The workshops examining each of the checklist requirements have not been completed in any state, although partial reports have emanated from many of the states. WorldCom maintains that it is premature to even

²⁶ See, *John Funk, MCI Makes Plans to Woo Ohioans from Ameritech*, Cleveland Plain Dealer (August 31, 2001).

²⁷ See, Ameritech Michigan Order, ¶389

²⁸ See, *Application by Bell Atlantic New York For Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, FCC 99-404, Memorandum Opinion and Order (Rel. Dec. 22, 1999), ¶ 423.

²⁹ See, Wall Street Journal, May 1, 2001, "Politics & Policy: Powell Quickly Marks Agency As His Own," by Yochi J. Dreazen.

³⁰ See, *In the Matter of the Investigation Into US West Communications, Inc.'s Compliance with §271(c) of the Telecommunications Act of 1996* ("Arizona Investigation"), Arizona Docket No. T-00000A-97-238 – Workshop 7, Transcript of June 12, 2001 (hereinafter TR), p. 340, l. 17-p. 341, l.10.

consider the public interest requirement until the workshops on the checklist items have been concluded.

Furthermore, in addition to whatever duties and requirements result from the workshops, the Arizona Commission should look not only at Qwest's prior actions, but almost must make every effort to anticipate the impact of those actions in the future. The FCC describes this notion in the following manner:

While BOC entry into the long distance market could have pro-competitive effects, whether such benefits are sustainable will depend on whether the BOC's local telecommunications market remains open after BOC interLATA entry. Consequently, we believe that we must consider whether conditions are such that the local market will remain open as part of our public interest analysis.³¹

This passage underscores the fact that there is a forward-looking aspect of the public interest review.

C. Profitability is the key to WorldCom's entry into the local residential market.

WorldCom's entry into the local residential market is contingent on its business necessity of profitability. Qwest's expert, Mr. Teitzel, tried to link the entrance of the Bells into certain local markets with an increase in CLEC market share.³² In contradiction, as Mr. Price testified:

There's what a social scientist would call a spurious correlation, when you try to assume that the granting of 271 relief in Texas was the thing that caused CLEC market share to suddenly – to cause CLECs to suddenly refocus their attention on that market and gain additional market share.

As a point there, WorldCom has been providing UNE-P based local services in Pennsylvania for quite a few months now. Last I checked, Pennsylvania has not yet received 271 relief. So this notion, this

³¹ See, *In the Matter of the Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, Memorandum Opinion and Order in CC Docket No. 97-137, Order FCC 97-298, released August 19, 1997 at 390.

³² See, Transcript, Teitzel's testimony, Page 257, Lines 5 through 21.

implied causality between us looking to enter a state and 271 is ludicrous. Pennsylvania, same thing exists in Michigan where we're offering local services today. Same exists in Illinois where we're offering local services today. And in none of those three states is the RBOC poised to gain 271 entry.³³

The FCC, in its Local Competition Order, recognized the significance of the pricing of network elements:

The incumbent LECs have economies of density, connectivity, and scale; traditionally, these have been viewed as creating a natural monopoly. As we pointed out in the NPRM, the local competition provisions of the Act require that these economies be shared with entrants. We believe they should be shared in such a way that permits the incumbent LECs to maintain operating efficiency to further fair competition, and to enable the entrants to share the economic benefits of that efficiency in the form of cost-based prices.³⁴

As evidence of WorldCom's interest in profitability rather than any regulatory 271 approval, the first market it entered was New York. That was a year before then-Bell Atlantic had approval for 271. WorldCom has been very aggressive in providing service in that state. The company is providing service in Texas, but only in Houston and Dallas, because it is not profitable in the rest of the state. Further, WorldCom made it clear before 271 approvals were obtained in the states of Massachusetts, Oklahoma, and Kansas that it would not enter those states because it could not do so profitably. The company, however, is presently in Illinois (where no 271 application is pending), Michigan, Pennsylvania, and Georgia - because these are all states where conditions and the prices of unbundled network elements allow WorldCom to make a profit.³⁵

³³ See, Transcript, Page 344, Line 18 through Page 345, Line 8.

³⁴ See, Local Competition Order. at ¶ 11.

³⁵ See, Testimony of Don Price, pp. 35-36 submitted as 7 WorldCom 1 in workshop 7, Arizona 271 investigation.

Given that profitability is a key to entry by WorldCom, and probably most CLECs, into the local market, the pricing of UNEs is one of the most important tools available to regulators to open effectively the incumbent local exchange carrier's ("ILEC's") local markets for competitive entry. That being said, there is no simple answer to how this Commission can ensure that the prices for unbundled elements of Qwest's network have the intended pro-competitive effects. Cost proceedings (one of which is still in process in Arizona) in different states often result in different recommendations due to the fact that numerous assumptions are required to estimate the "cost" of any network element. There are numerous factors such as labor rates, the cost of capital, and depreciation rates, all of which are needed to transform an investment into monthly cost. Qwest can manipulate each of these factors, as well as many others, to its competitive advantage.

For example, in the costing and pricing proceeding pending before this Commission, testimony has addressed, among other things, wholesale prices for unbundled network elements. AT&T and WorldCom proposed 2 wire analog loop monthly rates of \$7.34 for zone 1, \$11.23 for zone 2, \$32.06 for zone 3 for a statewide average of \$10.10. To demonstrate how parties can provide what they believe is the "right answer," consider the table of proposed loop rate proposed by Qwest, AT&T/WorldCom and the Arizona Commission staff. As can be seen from the chart below, the spread in rates, both current and recommended, illustrates the differences in "assumptions" that can be incorporated into cost models to yield prices considered advantageous by one entity or another:

Arizona Deaveraged Loop Proposal Comparison

	Qwest Proposal	Staff Proposal A ³⁶	Staff Proposal B ³⁷	Interim
Zone 1	\$23.07	\$ 9.35	\$ 9.35	\$18.96
Zone 2	\$28.62	\$14.57	\$14.20	\$34.94
Zone 3	\$42.14	\$43.80	\$36.34	\$56.53
Statewide Average		\$13.22	\$11.89	\$21.98

Colorado also is in the process of completing its own costing and pricing hearing.³⁸ In that hearing, WorldCom, XO, and AT&T jointly proposes that monthly loop rates, before the sale of exchanges, for zone 1 be \$7.03, for zone 2 be \$10.81, and for zone 3 be \$23.23 with a statewide average rate of \$10.00.³⁹ The current Colorado rates are \$19.65 for the base rate area (which mostly mirrors the proposed zone 1), \$26.65 for zone 1, \$38.65 for zone 2, and \$84.65 for zone 3. These current rates are extremely high, and have been an economic barrier to entry into the local residential market for WorldCom.

Further, the Colorado Staff recognized that these prices are a barrier to entry. Of significance in the current Colorado pricing docket, are the conclusions and

³⁶ Assumes no sale of rural exchanges by Qwest.

³⁷ Assumes sale of certain rural exchanges by Qwest.

³⁸ See, *In the Matter of U.S. West Communications, Inc.'s Statement of Generally Available Terms and Conditions* ("Arizona General Terms & Conditions"), in Arizona Docket No. 99A-577T. Testimony was completed on August 17, 2001. Briefs were filed on September 7, 2001.

³⁹ Based on published accounts, it is believed that the sale of exchanges originally anticipated in Colorado will not occur.

recommendations of Dr. Neil Langland in his filed testimony on behalf of the Staff. Dr.

Langland states:

Staff believes the instant matter cannot proceed as currently scheduled. The cost studies are seriously flawed. As presented, the rates derived from those cost studies could be a substantial entry barrier and as such are not an appropriate platform for a multiple-provider, multiple-entry-mode market structure. The cost studies-based rate creates an unfair advantage to Qwest, to the detriment of other providers, end-users, and the public interest as defined, in part, in recent state and federal statutes. The studies allow Qwest the ability to manipulate the market in a manner inconsistent with an "open market." An open market is not one where mere mechanical functionality is available regardless of absolute prices; or where terms or conditions affect absolute price in an in appropriate manner; or where the incumbent has an unfair, built-in, artificial cost advantage. These results are the case with the cost studies presented by Qwest.⁴⁰

Given such a wide range of price recommendations, WorldCom urges this Commission to remember that Congress' intent in allowing CLECs to lease components of the incumbents' networks at reasonable and cost-based rates was to remove the huge barrier to entry represented by the massive capital costs necessary to replicate the ILEC's networks.⁴¹ Thus, a principled basis for the setting of UNE rates is that such rates must be no higher than necessary to compensate the incumbent for the function it is providing and earn a return on its investment. Anything above such a minimum price will frustrate Congress' intent by creating rather than removing a barrier to entry because the Act is pro-competition rather than pro-competitor.

⁴⁰ See, Colorado General Terms & Conditions, Testimony of Dr. Neil Langland filed June 27, 2001, Page 41, Lines 4 through 14.

⁴¹ See, Testimony of Don Price, submitted as 7 WorldCom 1, pp. 35-36 in Workshop 7, Arizona 271 Investigation.

D. The Commission should adopt regulations to provide incentives for Qwest to facilitate competition in Arizona.

The Commission should adopt regulations to provide incentives for Qwest to facilitate competition in Arizona. This policy has its roots in the whole telecom Act and the fact that the Bell operating companies under the Act are treated differently from other competitors. The imposition of requirements §§271, 251, and 252 have already singled out Qwest and other Bell Companies. This is because the Congress has recognized that the Bells are different from other competitors since Qwest and other BOCs control bottleneck facilities upon which its competitors must rely. In enacting §§ 251 and 252, Congress recognized its need to preclude Qwest and other BOCs from acting on its “normal incentives” to exploit its market power.⁴² Since it is a for-profit entity, Qwest has both the incentive and the ability to exploit its control in such a way that provides it with a competitive advantage over its competitors. Allowing Qwest to exploit its undeniable market power would cause irreversible damage to the competitive process to the detriment of Arizona consumers and to the public interest. Evidence of Qwest’s treatment of its would-be competitors in the market for local telecommunications services is of critical relevance as this Commission considers the public interest implications of Qwest’s entry into the Arizona long distance market.

Mr. Price’s filed testimony describes instances where Qwest’s past behavior shows damaging treatment of WorldCom and others; treatment that bodes ill for future competition if past behavior is taken as an indicator. Without repeating in detail the incidents cited in Mr. Price’s testimony,⁴³ examples of past poor behavior include the

⁴² See, Mr. Price’s description the significance of market power, *Id.*, Page 10, Lines 2 through 14.

⁴³ See, *Id.*, Pages 39 through 43.

following. In the State of Washington, its Commission concluded that US West was at fault for failing to disclose that its processes did not accept CLEC forecasts at the same time that it required MCI metro to submit forecasts as a precondition to provisioning facilities.⁴⁴ In another example, the Minnesota Public Utilities Commission had concluded that US West had “discriminated (vis à vis itself) against MCI m[etro]” in several areas including network capacity and forecasting, provisioning intervals, and delivery of facilities, denying MCI metro’s request to have certain test orders worked, and US West’s performance in working request for interim number portability for MCI metro customers.⁴⁵ And in Colorado, that Commission found that Qwest had acted in an anti-competitive manner by unilaterally instituting “PIC freezes,” thus requiring Qwest’s long distance competitors to go through additional and unnecessary steps before they could win customers away from Qwest in what had previously been Qwest’s monopoly of the intraLATA toll market.⁴⁶

Therefore WorldCom urges the Commission to recognize that the Congress intended to foster competition so that telecommunications markets could transition from a single ubiquitous network operated by a monopoly to a competitive “network of networks” that would provide to consumers the benefits of a competitive system. The Commission should do what is necessary to promote a transition that gives a customer

⁴⁴ See, *MCI metro Access Transmission Services, Inc. v. US West Communications, Inc.*, Washington Utilities and Transportation Commission, Docket No. UT-971063, Commission Decision and Final Order Denying Petition to Reopen, Modifying Initial Order, in Part, and Affirming, in Part, issued February 1999. Cited in Filed Testimony of Don Price in fn. 34.

⁴⁵ See, *In The Matter of a Complaint of MCI metro Access Transmission Services, Inc. Against U.S. West Communications, Inc. for Anticompetitive Conduct*, Minnesota PUC Docket No. P-421/C97-1348.

⁴⁶ See, *MCI WorldCom vs. US West*, Decision No. C00-513, in Colorado Docket No. 99K-193T, at Par. B.4, adopted April 26, 2000.

choice. Implementation of a Performance Assurance Plan that protects the interest of the consumers and re-visiting pricing issues to ensure that economic barriers are removed would be methods of promoting the transition. In addition to the critical issue of pricing for UNEs, the Commission must also ensure that 1) the terms and conditions for CLECs' access to UNEs and UNE combinations permit economically viable access to those elements, 2) operational support systems are available to CLECS that are fully functional, stress-tested, and integratable, and 3) there exist self-executing and behavior-modifying remedies for violations of the competitive "rules of engagement" established by this Commission. This Commission should not accept promises of future behavior, but should enact strict safeguards before recommending approval of Qwest's 271 application. The entire 271 approval process is an evolving procedure, and this Commission has the opportunity to assert stricter supervision and control over the process in order to promote the transition to a competitive marketplace offering choice to the consumer.

E. The Commission should enact strict performance measures and significant penalties for failure to comply.

Last, but certainly not least, WorldCom urges this Commission to implement an "anti-backsliding" performance assurance plan ("PAP"). While specifics of the PAP are the subject of a separate proceeding, WorldCom believes that a PAP should encourage Qwest to "do the right thing" relative to its wholesale customers. To be effective, such a plan must contain financial penalties at a level sufficient for Qwest to view them as something other than the cost of doing business. Furthermore, the Commission should institute expedited procedures to handle complaints and conflicts. While other remedies such as complaint filings at the FCC and antitrust actions have been mentioned by

Qwest's expert, Mr. Teitzel,⁴⁷ those remedies are expensive, often drawn out, and, in the case of the antitrust mechanism, prohibitively expensive. In words that are very instructive for this industry, the United States Court of Appeals in the Microsoft case recently commented on the very real limitations of the anti-trust remedy:

What is somewhat problematic, however, is that just over six years have passed since Microsoft engaged in the first conduct plaintiffs allege to be anti-competitive. As the record in this indicates, six years seems like an eternity in the computer industry. By the time a court can assess liability, firms, products, and the marketplace are likely to have changed dramatically. This, in turn, threatens enormous practical difficulties for courts considering the appropriate measure of relief in equitable enforcement actions, both in crafting injunctive remedies in the first instance and reviewing those remedies in the second.⁴⁸

The telecommunications industry is currently littered with the wrecks of bankrupt CLECs. Few of the CLECs would have the stamina, financially and otherwise, to endure a prolonged antitrust action or even a complaint filing at the FCC. Therefore, this Commission's actions in instituting a PAP containing meaningful, behavior modifying penalties for violations by Qwest are the most critical tools in keeping the competitive local market vital and viable.

CONCLUSION

For the foregoing reasons, Qwest cannot be found to be in compliance with the requirements found in Section 271 as interpreted by the FCC and this Commission until it has modified its SGAT to properly address its legal obligations discussed above. In addition, WorldCom states that Qwest has not met the public interest criteria.

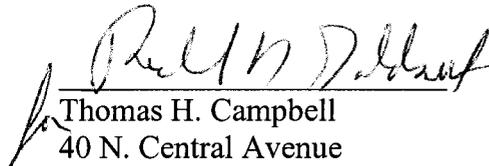
⁴⁷ See, Transcript, Teitzel's Testimony, Page 255, Line 24 through Page 256, Line 12.

⁴⁸ See, *United States of America v. Microsoft Corporation*, United States Court of Appeals (D.C. Circuit), No.005212, June 28, 2001 at pp. 10-11.

Furthermore, approval of its 271 application should be delayed until pricing, an accessible telecommunications system, and a supportive regulatory climate are in effect.

Respectfully submitted this 18th day of September, 2001.

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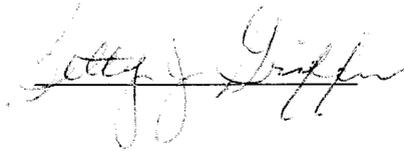
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A handwritten signature in cursive script, appearing to read "Betty J. Griffin". The signature is written in dark ink and is positioned in the lower-left quadrant of the page.