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

6
7 **BEFORE THE ARIZONA CORPORATION COMMISSION**

8 **WILLIAM A. MUNDELL**
9 **Chairman**

10 **JAMES M. IRVIN**
11 **Commissioner**

12 **MARC SPITZER**
13 **Commissioner**

Arizona Corporation Commission

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

Docket No. T-00000A-97-0238

18
19 **WORLDCOM'S POST-WORKSHOP BRIEF**
20 **ON THE RETAIL PARITY EVALUATION DRAFT REPORT**

21
22 WorldCom, Inc., on behalf its regulated subsidiaries, (collectively "WorldCom") submits
23 this Post-Workshop Brief on the Retail Parity Evaluation Draft Report. WorldCom also concurs
24 in the comments filed by AT&T regarding this report.
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1 **THE REPORT DOES NOT CONTAIN SUFFICIENT FACTS TO SUPPORT THE**
2 **CONCLUSIONS DRAWN.**

3 The Final Report on Retail Parity Evaluation, Version 2.0, published by Cap Gemini Ernst
4 & Young (“CGE&Y”) does not contain sufficient factual findings and statements to support the
5 conclusions drawn by CGE&Y. WorldCom advised CGE&Y of these same concerns when it
6 commented on Version 1, and Version 2 still suffers from the same defect.

7 The results of the Arizona Third Party Test need to conclusively determine that CLEC’s
8 are provided non-discriminatory access to Qwest Corporation’s (“Qwest”) Operational Support
9 Systems (OSS) and a meaningful opportunity to compete when using Qwest’s OSS. While the
10 report concludes that Qwest allows competitors a meaningful opportunity to compete repeatedly,
11 there are little or no findings of fact to support the conclusions made by CGE&Y. Moreover, it is
12 not appropriate for CGE&Y to make the ultimate conclusion. Rather, CGE&Y should report the
13 factual results, make factual findings, and leave to this Commission and the Federal
14 Communications Commission (“FCC”) the determination whether the competitors are provided a
15 meaningful opportunity to compete, which is the ultimate conclusion of law.
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17 CGE&Y is essentially acting as “trier of fact” when it conducts these tests and reports the
18 results. As a result, its factual conclusions must be supported by sufficient and detailed findings
19 of fact. For example, when the Staff of the Commission issues its checklist reports, it makes
20 findings of fact and conclusions of law for each checklist item. Based upon those findings of fact
21 and conclusions of law, Staff then makes recommendations to the Commission. CGE&Y should
22 also be making equivalent “findings of fact” to support its factual conclusions in this report. The
23 CGE&Y report should contain a complete statement of what facts CGE&Y relied upon to come to
24 each of its ultimate factual conclusions. That is not to say that CGE&Y’s factual conclusions are
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1 right or wrong, but without the recitation of the underlying factual reasons which CGE&Y relied
2 upon to come to its conclusions, neither the Arizona Corporation Commission nor the FCC can
3 independently assess CGE&Y's factual conclusions without reviewing the underlying
4 documentation CGE&Y presumably relied upon in order to determine whether CLECs are
5 provided a meaningful opportunity to compete.
6

7 **1. Qwest's mediation process should be faster and more efficient.**

8 Moreover, CGE&Y has also made some recommendations to Qwest in its report that
9 require clarification. For example, CGE&Y determined that it may be possible for Qwest to make
10 the mediation process ("IMA") of these interfaces faster and more efficient but did not apparently
11 perform root cause analysis as required by the Test Standard Document ("TSD"). The TSD states
12 that, "The TA will perform root cause analysis for test cases in which variation in cumulative test
13 measurements between the paired retail-resale tests show significant advantage in favor of U S
14 WEST performance." Presumably CGE&Y did not perform a root cause analysis because it
15 concluded that the paired retail-resale tests did not show a significant advantage in favor of U S
16 WEST performance. However, without a full factual statement of why CGE&Y made this
17 recommendation and a factual basis for why it apparently concluded that the paired retail-resale
18 tests did not show significant advantage in favor of Qwest performance, this Commission and the
19 FCC cannot determine whether Qwest should in fact make its mediated access faster and more
20 efficient in order to ensure Qwest does not have a significant advantage.
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23 **2. Qwest requires more fields and steps for CLECs to perform transactions.**

24 In addition, CGE&Y found disparity in the number of fields and steps required for CLECs
25 using IMA-GUI to complete an order (including pre-order steps) versus Qwest. The number of
26

1 fields and steps was greater, across most scenarios, for CLECs. Regardless of this finding,
2 CGE&Y concludes the Order and Billing Forum ("OBF") is to blame.

3 Qwest developed and implemented its proprietary software known as Intermediated
4 Access which purports to allow CLECs a meaningful opportunity to compete in Qwest local
5 market territory. As CGE&Y identified in their Retail Parity Report, "the CLEC experience when
6 using this system is almost entirely dependent upon design considerations and system architecture
7 decisions made by Qwest." CGE&Y also found a "disparity in the numbers of fields and steps
8 required for a CLEC using IMA-GUI to complete an order (including pre-order steps) versus
9 Qwest; the numbers of fields and steps were greater, across most scenarios, for CLECs" yet
10 concluded "that this disparity is largely accounted for by the guidelines imposed by the Ordering
11 and Billing Forum (OBF)". In the August workshop, CGE&Y acknowledged that a full analysis
12 had not been performed but that the conclusion was based on the experience of the personnel
13 executing the test.
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16 As is evident in the transcript of these workshops, CGE&Y's conclusory statement is not
17 supported by any further factual findings. CGE&Y must not be permitted to make such a
18 conclusory statement without describing how the OBF requirements are responsible for the
19 disparity. For example, CGE&Y should have described its review of the relevant OBF
20 requirements, identified the relevant OBF requirements, determined the number of fields and steps
21 that are specifically required by the OBF, and then, based upon its factual investigation, made its
22 conclusion. By providing such facts, this Commission and the FCC will then have confidence that
23 CGE&Y's conclusory statement is factually based, not mere speculation. There is nothing in the
24 report that tells this Commission or the FCC what the OBF requires and how that impacts the
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1 number of fields or steps required. Again, WorldCom is not attacking the conclusion, per se, only
2 seeking the necessary facts to support CGE&Y's conclusion.

3 **3. Disparity in response times is statistically significant.**

4 Similarly, CGE&Y determined response times to have a "statistically significant" disparity
5 yet CGE&Y concludes "in part" that this is due to systems architectural considerations that are
6 quite common in the area of business-to business e-commerce transactions. Again, this
7 conclusory statement is not supported by underlying factual statements. First, CGE&Y concludes
8 that there is a statistically significant disparity. It should report the facts that caused it to draw this
9 conclusion. However, it then states this disparity is not "significant." Clearly, CGE&Y has an
10 obligation to explain why something found to be "statistically significant" is nevertheless not
11 "significant." First, CGE&Y should have discussed the two standards, explaining what
12 distinguishes one from another and which standard was applicable here, and why. Then it should
13 have explained what facts supported its finding that the disparity was statistically significant.
14 Next it should have explained what facts supported its finding that the disparity was not
15 significant. Finally, using the appropriate standard, it should have then drawn its conclusion. The
16 nature of the investigation should be discussed and the factual results of the investigation
17 disclosed.
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20 **4. CGE&Y excuses deviation based on outside factors. (Timeliness Test)**

21 CGE&Y excuses deviation in performance due to outside factors such as security
22 infrastructure and back-end systems. There are at least two flaws in this methodology. Once
23 again, these outside factors are not quantified, and identified, and separately tested. In one
24 instance, CGE&Y chalks up performance deviation to back-end security programs that may delay
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1 response a few seconds. However, such security times are not quantified, nor are they compared
2 to the total deviation in time between Qwest's retail and resale offerings. Security system run
3 times is something that may be quantified, and should be factored in a quantitative manner rather
4 than qualitative in a summary of a report.

5
6 Secondly, CGE&Y fails to adequately describe the need for the back-end systems, and
7 their cost/benefit to the CLEC offerings. If in fact the systems benefit the CLECs, those benefits
8 should be outlined specifically to show that the systems are not just there due to inefficient
9 development of competitive systems, but rather for the purpose of protecting and promoting
10 competition. CGE&Y again makes an unfair assumption that the need for back-end systems
11 adequately excuses any deviation in performance between retail and resale.

12
13 **5. CGE&Y does not explain how it weighted test results.**

14 CGE&Y performed quantitative evaluations, qualitative evaluations and timeliness
15 evaluations. As noted above it found Qwest required more fields and steps (quantitative
16 evaluation) and that CLECs had longer response times (timeliness evaluation). Just from its
17 description of the test results, one could conclude that Qwest failed the timeliness evaluation and
18 the quantitative evaluation, or two of the three relevant tests, and, therefore, the retail parity
19 evaluation. However, CGE&Y made the opposite conclusion. Apparently, CGE&Y weighted the
20 three evaluations differently so that the qualitative evaluation was paramount within the retail
21 parity evaluation. Nowhere within the TSD or the MTP is CGE&Y directed to favor one aspect
22 of the test over another. Again, CGE&Y has failed to state the facts to supports its conclusion.
23 Did CGE&Y attach different weight to each of the three evaluations? If so, what weighting did it
24 apply. If it treated each aspect of the test equally, it should so state.
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1 **6. Throughout the report CGE&Y relies on undefined terms.**

2 CGE&Y uses terms such as "largely accounted for," "quite common," "statistically
3 significant," and "substantially similar" without defining such terms. Absent definitions, these are
4 subjective measures. As discussed earlier, CGE&Y states that there was disparity in the number of
5 fields and steps required for the CLEC using an IMA-GUI to complete an order. CGE&Y states
6 this is "largely accounted for" by the OBF guidelines. "Largely accounted for" implies that there is
7 some portion that cannot be attributed to OBF guidelines, yet CGE&Y does not provide the
8 information of what portion of the extra fields and steps are not OBF required. Rather, it asks this
9 Commission and the FCC to take it on faith that the OBF is what is holding up Qwest's ordering
10 process, not other requirements imposed solely by Qwest in its proprietary system that it designed.

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12
13 CGE&Y does not identify prior to testing what criteria it uses to determine what it means
14 by "statistically significant" or "substantially similar," terms used in its conclusions. CGE&Y has
15 the ability to compare Qwest's performance to other ILECs when it states that acceptable delays
16 are consistent with other industry interfaces. However, CGE&Y not only failed to make such a
17 comparison, but it stated no factual basis for its conclusion. In this report, "statistically
18 significant" and "substantially similar" are vague and nebulous labels. When CGE&Y states
19 something is "substantially similar," does it mean it is within FCC standards or industry
20 standards? If so, such standards are not described or identified in its report, and should be.

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CONCLUSION

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3 For the reasons stated, WorldCom requests that CGE&Y expand its report and provide the
4 appropriate underlying factual information in this report and any future report it issues. Further,
5 WorldCom requests that CGE&Y not make any ultimate conclusions of law in this or any other
6 report, such as whether Qwest provides CLECs a meaningful opportunity to compete as part of its
7 report. Such ultimate conclusions should properly be made by the Commission or in
8 recommendations made by its staff.

9 Respectfully submitted this 7th day of September, 2001.

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