



0000023249

ORIGINAL

RECEIVED

JAN 14 P 13

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

6 **BEFORE THE ARIZONA CORPORATION COMMISSION**

7 **WILLIAM A. MUNDELL**
8 **Chairman**

Arizona Corporation Commission

DOCKETED

9 **JAMES M. IRVIN**
10 **Commissioner**

JAN 14 2002

11 **MARC SPITZER**
12 **Commissioner**

DOCKETED BY *mac*

13
14 **IN THE MATTER OF U S WEST**
15 **COMMUNICATIONS, INC.'S**
16 **COMPLIANCE WITH § 271 OF THE**
17 **TELECOMMUNICATIONS ACT OF**
18 **1996**

) **Docket No. T-0000A-97-0238**

19 **WORLDCOM, INC.'S COMMENTS ON PROPOSED FINDINGS OF FACT AND**
20 **CONCLUSIONS OF LAW ON QWEST'S COMPLIANCE WITH GENERAL**
21 **TERMS AND CONDITIONS, BFR PROCESS AND FORECASTING**

22 WorldCom, Inc., on behalf of its regulated subsidiaries, ("WorldCom") files its
23 comments on Staff's Proposed Findings of Fact and Conclusions of Law on Qwest's
24 Compliance with General Terms and Conditions, Bona Fide Request ("BFR") Process,
25 and Forecasting. WorldCom has also reviewed the comments filed by AT&T
26

1 Communications of the Mountain States, Inc. and TCG Phoenix, (collectively, "AT&T")
2 regarding these subjects and concurs in those comments as well as AT&T's previously
3 filed Comments. WorldCom will only address several issues. By limiting its argument
4 here, WorldCom is not abandoning its preferred positions stated in its testimony,
5 comments and briefs provided in this proceeding addressing these subjects and reserves
6 the right to raise any issue it has previously addressed before the appropriate forum.
7

8 **A. INTRODUCTION**
9

10 **Inclusion of consensus language from other states.** WorldCom reviewed
11 Qwest's SGAT dated November 30, 2001. That SGAT does not include much of the
12 language that Qwest, AT&T, WorldCom and other parties agreed to in Colorado and
13 Washington regarding General Terms and Conditions, the BFR Process and Forecasting.
14 Accordingly, WorldCom requests that Qwest be directed to file a new updated SGAT
15 containing consensus language on General Terms and Conditions, including the BFR
16 Process and Forecasting before Staff issues its final report on these subjects.
17

18 WorldCom further requests that Qwest footnote the updated SGAT showing the
19 *exhibit number reflecting the appropriate source of consensus language, whether the*
20 *exhibit was from Arizona, Colorado or Washington.* Since WorldCom did not participate
21 in the multi-state workshops, there should be no consensus language from the multi-state.
22

23 Finally, WorldCom requests that a Qwest witness certify under oath that Qwest has
24 accurately incorporated all consensus language. Until WorldCom can review Qwest's
25
26

1 updated SGAT that includes consensus language, WorldCom reserves the right to argue
2 Qwest has failed to properly include consensus language, if such language is missing.

3 **B. SPECIFIC COMMENTS**

4
5 **1. DISPUTED ISSUE NO. 8: How should conflicts between the SGAT and**
6 **other Qwest documents and tariffs be treated? (G-25, SGAT Section 2.3)**

7 Staff has modified Section 2.3.1. It has proposed the following last sentence:
8 “During the pendency of the Dispute Resolution, the Parties shall continue to perform their
9 obligations in accordance with the terms and conditions of this Agreement, for up to sixty
10 (60) days.” WorldCom requests this sentence be stricken from the SGAT. The language
11 proposed in Section 2.3.1 is identical in all respects to that ordered by the Hearing Officer
12 in Colorado except for inclusion of the last sentence, which was not included in the
13 Colorado SGAT.
14

15 The last sentence is unnecessary because inclusion of a requirement for the parties
16 to perform their obligations in accordance with the terms and conditions of this
17 Agreement, for up to sixty (60) days, will cause confusion with the dispute resolution
18 procedures under SGAT Section 5.18, a generally applicable term. In the event the parties
19 enter the dispute resolution process, if resolution takes more than 60 days, a period of time
20 not under the parties’ control, what should the parties do beginning on day 61 and
21 thereafter? While WorldCom certainly hopes that the dispute resolution process would
22 resolve a disputed issue within 60 days, there is no 60-day requirement in Section 5.18
23 mandating that disputes be resolved within 60 days.
24
25
26

1 In the alternative, the last sentence should be modified to state: “During the
2 pendency of the Dispute Resolution, the Parties shall continue to perform their obligations
3 in accordance with the terms and conditions of this Agreement” with no reference to any
4 time period, such as the 60-day period Staff proposes.
5

6 **2. DISPUTED ISSUE NO. 10 : Should AT&T’s proposed restrictions on**
7 **Qwest’s sale of exchanges in the Assignment Clause be adopted? (G-38, SGAT**
8 **Section 5.12)**

9 Staff has not adopted AT&T’s proposed language because “Qwest’s sale of 38 rural
10 wire centers to Citizens has been cancelled” and because “Staff believes this issue is now
11 moot and that Qwest should simply delete this provision from its SGAT.”

12 Although the sale of exchanges between Qwest and Citizens has been cancelled, the
13 concept of requiring that the interconnection agreement, for new exchanges, which Qwest
14 sells, be assigned to the purchaser for the entire term of the agreement and that Qwest
15 require the purchaser to agree to this condition is still necessary. As WorldCom stated,
16 this condition provides certainty and stability to the CLEC Community, and will support
17 the purpose of the federal Act to encourage local competition in all markets. Under the
18 federal Act, Qwest has different obligations regarding interconnection, access to UNEs
19 and resale, than Rural Telephone Companies (“RTCs”) under the federal Act. For
20 example, under the Act, RTCs are exempt from the additional obligations for ILECs found
21 in Section 251c in accordance with Section 251f(1)(A) until such RTC has received a bona
22 fide request for interconnection services, or network elements, and the Arizona
23 Corporation Commission determines that such a request is not unduly economically
24
25
26

1 burdensome, is technically feasible, and is consistent with Section 254, other than
2 subsections (b)(7) and (c)(1)(D) thereof.

3
4 In short, because of the different obligations under the Act for RTCs, this issue is
5 relevant. Allowing an RTC to acquire Qwest exchanges cannot be tantamount to
6 abridging a CLEC's contractual rights with Qwest for interconnection services and
7 network elements. If an RTC does not accept or Qwest is not obligated to assign its
8 interconnection agreements with CLECs, then CLEC rights are abridged.

9
10 Finally, the territory WorldCom was authorized to serve under its Certificate of
11 Convenience and Necessity granted by Decision 59983 was defined as "the exchanges
12 currently served by U S WEST Communications, Inc." That decision was issued on
13 January 16, 1997. Accordingly, WorldCom is authorized to serve exchanges served by U
14 S WEST, now Qwest, on January 16, 1997, no matter which telephone company serves
15 those exchanges in the future. WorldCom's interconnection agreement with Qwest
16 applied to any exchanges that WorldCom might choose to serve that U S WEST served on
17 January 16, 1997. Therefore, AT&T's proposed language should be adopted.

18
19
20 **3. DISPUTED ISSUE NO. 11: What is the appropriate scope of audits?
(G-51 - SGAT Section 18)**

21 As Staff states, CLECs believe the audit authority should be expanded to include
22 the right to examine services performed under the agreement (e.g., confirm that Qwest is
23 maintaining CLEC forecasts in the manner prescribed by the law). Qwest argues that the
24 SGAT contains a detailed and comprehensive dispute resolution process and that if CLECs
25
26

1 believe that Qwest failed to perform as required by the SGAT, a CLEC can initiate dispute
2 resolution proceedings pursuant to Section 5.18. Staff concurred with Qwest that aspects
3 of the CLEC proposed audits are too broad and that there are other mechanisms available
4 both within and external to the SGAT to ensure compliance.
5

6 Consistent with Staff's and Qwest's assertions, WorldCom requests that a third
7 sentence be added to Section 5.18.1 as follows: "Nothing in this Section 18 shall preclude
8 the right of any party to examine services performed under this Agreement and address
9 any alleged deficiencies of Qwest's performance of those services under Section 5.18
10 concerning dispute resolution proceedings, or under all other remedies available in law or
11 in equity." This sentence incorporates what Qwest and Staff assert are the CLEC's
12 existing rights under the SGAT.
13
14

15 **4. DISPUTED ISSUE NO. 14: Whether Qwest's SGAT has adequate**
16 **revenue protection language. (G-50(D): SGAT Section 11.34)**

17 In Colorado, Qwest and the CLECs agreed to the following language for Section
18 11.34:

19 11.34 Revenue Protection. Qwest shall make available to CLEC all present and
20 future fraud prevention or revenue protection features. These features include, but are not
21 limited to, screening codes, information digits '29' and '70' which indicate prison and
22 COCOT pay phone originating line types respectively; call blocking of domestic,
23 international, 800, 888, 900, NPA-976, 700 and 500 numbers. Qwest shall additionally
24 provide partitioned access to fraud prevention, detection and control functionality within
25
26

1 pertinent Operations Support Systems which include but are not limited to LIDB Fraud
2 monitoring systems.

3 11.34.1 Uncollectable or unbillable revenues resulting from, but
4 not confined to, Provisioning, maintenance, or signal network routing
5 errors shall be the responsibility of the Party causing such error or
6 malicious acts, if such malicious acts could have reasonably been
avoided.

7 11.34.2 Uncollectible or unbillable revenues resulting from the
8 accidental or malicious alteration of software underlying Network
9 Elements or their subtending Operational Support Systems by
10 unauthorized third parties that could have reasonably been avoided
11 shall be the responsibility of the Party having administrative control
of access to said Network Element or operational support system
software.

12 11.34.3 Qwest shall be responsible for any direct uncollectible
13 or unbillable revenues resulting from the unauthorized physical
14 attachment to Loop facilities from the Main Distribution Frame up to
15 and including the Network Interface Device, including clip-on fraud,
if Qwest could have reasonably prevented such fraud.

16 11.34.4 To the extent that incremental costs are directly
17 attributable to a revenue protection capability requested by CLEC,
those costs will be borne by CLEC.

18 11.34.5 To the extent that either Party is liable to any toll
19 provider for fraud and to the extent that either Party could have
20 reasonably prevented such fraud, the Party who could have
21 reasonably prevented such fraud must indemnify the other for any
22 fraud due to compromise of its network (e.g., clip-on, missing
information digits, missing toll restriction, etc.).

23 11.34.6 If Qwest becomes aware of potential fraud with respect
24 to CLEC's accounts, Qwest will promptly inform CLEC and, at the
25 direction of CLEC, take reasonable action to mitigate the fraud where
26 such action is possible.

1 WorldCom requests that Qwest include the above consensus language in its
2 updated SGAT.

3 **5. DISPUTED ISSUE NO. 15: Use of confidential information. (G-62,**
4 **SGAT Section 5.16)**

5 As directed by Staff, Qwest should be required to add language to its SGAT
6 concerning the treatment of confidential information in general. In Colorado, the parties
7 agreed to the following language:
8

9 5.16.3 Each Party shall keep all of the other Party's Proprietary Information
10 confidential and will disclose it on a need to know basis only. In no
11 case shall retail marketing, sales personnel, or strategic planning have
12 access to such Proprietary Information. The Parties shall use the other
13 Party's Proprietary Information only in connection with this
14 Agreement. Neither Party shall use the other Party's Proprietary
15 Information for any other purpose except upon such terms and
16 conditions as may be agreed upon between the Parties in writing. If
either Party loses, or makes an unauthorized disclosure of, the other
Party's Proprietary Information, it will notify such other Party
immediately and use reasonable efforts to retrieve the information.

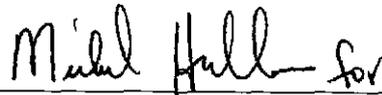
17 If the above language is included in Qwest's updated SGAT, WorldCom
18 believes Staff's concerns will have been addressed.
19
20
21
22
23
24
25
26

1 **C. CONCLUSION**

2 WorldCom requests that Qwest's SGAT be modified as discussed above and that
3 Staff's proposed language be modified or enhanced as described above.
4

5 RESPECTFULLY submitted this 14th day of January, 2002.

6 LEWIS AND ROCA LLP

7 

8 Thomas H. Campbell
9 40 N. Central Avenue
10 Phoenix, Arizona 85007
11 Telephone (602) 262-5723

12 - AND -

13 Thomas F. Dixon
14 WorldCom, Inc.
15 707 - 17th Street, #3900
16 Denver, Colorado 80202
17 Telephone: (303) 390-6206

18 Attorneys for WorldCom, Inc.

19
20
21 ORIGINAL and ten (10)
22 copies of the foregoing filed
23 this 14th day of January, 2002,
24 with:

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

COPY of the foregoing hand-delivered this 14th day of January, 2002, to:

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

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

Ernest Johnson, Director
Utilities Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

COPY of the foregoing mailed this 14th day of January, 2002, to:

Lyndon J. Godfrey
Vice President – Government Affairs
AT&T Communications of the Mountain States
111 West Monroe, Suite 1201
Phoenix, Arizona 85003

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

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

Richard M. Rindler
Swidler & Berlin
3000 K. Street, N.W.
Suite 300
Washington, DC 20007

LEWIS
AND
ROCA
LLP

LAWYERS

- 1 Maureen Arnold
US West Communications, Inc.
2 3033 N. Third Street
Room 1010
3 Phoenix, Arizona 85012
- 4 Jeffrey W. Crockett
Snell & Wilmer
5 One Arizona Center
Phoenix, Arizona 85004-0001
- 6 Richard P. Kolb
7 Vice President – Regulatory Affairs
OnePoint Communications
8 Two Conway Park
150 Field Drive, Suite 300
9 Lake Forest, Illinois 60045
- 10 Andrew O. Isar
TRI
11 4312 92nd Avenue N.W.
Gig Harbor, Washington 98335
- 12 Eric S. Heath
13 Sprint Communications Company L.P.
100 Spear Street, Suite 930
14 San Francisco, CA 94105
- 15 Steven J. Duffy
Ridge & Isaacson P.C.
16 3101 N. Central Avenue
suite 1090
17 Phoenix, Arizona 85012-1638
- 18 Timothy Berg
Fennemore, Craig, P.C.
19 3003 N. Central Avenue
Suite 2600
20 Phoenix, Arizona 85012-3913
- 21 Charles Steese
Qwest
22 1801 California Street, Ste. 5100
Denver, Colorado 80202
- 23 Joan S. Burke
24 Osborn & Maledon
2929 N. Central Avenue
25 21st Floor
Phoenix, Arizona 85067-6379
- 26

LEWIS
AND
ROCA
LLP
LAWYERS

- 1 Richard S. Wolters
AT&T & TCG
- 2 1875 Lawrence Street
Suite 1575
- 3 Denver, Colorado 80202

- 4 Michael M. Grant
Todd C. Wiley
- 5 Gallagher & Kennedy
2575 E. Camelback Road
- 6 Phoenix, AZ 85016-4240

- 7 Raymond S. Heyman
Michael Patten
- 8 Roshka Heyman & DeWulf
Two Arizona Center
- 9 400 Fifth Street
Suite 1000
- 10 Phoenix, Arizona 85004

- 11 Diane Bacon, Legislative Director
Communications Workers of America
- 12 5818 North 7th Street
Suite 206
- 13 Phoenix, Arizona 85014-5811

- 14 Bradley Carroll, Esq.
Cox Arizona Telcom, L.L.C.
- 15 1550 West Deer Valley Road
Phoenix, Arizona 85027

- 16 Joyce Hundley
- 17 United States Department of Justice Antitrust Division
1401 H Street, N.W.
- 18 Suite 8000
Washington, D.C. 20530

- 19 Daniel Waggoner
- 20 Davis Wright Tremaine
2600 Century Square
- 21 15011 Fourth Avenue
Seattle, Washington 98101-1688

- 22 Alaine Miller
- 23 NextLink Communications, Inc.
500 108th Avenue NE, Suite 2200
- 24 Bellevue, Washington 98004

- 25 Mark N. Rogers
Excell Agent Services, LLC
- 26 2175 W. 14th Street

LEWIS
AND
ROCA
LLP

LAWYERS

- 1 Tempe, Arizona 85281

- 2 Traci Grundon
Davis Wright Tremaine LLP
3 1300 S.W. Fifth Avenue
Portland, Oregon 97201

- 4 Mark P. Trinchero
5 Davis Wright Tremaine LLP
1300 S.W. Fifth Avenue, Suite 2300
6 Portland, Oregon 97201

- 7 Gena Doyscher
Global Crossing Local Services, Inc.
8 1221 Nicollet Mall
Minneapolis, Minnesota 55403-2420

- 9 Penny Bewick
10 New Edge Networks, Inc.
P.O. Box 5159
11 Vancouver, WA 98668

- 12 Jon Loehman
Managing Director-Regulatory
13 SBC Telecom, Inc.
5800 Northwest Parkway
14 Suite 135, Room I.S. 40
San Antonio, TX 78249

- 15 M. Andrew Andrade
16 5261 S. Quebec Street
Suite 150
17 Greenwood Village, CO 80111

- 18 Karen Clauson
Eschelon Telecom, Inc.
19 730 2nd Avenue South
Suite 1200
20 Minneapolis MN 55402

- 21 Megan Doberneck
Covad Communications Company
22 7901 Lowry Boulevard
Denver, CO 80230

- 23 Brian Thomas
24 Vice President Regulatory – West
Time Warner Telecom, Inc.
25 520 S.W. 6th Avenue
Suite 300
26 Portland, Oregon 97204

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

Patricia J. Griffin