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BEFORE THE ARIZONA CORPORATION COMMISSION

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CHAIRMAN

Arizona Corporation Commission

DOCKETED

JIM IRVIN  
COMMISSIONER

FEB 01 2002

MARC SPITZER  
COMMISSIONER

DOCKETED BY

In the Matter of Investigation into  
US West Communications, Inc.'s  
Compliance with Certain Wholesale  
Pricing Requirements for Unbundled  
Network Elements and Resale  
Discounts

Docket No: T-00000A-00-0194  
Phase II

WORLDCOM, INC.'S REPLY TO QWEST'S RESPONSE  
TO OTHER PARTIES' EXCEPTIONS

WorldCom, Inc., on behalf of its operating subsidiaries ("WorldCom") respectfully submits this Reply to Qwest's Response to Other Parties' Exceptions to the Recommended Opinion and Order ("ROO"). Qwest specifically responds to WorldCom's exceptions on power cable lengths, "double counting," market pricing and directory assistance listing ("DAL") databases. WorldCom's Reply is limited to these issues, but WorldCom continues to support all its previously filed exceptions.

A. Power Cable Lengths

Qwest misses WorldCom's point concerning power cable lengths.

1 Qwest explains that there are two types of average cable lengths used in Qwest's  
2 current central offices, depending on the size of the DC power request. Qwest Response,  
3 pp. 25-26. WorldCom's concern is that the use of average lengths from existing central  
4 offices in Arizona is not the appropriate measure regardless of the size of the DC power  
5 request. Cable lengths should be based on a modern, forward-looking central office like  
6 the office used by Qwest in its rent study. WorldCom Hearing Exhibit 6, the "Rent  
7 Study." In that Rent Study, a one-story, 8,000 square foot central office is used. Using a  
8 normal configuration, one would expect the building to be approximately 80 feet by 100  
9 feet, so that no cable lengths would need to be 177 feet as proposed in some cases by  
10 Qwest. A 70 foot cable length based on the Rent Study should be adopted.

13 **B. Double Counting Concerns**

14 **1. HVAC and Electrical Costs in Space Construction and Rent Charges**

15 With respect to double counting of HVAC and electrical costs in the Space  
16 Construction charge, Qwest again misses the point. Qwest claims that it already removed  
17 from its Rent Study the cost of HVAC and electrical costs. Qwest Response, p. 26. On  
18 the contrary, only a portion of those costs were removed. The 1998 Rent Study (using a  
19 one-story building) reduced some of the HVAC and electrical costs from a similar 1996  
20 study (using a three-story building), but did not eliminate them entirely. Qwest cannot  
21 dispute that "distribution facilities" are still included in the Rent Study. *See* WorldCom  
22 Hearing Exhibit 6, Appendix, p. 1. WorldCom Exceptions, pp. 11-12; WorldCom Post-  
23 Hearing Brief, p.8; Transcript, pp. 421-422; Lathrop Direct, pp. 51-52.

1 Qwest witness Mr. Fleming claims that Qwest's floor space rent includes only  
2 "centralized system" costs while "distribution facilities" costs are included in Qwest's  
3 space construction charge. The centralized system serves all users of the central office  
4 while the distribution facilities are the specific electrical and mechanical facilities  
5 connecting the central system to the collocation space. Mr. Fleming suggests that Qwest  
6 removed all "distribution facilities" from its rent costs, but, contrary to this explanation,  
7 the Rent Study includes 70 feet of distribution line costs for electrical and mechanical  
8 facilities that connect directly to the collocation space. See WorldCom Hearing Exhibit 6,  
9 Appendix, p.1. Qwest could not explain away this double counting except to say that it is  
10 adjusted "someplace else." Transcript, pp. 432-437. It appears that the same distribution  
11 facilities included in the Rent Study also are included in the Space Construction costs. As  
12 a result, the collocation Space Construction charge should be reduced to eliminate this  
13 double counting.  
14  
15  
16

17 **2. Power and Land and Building Costs**

18 Qwest claims that WorldCom's concerns with double counting of land and building  
19 costs lack merit because those factors are only applied to space outside of the CLEC's  
20 rented collocation space and therefore there is no double counting with the collocation  
21 rent. Qwest Response, pp. 26-27. Qwest also claims that it is necessary to spread power  
22 costs evenly over all assets in a central office because it is not administratively feasible to  
23 distinguish between central office assets that use power and those that do not. *Id.* Other  
24 than administrative convenience, Qwest fails to explain why collocators, who also pay  
25  
26

1 directly for power and land and building, should pay more for facilities, like overhead  
2 cable racking, that use no power or floor space.

3  
4 WorldCom's point is that the costs of the central office that are not being used by  
5 the CLECs are already recovered by Qwest from rates paid by other Qwest customers. It  
6 is double recovery to include those same factors in the collocation prices.

7  
8 Qwest develops its power and land and building factors in a manner that allows  
9 Qwest to spread (recover) its entire power and land and building costs by applying those  
10 costs to other investments. For example, Qwest's power factor is developed as the ratio of  
11 power costs to central office equipment costs, so that Qwest's power costs are paid by  
12 customers of, for example, switched services, since the switch uses power (and occupies  
13 land and building space).

14  
15 In developing these cost factors, Qwest does not consider the payments collocators  
16 make, for example rent (*i.e.*, land and buildings). Since collocators pay rent to compensate  
17 Qwest for the land and building space they occupy, for Qwest to apply its land and  
18 building factor to any other collocation-related elements results in double-recovery of land  
19 and building costs. The same is true for power costs.

20  
21 Qwest applies power and land and building factors to cable racking and other  
22 investments. Qwest applies these factors generally as a means to spread the cost of a  
23 central office power plant and the land and building investments over its various services.  
24 Collocation service, however, is different from other services in that collocators already  
25 pay directly for power and space rental. Other collocation elements, therefore, should not  
26

1 include land and building investment. To do otherwise would permit Qwest to “over  
2 recover” its power and land and building cost. Lathrop Direct, p. 40. WorldCom  
3 respectfully requests that all power and land and building cost factors be eliminated from  
4 collocation rates.  
5

6 **C. Information Services and Databases**

7 **1. Market Pricing**

8 Qwest proposed unsubstantiated, discriminatory market pricing for numerous  
9 information services and database elements. WorldCom contends that Qwest’s proposed  
10 market prices must be justified. The Commission needs evidence in the record to  
11 determine if such rates are just and reasonable. Qwest disagrees and says that this docket  
12 only addresses UNE pricing and that Qwest does not have to support its market based  
13 prices. Qwest Response, pp. 27-28 (n. 16).  
14  
15

16 Qwest did not provide any studies to support its market-based prices and concedes  
17 that a “profit” factor is somehow included. Transcript, pp. 565, 572-573 and 688-689. In  
18 fact, no Qwest witness could explain the basis for Qwest’s proposed market prices. More  
19 remarkably, Qwest witnesses took the position that the Commission does not need to  
20 approve these rates and that they were being provided merely as a courtesy. Transcript, p.  
21 688. This position is in stark contrast to Qwest’s position in last year’s retail rate case  
22 settlement in which wholesale prices were put into basket two and the Commission was  
23 told it did not need to consider basket two in establishing retail rates because basket two  
24 would be reviewed by the Commission in separate proceedings. Transcript, p. 689; *see*  
25  
26

1 also A.C.C. Decision No. 63487, p. 5, ll. 21-26. In fact, Qwest argues in a filing in the  
2 Arizona §271 proceeding that wholesale rates are subject to review by state commissions  
3 and must comply with §252 of the Act. See Qwest Corporation's Legal Brief on Impasse  
4 Issues Relating to General Terms and Conditions, pp. 5-6, attached at Tab A.  
5

6 Of equal importance, there is no assurance based on this record that these market  
7 prices are not discriminatory. In response to questions, Qwest's witnesses could not  
8 confirm that these market prices are imputed by Qwest. Transcript, p. 574. The  
9 Commission should strike all market-based pricing in this docket until Qwest provides  
10 studies for review as well as evidence that these proposed prices are imputed and not  
11 discriminatory.  
12

13 **2. DAL**  
14

15 Qwest claims that there is no legal basis for subjecting Qwest to regulated rates for  
16 providing access to directory assistance information ("DAL") database and cites to the  
17 FCC's UNE Remand Order. Qwest Response, p. 28 (n. 16). But Qwest does not address  
18 WorldCom's argument that there is nothing in the FCC UNE Remand Order that prohibits  
19 state commissions from requiring DAL database to be made available at TELRIC prices.  
20 Several states have done so, such as Texas and New York. Qwest does not dispute that it  
21 remains the only reliable source for DAL information and that, without such data,  
22 WorldCom is put at a direct competitive disadvantage. Nor does Qwest address  
23 WorldCom's argument that DAL is subject to the Act's non-discriminatory provisions  
24 regarding dialing parity, pursuant to Section 251(b)(3) of the Act. Finally, Qwest did not  
25  
26

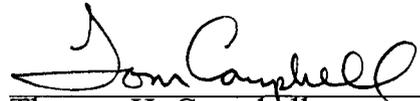
1 address WorldCom's objections to the transport fee. The Commission should order that  
2 Qwest provide DAL database to CLECs on a TELRIC basis and file cost studies  
3 supporting a TELRIC price.  
4

5 **3. ICNAM**

6 With respect to ICNAM database, WorldCom agrees that the question of whether it  
7 should be provided on a batch basis is now being addressed in the §271 proceeding. If the  
8 Commission determines that ICNAM should be provided on a batch basis, it will be  
9 necessary that the pricing of "batch" ICNAM be handled in this wholesale pricing  
10 proceeding, perhaps in Phase III.  
11

12 RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of February, 2002.

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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF U S WEST  
COMMUNICATIONS, INC.'S COMPLIANCE  
WITH § 271 OF THE  
TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. T-00000A-97-0238

QWEST CORPORATION'S LEGAL BRIEF ON IMPASSE ISSUES  
RELATING TO GENERAL TERMS AND CONDITIONS

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## I. INTRODUCTION

Pursuant to the schedule set by the Commission, Qwest Corporation ("Qwest") submits its Legal Brief on Impasse Issues Relating to General Terms and Conditions contained in its Statement of Generally Available Terms and Conditions ("SGAT"). As set forth below, Qwest's proposals for general terms and conditions to be included in the SGAT are reasonable and well-supported in existing practice and law. Accordingly, the Commission should adopt Qwest's proposals on the general terms and conditions issues that are at impasse.

The parties have had several meaningful opportunities in this proceeding and others to present their views on all of the checklist items identified under section 271 of the Telecommunications Act of 1996 ("Act"). Although the SGAT's general terms and conditions do not involve any specific checklist item under the Act, Qwest has agreed to work with the competitive local exchange carriers ("CLECs") participating in this workshop in an effort to achieve consensus on the general terms and conditions.

Qwest appreciates that general terms and conditions play a role in achieving the appropriate balance of risk between the parties to an interconnection agreement. However, as set forth below and demonstrated in the record here, many of the CLECs' proposals do not achieve an appropriate balance, but rather seek to improperly tip the scales in their favor. In many respects, the proposals of the CLECs represent attempts by strategic competitors to control Qwest's business operations in a manner not required nor ever contemplated by the Act. Qwest has every intention of standing behind the services that it provides under the SGAT and has substantial inducements to do so, including Performance Indicator Definitions ("PIDs"), Quality Performance Assurance Plans ("QPAPs"), and the possibility of the Federal Communications Commission reexamining Qwest's entry into the in-region long distance market under section 272 of the Act.

Qwest's proposed SGAT provisions, many of which incorporate the proposals of AT&T, XO and other CLECs, provide a fair and balanced means of resolving disputes between the parties, amending interconnection agreements, and complying with the Act's pick-and-choose requirements. Qwest proposed provisions not only accommodate future changes in law but significantly accelerate access by CLECs to new services and products offered by Qwest. As evidenced by the redlined version of the "frozen" SGAT filed by Qwest on July 25, 2001, Qwest has made an enormous number of changes, both large and small, in response to the CLECs' comments.

In considering the positions of the parties, it is important to remember what the SGAT is and what it is not. The SGAT is Qwest's standard contract offering, intended to accommodate those CLECs who choose to forego the time and expense associated with negotiating an individual interconnection agreement addressing their individual requirements and CLECs that desire to pick and choose portions of the SGAT into their existing interconnection agreement. Even after the SGAT has been adopted by this Commission, CLECs will remain free to negotiate a specific agreement if they wish, as many of the larger CLECs undoubtedly will do.

As they have in connection with previous workshops, the parties have been extremely successful in narrowing the issues in dispute relating to SGAT general terms and conditions. This brief addresses those relatively few issues that remain open. Qwest's SGAT must be approved if it complies with Sections 251 and 252(d) of the Act and "other requirements of State law."<sup>1</sup> In many instances, Qwest has agreed to modifications that were unnecessary for compliance purposes, but that avoided disputes or promoted the competitive goals of CLECs. Although disputes remain, most of these issues relate to the mechanics of Qwest's SGAT as opposed to its compliance with Section 271 of the Act. Because Section 271 proceedings are not the proper forum to create new requirements under the Act, the Commission should approve

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<sup>1</sup> See 47 U.S.C. § 252(f)(2).

Qwest's language if it comports with the Act, FCC regulations, and applicable state law even if the CLECs favor slightly different wording.<sup>2</sup>

## II. GENERAL TERMS AND CONDITIONS IMPASSE ISSUES

### A. Section 1.7.2 – AT&T's Proposal Regarding "Comparable Rates, Terms and Conditions" Is Unnecessary and Unwarranted and Should Be Rejected.

During the workshop and after all the testimony had been filed and all the relevant issues had been identified, AT&T proposed, for the first time, section 1.7.2. By this section, AT&T would obligate Qwest to offer new products and services on substantially the same rates, terms and conditions as existing products and services when the new and existing products and services are comparable. AT&T offered section 1.7.2 because it fears that Qwest will unilaterally attach unreasonable rates, terms and conditions to Qwest's new products and services. As part of section 1.7.2, AT&T also tried to create a presumption of comparability, meaning that if a party disputes the similarity between new and existing products and services, Qwest would bear the burden of demonstrating that the products and services are not comparable.<sup>3</sup> The Commission should reject AT&T's proposed provision because it is unnecessary, unwarranted and will only lead to confusion and delay.

#### 1. Proposed Section 1.7.2 Is Unnecessary and Unwarranted.

Section 1.7.2 is unnecessary and unwarranted for at least three reasons. First, the SGAT already contains sufficient safeguards against Qwest's imposition of unreasonable rates, terms and conditions on new products and services. Second, this Commission will insure that any

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<sup>2</sup> See Memorandum Opinion and Order, *Application of SBC Communications, Inc. Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Dkt. No. 00-65, FCC 00-238 ¶¶ 22-26 (June 30, 2000) ("SBC Texas Order").

<sup>3</sup> See *id.* at 37.

rates, terms and conditions offered by Qwest are reasonable. Third, Qwest has the right to establish contractual rates, terms, and conditions for its products.

**a. The SGAT Already Contains Sufficient Safeguards Against Unreasonable Rates, Terms and Conditions On New Products and Services.**

The SGAT already protects CLECs from unreasonable rates, terms and conditions on new products and services in at least two ways. First, section 5.1.6 protects CLECs by reaffirming Qwest's obligation to price new products and services in accordance with all applicable laws and regulations. Section 5.1.6 states in relevant part:

All services and capabilities currently provided hereunder (including resold Telecommunications Services, Unbundled Network Elements, UNE combinations and ancillary services) and all new and additional services or Unbundled Network Elements to be provided hereunder, shall be priced in accordance with all applicable provisions of the Act and the rules and orders of the Federal Communications Commission and orders of the Commission.

By this provision, Qwest contractually obligated itself to offer new products and services in a manner that is reasonable and consistent with the law. Moreover, section 252(f)(2) of the Act requires that all SGAT rates comport with section 252(d) of the Act – the TELRIC and resale discount provisions. AT&T's section 1.7.2 is unnecessary and redundant. Qwest has already committed to offer its new products and services under reasonable rates, terms and conditions.

Second, in the SGAT Qwest commits to maintain the CICMP process, which protects CLECs by allowing them to offer input and make suggestions on Qwest's new product offerings.<sup>4</sup> Under CICMP, Qwest will notify the CLECs of all new products before it formally

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<sup>4</sup> See SGAT § 12.2.6. All references to the "SGAT" are to the SGAT "lite" attached as Exhibit A hereto and filed contemporaneously with this brief. Qwest notes that minor language changes may be appropriate to the SGAT lite to incorporate all of the agreements reached by the parties. Qwest will consult with CLECs on such changes and will incorporate them in a revised SGAT lite to be filed within the next few days. Specifically, Qwest believes that the parties are likely in agreement over SGAT language governing Revenue Protection (section 11.34) and Term of Agreement (section 5.2). Because of disrupted schedules during the past week, however, Qwest has been unable to confirm the language at

introduces them in the market.<sup>5</sup> CLECs will then be able to review and comment on the new products and raise any concerns.<sup>6</sup> If CLECs are concerned about the rates, terms or conditions of a new product, they may work with Qwest to resolve the issues. CLECs will not be caught off guard or surprised by any of the rates, terms and conditions and will have ample opportunity to dispute what they believe is inappropriate or unreasonable. The CLECs' active participation in a process in which Qwest's new product offerings are described and discussed insures that Qwest will not unilaterally attach unreasonable rates, terms and conditions to its new products and services.

**b. This Commission Will Insure That Any Rates, Terms and Conditions Offered By Qwest Are Reasonable.**

Section 1.7.2 is also unnecessary because Qwest's rates are subject to review and oversight by each individual state commission. Section 252(f)(2) of the Act mandates that commissions cannot approve an SGAT unless they specifically find that SGAT rates comply with section 252(d). Because Qwest's rates for its products and services are heavily regulated (here, specifically regulated) and subject to cost dockets, there is little chance that Qwest can

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issue and to incorporate it into the SGAT lite. Again, Qwest will confirm agreement concerning this language and will file a revised SGAT lite within the next week.

<sup>5</sup> See Ex. 6-Qwest-83 (Multi-State Tr. [6/28/01]) at 38. Citations to "Tr." are to the transcripts of general terms and conditions workshop proceedings held in this docket as well as those held in Arizona on June 11-15, 2001, the Multi-State collaborative proceeding on June 25-28, 2001, and Washington on July 9-10, 2001. Because of the substantial overlap between the issues here and these other general terms and conditions proceedings, and because of the evolving nature of the issues actually in dispute, the parties agreed to "import" into the record here the records developed (transcripts and exhibits) in those workshops. See, e.g., Colorado Transcript ("CO Tr.") (8/21/01) at 105-107 (noting parties' agreement regarding record importation). Consistent with this agreement, on August 27, 2001, Qwest filed its Notice of Filing of Transcripts and Exhibits from the Colorado Workshop Regarding General Terms and Conditions. The Notice includes the exhibit numbers assigned the materials in Colorado, and Qwest used those numbers in identifying them in this brief. Finally, because the Washington proceeding is the most recent of these proceedings and, therefore, explored the most recent iteration of the parties' positions, citations to prefiled testimony is to that filed in Washington.

<sup>6</sup> See Ex. 6-Qwest-83 (Multi-State Tr. [6/28/01]) at 38.

successfully impose unreasonable rates. If Qwest attempts to charge excessive amounts for its new products, this Commission would surely order Qwest to adjust its rates.

**2. Proposed Section 1.7.2 Promotes Confusion and Delay.**

Section 1.7.2 promotes confusion and delay because it employs vague terms that are subject to multiple interpretations and adds an unnecessary layer of analysis in resolving new product disputes. Nowhere in section 1.7.2 does AT&T define the terms "comparable products and services" or "substantially the same rates, terms and conditions." Because these terms are not defined, the parties will undoubtedly dispute what is "comparable" and what is "substantially the same," thus leading to lengthy dispute resolution proceedings and delayed product offerings. Rather than promote efficiency, section 1.7.2 will only cause unnecessary delay.

Furthermore, section 1.7.2 adds an unnecessary layer of analysis in resolving disputes over the proper rates, terms and conditions. Instead of focusing on what the rates should be, section 1.7.2 focuses on whether there are comparable products. According to section 1.7.2, whenever the parties dispute the reasonableness of Qwest's rates, terms and conditions, the first inquiry is whether the new product is comparable to an existing product. Regardless of whether the products are comparable, the second inquiry examines the appropriateness of the rates, terms and conditions. For example, if the products are comparable, the parties must examine whether the rates, terms and conditions are substantially similar. If the products are not comparable, the parties must examine whether the rates, terms and conditions are appropriate and reasonable. This two-step approach is completely unnecessary. Rather than examine whether the products are comparable, the parties should consider the appropriateness of the rates, terms and conditions in the first instance. There is no reason to add another potential point of dispute when the heart of the issue can be addressed directly.