



0000109915

EXCEPTION

RECEIVED

2002 APR 29 P 3:46

AZ CORP COMMISSION  
DOCUMENT CONTROL

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

**BEFORE THE ARIZONA CORPORATION COMMISSION**

6 **WILLIAM A. MUNDELL**  
7 **Chairman**

Arizona Corporation Commission

**DOCKETED**

8 **JAMES M. IRVIN**  
9 **Commissioner**

APR 29 2002

10 **MARC SPITZER**  
11 **Commissioner**

DOCKETED BY	
-------------	--

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

**Docket No. T-00000A-97-0238**

17 **WORLDCOM INC.'S EXCEPTIONS TO**  
18 **RECOMMENDED ORDER**  
19 **ON CNAM DATABASE**

20 WorldCom, Inc., on behalf of its operating affiliates ("WorldCom"), respectfully  
21 takes exception to the Administrative Law Judge's April 18, 2002 Recommended Order  
22 ("RO"). The proposed decision to deny CLECs bulk access to the CNAM database  
23 violates the federal Telecommunication Act non-discrimination provision (§251(c)(3)),  
24 and is contrary to public interest because it will inhibit competition and the consumer  
25 benefits that flow from competition.  
26

1 There is no dispute about the following key facts:

- 2 1. CLEC bulk access to CNAM is technically feasible.
- 3 2. Qwest has bulk access to the CNAM database.
- 4 3. The Arizona Corporation Commission has the authority to order bulk access
- 5 to the CNAM database.
- 6

7 Nevertheless, in §40 of the RO, the Administrative Law Judge offers three reasons

8 for the decision to deny bulk access to CNAM database. First, “it appears . . . that

9 MCIW’s per query access is not discriminatory as Qwest accesses the database in the same

10 manner as the CLECs.” Second, “concerns over proprietary information associated with

11 the databases of other carriers should be resolved prior to ordering bulk access to the

12 CNAM database.” Third, “. . . for bulk access to be meaningful, it must be available on a

13 nationwide basis” and, therefore, presumably should be decided by the FCC, not the ACC.

14

15

16 **I. Per Query Access is Discriminatory Because Qwest has Access to the Entire**

17 **Database.**

18 The RO concludes that Qwest provides access to the CNAM database in a non-

19 discriminatory manner based on Qwest’s testimony that it accesses the database in the

20 same manner as CLECs.

21

22 Contrary to the RO’s conclusion, there was evidence of discrimination. As the

23 FCC found in the DAL database case, “per query access does not constitute equal access

24 for a competing provider that wants to provide directory assistance from its platform.”

25

26

1 WorldCom's Closing Brief, pp. 4-5.<sup>1</sup> The mere fact that WorldCom is precluded from  
2 developing innovative services that it could otherwise offer if it had download bulk access  
3 is enough to demonstrate discrimination. There is no dispute that Qwest has access to the  
4 entire CNAM database even if it currently chooses to access that database on a per query  
5 basis. The fact that Qwest chooses not to develop new and innovative services for its  
6 CNAM database (Transcript, p. 97)<sup>2</sup> should not preclude WorldCom from developing new  
7 services using bulk access to CNAM.  
8

9  
10 WorldCom also presented evidence that per query-access is discriminatory because  
11 WorldCom must pay repeatedly for the same information accessed from Qwest's database.  
12 As Mr. Lehmkuhl established at the workshop, when WorldCom uses Qwest's CNAM  
13 database on a per query basis, it must dip Qwest's CNAM database every time a Qwest  
14 customer calls a WorldCom customer to display the number of the calling party on the  
15 WorldCom customer's premise equipment. When a large volume customer makes  
16 numerous calls throughout Arizona, WorldCom is required to dip the Qwest database for  
17 the SAME number for each call WorldCom completes because it is not permitted to store  
18 the information it obtains from previous queries to Qwest's database. Transcript, pp. 13-15  
19 and 88.  
20  
21

22  
23 <sup>1</sup> See also, In the Matters of Implementation of the Telecommunications Act of 1996,  
24 Telecommunications Carriers' Use of Customer Proprietary Network Information and  
25 Other Customer Information, Implementation of the Local Competition Provisions of the  
26 Telecommunications Act of 1996, Provision of Directory Listing Information, Third  
Report and Order in CC Docket No. 96-115, Second Order on Reconsideration in CC  
Docket No. 96-98, and Notice of Proposed Rulemaking in CC Docket No. 99-273, at ¶  
153 (September 9, 1999) (Hereinafter, "1999 Directory Listing Order").

<sup>2</sup> Transcript means Reporter's Transcript of Proceedings of January 10, 2002.

1  
2 **II. Proprietary Information Concerns are not a Valid Basis for Denying Bulk**  
3 **Access to the CNAM Database.**

4 The RO expressed concern that the CNAM database contains proprietary  
5 information. This concern is misplaced because proprietary information in the bulk access  
6 CNAM is still protected by the Arizona SGAT and federal law. WorldCom has  
7 challenged Qwest's method of access to CNAM, not provisions contained in the SGAT or  
8 elsewhere that relate to proprietary information and how the material obtained from the  
9 database may be used. Specifically, SGAT Section 9.17.2.10 provides as follows:  
10

11 9.17.2.10 CLEC shall arrange its Calling Party Number based services in such a  
12 manner that when a calling party requests privacy, CLEC will not  
13 reveal that caller's name or number to the called party (CLEC's End  
14 User Customer). CLEC will comply with all FCC guidelines and, if  
15 applicable, the appropriate Commission rules, with regard to honoring  
the privacy indicator.

16 Moreover, SGAT Section 12.3.22.3 provides that "CPNI information and NXX  
17 activity reports are also included in this [ICONN] database." Staff raised no concern  
18 about CPNI issues in regard to that section when it issued its report on general terms and  
19 conditions undoubtedly because CPNI is governed by existing state and federal rules, and  
20 WorldCom is bound by those rules. As a result, the ICONN database is available to  
21 CLECs with no specific CPNI restrictions in the SGAT. The same rationale should also  
22 be applied to the CNAM database.  
23  
24  
25  
26

1 **III. Nationwide Bulk Access Should not be a Prerequisite to the ACC Ordering**  
2 **Bulk Access in Arizona.**

3 The RO concluded that nationwide availability of bulk provisioned CNAM  
4 database is required for maximum public benefit and that the Arizona Corporation  
5 Commission cannot order such nationwide availability. Although the benefits of download  
6 access are even greater if achieved on a nationwide basis, the RO's conclusion ignores the  
7 Arizona Corporation Commission's role in enforcing nondiscriminatory access to UNEs.  
8 CNAM bulk access may be pursued on a state-by-state basis. Michigan, Georgia, and  
9 Tennessee have already taken steps to require such nondiscriminatory access within their  
10 own states.  
11

12  
13 Moreover, many states had already decided that nondiscriminatory access to DAL  
14 information required download bulk access to the database before the FCC decided the  
15 issue in its 1999 Directory Assistance Order-- despite the fact that US West continued to  
16 argue against such access. See, 1999 Directory Assistance Listing Order at ¶¶ 150 – 151;  
17 see, e.g. Maryland Public Service Commission, Case No. 87311 Phase B, Order  
18 No. 73725, Oct. 9, 1997 at p. 3.<sup>3</sup> Similar to those state decisions on DAL database,  
19 nothing in the Act or in Arizona law precludes the Commission from deciding whether  
20  
21

22  
23 <sup>3</sup> "The Commission affirms and adopts the findings of the proposed order that  
24 access to the underlying directory assistance database information should be  
25 provided as requested by MCI on a data dump basis. The Commission agrees  
26 that access to such information is unbundled and must be provided in a  
nondiscriminatory manner, and the data dump proposal of MCI will better  
enable MCI to develop its own directory assistance services and enhance  
competition."

1 nondiscriminatory access to a UNE includes download bulk access to the CNAM  
2 database.

3  
4 **III. Bulk Access to the CNAM Database is in the Public Interest.**

5 There are no ubiquitous, practical alternatives to getting bulk access from Qwest.<sup>4</sup>

6 The record shows that bulk access will allow WorldCom to provide higher quality,  
7 more timely service. WorldCom is prevented from controlling the service quality,  
8 managing the format of the database, or adding new features, thereby allowing only for the  
9 provision of inferior service. Per query access limits WorldCom's ability to offer other  
10 service offerings that will enable it to compete effectively with Qwest. Transcript, pp. 10-  
11 11, 23-25, 82-83, 96-99.

12  
13 Access to CNAM on a bulk basis will spur competition because bulk access will  
14 allow the potential for development of innovative services (Transcript, pp. 13-14, 16-17  
15 and 40). The query only process proposed by Qwest makes CLECs dependent on Qwest's  
16 systems and prevents CLECs from structuring their own calling name databases to provide  
17 efficient, equal and quality service to their customers. The public interest of bulk basis  
18 CNAM has been recognized by Michigan, Tennessee and Georgia. *See* WorldCom  
19 Hearing Exhibits, W-7.1 through W-7.6.

20  
21  
22  
23 <sup>4</sup> The Staff acknowledged that self-provisioning or third-party provider alternatives of  
24 CNAM are at best inferior options. WorldCom believes the record shows that there are  
25 literally no third-party providers who could provide a complete CNAM database on a bulk  
26 basis. Qwest is the only entity in Arizona with a comprehensive database, because of its  
incumbent status, with information on the majority of subscribers in Arizona. Transcript,  
pp. 59, 60, 69 and 99-101.

1           The provision of CNAM on a bulk basis will make CLECs more efficient and cost  
2 effective.<sup>5</sup> First of all, CLECs will not have to use multiple “dips” for the same number.  
3 Transcript, pp. 109-110 and 112. Second, CLECs will save money because they will not  
4 have as much need to pay for links to the Qwest STP. Transcript, pp. 72-73. Third,  
5 CLECs will save time by not having to route through Qwest’s query system as opposed to  
6 accessing information directly through the CLEC’s own database. Under Qwest’s  
7 proposal, WorldCom must first determine which CLEC owns the number, then route the  
8 call out to the CLEC and back to make the “dip.” It also forces WorldCom to incur  
9 development costs associated with creating a complex routing scheme within its network.  
10 If WorldCom maintains its database via bulk access to Qwest’s database, a lengthy step in  
11 the Caller ID process will be eliminated.

#### 15   **IV. Conclusion**

16           WorldCom respectfully requests that the RO be modified to authorize access to  
17 CNAM on a bulk basis and has attached a proposed amendment as Exhibit A.

---

23 <sup>5</sup> Contrary to Qwest’s position and the Staff’s conclusion, the relevant issue is not simply  
24 the direct cost of self-provisioning the database, but the lost opportunity costs due to the  
25 competitive disadvantage to WorldCom resulting from discriminatory access. Even if the  
26 cost of downloading the bulk data, purchasing subsequent updates, and storing the data in  
WorldCom’s own facilities is more expensive than per query access, download bulk  
access will allow WorldCom to put the data to better use in other telecommunications  
services and thus better offset the costs it incurs in self-provisioning the data.

1 RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of April, 2002.

2 LEWIS AND ROCA LLP

3  
4 

5 Thomas H. Campbell  
6 40 N. Central Avenue  
7 Phoenix, Arizona 85007  
8 (602) 262-5723

9 - AND -

10 Thomas F. Dixon  
11 707 -17<sup>th</sup> Street, #3900  
12 Denver, Colorado 80202  
13 (303) 390-6206

14 Attorneys for WorldCom, Inc.

15 ORIGINAL and ten (10)  
16 copies of the foregoing filed  
17 this 29<sup>th</sup> day of April, 2002,  
18 with:

19 Arizona Corporation Commission  
20 Docket Control - Utilities Division  
21 1200 W. Washington Street  
22 Phoenix, Arizona 85007

23 COPY of the foregoing hand-  
24 delivered this 29<sup>th</sup> day of April,  
25 2002, to:

26 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

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

4 COPY of the foregoing mailed  
this 29<sup>th</sup> day of April, 2002, to:

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

9 Scott Wakefield  
Residential Utility Consumer Office  
10 2828 N. Central Avenue  
Phoenix, Arizona 85004

11 Mark Dioguardi  
12 Tiffany and Bosco PA  
500 Dial Tower  
13 1850 N. Central Avenue  
Phoenix, Arizona 85004

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

17 Maureen Arnold  
18 US West Communications, Inc.  
3033 N. Third Street  
19 Room 1010  
Phoenix, Arizona 85012

20 Jeffrey W. Crockett  
21 Snell & Wilmer  
One Arizona Center  
22 Phoenix, Arizona 85004-0001

23 Richard P. Kolb  
Vice President – Regulatory Affairs  
24 OnePoint Communications  
Two Conway Park  
25 150 Field Drive, Suite 300  
Lake Forest, Illinois 60045  
26

LEWIS  
AND  
ROCA  
LLP  
LAWYERS

- 1 Andrew O. Isar  
TRI  
2 4312 92<sup>nd</sup> Avenue N.W.  
Gig Harbor, Washington 98335
- 3 Eric S. Heath  
4 Sprint Communications Company L.P.  
100 Spear Street, Suite 930  
5 San Francisco, CA 94105
- 6 Steven J. Duffy  
Ridge & Isaacson P.C.  
7 3101 N. Central Avenue  
Suite 1090  
8 Phoenix, Arizona 85012-1638
- 9 Timothy Berg  
Fennemore, Craig, P.C.  
10 3003 N. Central Avenue  
Suite 2600  
11 Phoenix, Arizona 85012-3913
- 12 Andrew Crain  
Qwest Corporation  
13 1801 California Street, Ste. 5100  
Denver, Colorado 80202
- 14 Joan S. Burke  
15 Osborn & Maledon  
2929 N. Central Avenue  
16 21<sup>st</sup> Floor  
Phoenix, Arizona 85067-6379
- 17 Richard S. Wolters  
18 AT&T & TCG  
1875 Lawrence Street  
19 Suite 1575  
Denver, Colorado 80202
- 20 Michael M. Grant  
21 Todd C. Wiley  
Gallagher & Kennedy  
22 2575 E. Camelback Road  
Phoenix, AZ 85016-4240
- 23 Raymond S. Heyman  
24 Michael Patten  
Roshka Heyman & DeWulf  
25 Two Arizona Center  
400 Fifth Street, Suite 1000  
26 Phoenix, Arizona 85004

- 1 Diane Bacon, Legislative Director  
Communications Workers of America  
2 5818 North 7<sup>th</sup> Street  
Suite 206  
3 Phoenix, Arizona 85014-5811
- 4 Bradley Carroll, Esq.  
Cox Arizona Telcom, L.L.C.  
5 1550 West Deer Valley Road  
Phoenix, Arizona 85027
- 6 Joyce Hundley  
7 United States Department of Justice Antitrust Division  
1401 H Street, N.W.  
8 Suite 8000  
Washington, D.C. 20530
- 9 Daniel Waggoner  
10 Davis Wright Tremaine  
2600 Century Square  
11 15011 Fourth Avenue  
Seattle, Washington 98101-1688
- 12 Alaine Miller  
13 1633 Westlake Avenue N, #200  
Seattle, Washington 98109-6214
- 14 Mark N. Rogers  
15 Excell Agent Services, LLC  
2175 W. 14<sup>th</sup> Street  
16 Tempe, Arizona 85281
- 17 Traci Grundon  
Davis Wright Tremaine LLP  
18 1300 S.W. Fifth Avenue  
Portland, Oregon 97201
- 19 Mark P. Trincherro  
20 Davis Wright Tremaine LLP  
1300 S.W. Fifth Avenue, Suite 2300  
21 Portland, Oregon 97201
- 22 Gena Doyscher  
Global Crossing Local Services, Inc.  
23 1221 Nicollet Mall  
Minneapolis, Minnesota 55403-2420
- 24 Penny Bewick  
25 New Edge Networks, Inc.  
P.O. Box 5159  
26 Vancouver, WA 98668

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

Kevin Chapman  
SBC Telecom, Inc.  
300 Convent Street  
Room 13-Q-40  
San Antonio, TX 78205

M. Andrew Andrade  
5261 S. Quebec Street  
Suite 150  
Greenwood Village, CO 80111

Karen Clauson  
Eschelon Telecom, Inc.  
730 2<sup>nd</sup> Avenue South  
Suite 1200  
Minneapolis MN 55402

Megan Doberneck  
Covad Communications Company  
7901 Lowry Boulevard  
Denver, Colorado 80230

Brian Thomas  
Vice President Regulatory – West  
Time Warner Telecom, Inc.  
520 S.W. 6<sup>th</sup> Avenue  
Suite 300  
Portland, Oregon 97204

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

*Betty J. Griffin*

## Exhibit A

Delete Paragraph 40 on pages 8 through 9 and insert the following:

We require Qwest to provide access to the CNAM database on a bulk or download basis. As with the DAL database, per query access to the CNAM database is inferior to bulk access and violates the non-discrimination provisions of the federal Telecommunications Act because Qwest has bulk access to the entire CNAM database. Qwest is the only entity in Arizona with a comprehensive CNAM database and bulk access to that database is technically feasible and has been ordered by other states. Self provisioning or obtaining the database from a third party is an inferior option. Providing bulk access will allow CLECs to structure their databases to suit their customers' needs as contemplated by the 1996 Act. It will allow the CLECs to provide Caller ID service to its customers with the same level of efficiency as Qwest while controlling the service quality, management of the database and having the opportunity to add new features. Bulk access will be in the public interest because it will allow for the development of innovative services and be more efficient and cost effective. Moreover, because all local exchange carriers operate under the same laws regarding the protection of the proprietary nature of the customer information, Qwest's concerns here are unfounded. The current provisions of the federal Telecommunications Act and the Arizona SGAT adequately protect the proprietary nature of the information in the CNAM database.

Page 9, Conclusion of Law 2.

Delete the phrase "and the Commission hereby approves and adopts the Second Supplemental Report on Qwest's compliance with Checklist Item No. 10" and insert in its place:

" . . .subject to providing bulk access to the CNAM database."

Page 10 in the first Ordering paragraph add the phrase, "as modified above" after the word "adopted."