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AZ CORP COMMISSION
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1 **LEWIS**
2 **AND**
3 **ROCA**
4 **LLP**
5 **LAWYERS**

6 **BEFORE THE ARIZONA CORPORATION COMMISSION**

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

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

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

Arizona Corporation Commission

DOCKETED

APR 29 2002

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| DOCKETED BY | <i>ms</i> |
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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-00000A-97-0238

19 **SECOND SUPPLEMENT TO**
20 **WORLD COM, INC.'S RESPONSE TO QWEST CORPORATION'S**
21 **COMMENTS ON RECOMMENDED OPINION AND ORDER**
22 **OF THE ADMINISTRATIVE LAW JUDGE**
23 **ON QWEST'S PERFORMANCE ASSURANCE PLAN**

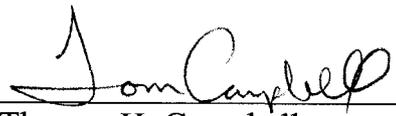
24 WorldCom, Inc., on behalf of its regulated subsidiaries ("WorldCom") filed its
25 Response to Qwest's Comments on the Recommended Opinion and Order ("ROO") on
26 April 22, 2002. WorldCom hereby supplements that filing with the Colorado Public
Utilities Commission's Order on Qwest's Performance Assurance Plan. This Order was

1 issued on April 24, 2002 and denies the Office of Consumer Counsel's Motion for
2 Clarification and Grants Qwest's Motion for Clarification which was Exhibit G to
3 WorldCom's Response.
4

5 Due to the expense of copying and mailing this Order, WorldCom also requests that
6 it only be required to file the Order with the official Commission copies. All other parties
7 will be provided electronic copies of the Order. If for any reason a party wants a copy of
8 the Order, please contact the undersigned.
9

10 RESPECTFULLY submitted this 29th day of April, 2002.

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1 ORIGINAL and ten (10)
2 copies of the foregoing filed
3 this 29th day of April, 2002,
4 with:

5 Arizona Corporation Commission
6 Docket Control – Utilities Division
7 1200 W. Washington Street
8 Phoenix, Arizona 85007

9 COPY of the foregoing hand-
10 delivered this 29th day of April, 2002,
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17 Jane Rodda, Administrative Law Judge
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26 COPY of the foregoing mailed
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Decision No. C02-468

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 01I-041T

IN THE MATTER OF THE INVESTIGATION INTO ALTERNATIVE APPROACHES
FOR A QWEST CORPORATION PERFORMANCE ASSURANCE PLAN IN COLORADO.

**ORDER DENYING THE OFFICE OF CONSUMER
COUNSEL'S MOTION FOR CLARIFICATION AND
GRANTING QWEST'S MOTION FOR CLARIFICATION**

Mailed Date: April 26, 2002
Adopted Date: April 24, 2002

I. STATEMENT, FINDINGS, AND CONCLUSIONS

A. On April 15, 2002, the Office of Consumer Counsel ("OCC") filed a Motion for Clarification of Decision on Remand and Other Issues Pertaining to the Colorado Performance Assurance Plan, Decision No. C02-399 ("CPAP Decision").

B. On April 17, 2002, Qwest Corporation, formerly known as U S WEST Communications, Inc. ("Qwest"), also filed a Motion for Clarification.

C. In Decision No. R02-441-I, the hearing commissioner shortened response time for both of these motions. Responses to the OCC's and Qwest's Motions were to be filed by April 22, 2002.

D. On April 22, 2002, the OCC filed an Objection to Qwest's Motion for Clarification and Qwest filed a Response to the Motion for Clarification of the Office of Consumer Counsel.

E. In its Motion for Clarification, filed on April 15, 2002, the OCC states:

If the Commission's intent is to retain clear authority to order Qwest to implement changes in the CPAP at the three-year review that impose new obligations on the company, then the OCC requests clarification of the Commission's intent by deleting the first sentence of § 18.10...The language in § 18.10 conflicts with CPAP language that permits such modifications as part of the three-year review.

F. Section 18.10 in pertinent part reads, "At the three-year review, the Commission cannot require Qwest, under the authority granted to it under the CPAP, to undertake any new obligations."

G. Further, the OCC states that it has strenuously supported this Commission's exercise of the full breadth of its authority and discretion to assure Colorado that Qwest will irretrievably open the local market to competition. It asserts that the elimination of the first sentence in § 18.10 will clarify the Commission's intent as expressed by the accompanying order.

H. In its response, Qwest states that it disagrees with and opposes the OCC's Motion. Qwest asserts that the CPAP Decision states that the Commission may assert whatever

authority the Commission might have to order changes at the Three-Year Review, independent of that which would arise under Qwest's voluntary offering of the CPAP. Qwest maintains that the language in § 18.10 is appropriate and should not be deleted.

I. In Qwest's Motion for Clarification it states that there is a provision that is inconsistent with CPAP § 18.0 contained in the language of Attachment A to the CPAP Decision. This language, found at § 16.9 states, "The Commission shall have the right to modify this plan at any time as appropriate." In order to avoid confusion with the provisions in § 18.0, Qwest asks that the Commission allow a limiting phrase be added to the end of the sentence in § 16.9 that reads, "...in accordance with section 18.0."

J. In the Verification of R. Steven Davis filed on April 17, 2002, Qwest indicates that with the minor change outlined above, it agrees to offer the CPAP attached to Decision No. C02-399 as a part of its Colorado Statement of Generally Available Terms and Conditions ("SGAT").

K. The OCC's Objection to Qwest's Motion for Clarification indicates that the addition of the proposed phrase for § 16.9 would exclude the Commission's ability to make changes to the CPAP that fall under its independent authority under state and federal law. Therefore, the OCC asks that in addition to Qwest's proposed phrase, the sentence in § 16.9 be

changed to read as follows: "In addition to any Commission authority under state and federal law, the Commission shall have the right to modify this plan in accordance with section 18.0."

L. We will deny the OCC's motion. The process for developing a CPAP began over a year ago. Since the process began, a great deal of negotiating, word-smithing and compromising has taken place. We are reluctant to make the changes that the OCC requests for this reason. Qwest has stated in its Verification that we have formulated a plan that it can live with as part of its SGAT. We see no reason to change the language in § 18.10 at this time. If it is determined at one of the six-month reviews or at the three-year review that this language needs to be clarified, the issue can be readdressed then, with full comments from the participants.

M. As for Qwest's motion, we will grant the addition of the proposed language to § 16.9. We believe the sentence in that section already implies the inclusion of the § 18.0 provisions and do not have a problem with stating it more explicitly.

II. ORDER

A. The Commission Orders That:

1. The Office of Consumer Counsel's Motion for Clarification is denied.

2. Qwest Corporation's Motion for Clarification is granted.

3. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 24, 2002.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

CHAIRMAN RAYMOND L. GIFFORD
ABSENT.