

1 **Paragraph 2.4**

2 In paragraph 2.4, Qwest has added “in circumstances where the combination of a
3 benchmark and a small sample size is such that it would require Qwest to meet a 100%
4 standard, Qwest will be allowed to round up to the nearest integer.” Qwest provides no
5 citation to the Commission’s Order directing this revision, and states that it is a “clarifying
6 modification” with no further explanation. Until the Commission approves this
7 modification, WorldCom opposes this language because it is not in compliance with
8
9 Decision No. 64888.

10 **Paragraph 13.3**

11 In this paragraph, Qwest has failed to comply with Paragraph 120 of the
12 Commission’s Order. Qwest continues to define a force majeure event using broader
13 language than that found in Section 5.7 of its Statement of Generally Available Terms and
14
15 Conditions (“SGAT”). That section of the SGAT provides:

16 Neither Party shall be liable for any delay or failure in performance of
17 any part of this Agreement from any cause beyond its control and without its
18 fault or negligence including, without limitation, acts of nature, acts of civil
19 or military authority, government regulations, embargoes, epidemics,
20 terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear
21 accidents, floods, work stoppages, power blackouts, volcanic action, other
22 major environmental disturbances, or unusually severe weather conditions
23 (collectively, a Force Majeure Event).

24 Qwest’s proposed force majeure language in subsection (1) includes other
25 events that are not in Section 5.7 or authorized in the Commission’s Order,
26 specifically, “equipment failure” and “other events beyond Qwest’s control.”

1 In addition, Qwest has failed to comply with the Order by failing to state that
2 the force majeure language in Section 13.3 is appropriate only for benchmark
3 standards and should not excuse parity failures found in Paragraph 120 of the
4 Commission's Order.
5

6 **Paragraph 13.4**

7 In this paragraph, Qwest has failed to comply with Paragraph 124 of the
8 Commission's Order. That paragraph directs Qwest to delete the reference to
9 "liquidated damages." Qwest deleted both the reference to "liquidated damages"
10 and "assessments" and substituted the word "payments" for both terms. The
11 Commission did not order deletion of the word "assessments." Qwest should use
12 the word "assessments" and delete its use of the word "payments" as stated in
13 Paragraph 129 of the Commission Order.
14
15

16 **Paragraph 13.6**

17 In this paragraph, Qwest has failed to comply with the oral amendment that was
18 made at the Commission's deliberations held on May 30, 2002, that stated if Qwest
19 believed it was paying twice for the same performance miss, it would have the burden of
20 proving that allegation and could use the dispute resolution provisions found in Section
21 5.18 of the SGAT. While the Commission's Order appears to have failed to incorporate
22 the amended language, it is stated in the transcript of the May 30 deliberations on page
23 313, lines 10-14, and discussed and approved formally on page 314, line 25 to page 318,
24 line 1.
25
26

1 **Paragraph 14.4**

2 In this paragraph, Qwest has failed to comply with Paragraph 94 by stating that
3 “Qwest may not make changes to the Performance Indicator Definitions (“PIDs”)
4 contained in the PAP or the statistical methodology for calculating the PID results as
5 required by the PAP unless it obtains approval from the Commission.”
6

7 The Order stated Qwest could not change “the performance measurements and
8 reporting system unless the Commission approves it in advance . . .” Qwest’s use of “the
9 statistical methodology for calculating the PID results” is more narrow than the “reporting
10 system.” Therefore, Qwest’s phrase should be replaced with “reporting system” as stated
11 in the Order.
12

13 **Paragraph 15.0**

14 In this paragraph, Qwest has failed to comply with the Order by using the word
15 “Alternatively,” to begin the fourth sentence. WorldCom objects to this introductory word
16 because the Commission’s power to conduct its own audit is in addition to its right to
17 approve the selection of an auditor, not as an alternative to approve an auditor.
18

19 Accordingly, “Alternatively” should be deleted and replaced with “Additionally.”
20

21 **Paragraph 15.5**

22 In this paragraph, Qwest has failed to comply with Paragraph 41 by stating that
23 “CLECs have the ability to seek an investigation in conjunction with a second consecutive
24 month miss.” The Order states that “Qwest should investigate consecutive two-month
25 failures for measures at the Tier II level, and when an individual CLEC requests a root
26

1 cause analysis.” Qwest’s language is inaccurate and more restrictive than ordered and
2 should state the verbatim language contained in Paragraph 41.

3 **Paragraph 15.6 and 16.0 (Footnotes 44 and 45 of redlined version of PAP)**

4 Footnotes 44 and 45 in the redlined version have been transposed. What is
5 identified as Footnote 44 should be the citation in Footnote 45, and vice versa.
6

7 **Attachment 1:** Qwest has assigned PO-19 to Tier II, Low. While the Commission
8 approved inclusion of PO-19 into the PAP, it did not classify the measure. Qwest has
9 assigned this measure a low value and has provided no compensation to CLECs if its
10 stand-alone test environment (“SATE”) does not mirror production. The requirement that
11 Qwest’s SATE mirror the production environment is mandated by the Federal
12 Communications Commission and has been a fundamental in these 271 proceedings.
13 Accordingly, PO-19 should be both a Tier I and Tier II measure with a higher value to
14 induce Qwest to continue its development of SATE and to ensure it does not backslide.
15

16 **Attachment 1 (Footnotes 51 and 52 of redlined version of PAP)**

17 Footnote 51 should be associated with PID MR-12, which no longer is a PID, not
18 MR-11, and footnote 52 should, therefore, be deleted. PID MR-11 is in the PAP.
19

20 **CONCLUSION**

21 For the reasons stated, WorldCom requests the Commission order Qwest to modify
22 its PAP to be consistent with Decision No. 64888 as discussed above.
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26

1 RESPECTFULLY submitted this 19th day of June, 2002.

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