

**BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

In the Matter of the Investigation Into

U S WEST COMMUNICATIONS, INC.'s

Compliance with Section 271 of the
Telecommunications Act of 1996.

Docket No. UT-003022

DIRECT TESTIMONY OF

MICHAEL W. SCHNEIDER

ON BEHALF OF WORLDCOM, INC.

ADDRESSING

GENERAL TERMS AND CONDITIONS

June 7, 2001

1 **Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.**

2 **A.** My name is Michael W. Schneider. I am a commercial attorney for WorldCom,
3 Inc. (“WorldCom”). My business address is 2400 N. Glenville Dr., Richardson, Texas
4 75082.

5 **Q. PLEASE DESCRIBE YOUR RESPONSIBILITIES AS A COMMERCIAL**
6 **ATTORNEY FOR WORLDCOM.**

7 **A.** I am responsible for negotiating interconnection agreements with various Bell
8 Operating Companies for WorldCom. In that capacity, I review and address, among
9 other things, what are referred to as general terms and conditions for interconnection
10 agreements negotiated in accordance with the federal Telecommunications Act of 1996
11 (“federal Act”).

12 **Q. HAVE YOU PARTICIPATED IN THIS PROCEEDING PREVIOUSLY?**

13 **A.** Yes, I was involved in the negotiation of language addressing checklist item 3
14 concerning access to poles, ducts and rights of way found generally in Section 10.8 of
15 Qwest’s Statement of Generally Available Terms (“SGAT”).

16 **Q. PLEASE DESCRIBE YOUR RELEVANT EXPERIENCE WITH**
17 **WORLDCOM.**

18 **A.** I have been employed by WorldCom for over six years as a commercial attorney.
19 For five years of those years I was assigned to network and facilities. For the remainder,
20 I have been assigned to carrier transactions. Carrier Transactions is responsible for legal
21 support for negotiations for interconnection agreements with Bell Operating Companies.

22

1 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

2 **A.** I will address issues raised in the Direct Testimony filed by Larry Brotherson
3 addressing general terms and conditions and sections of the Qwest Washington SGAT
4 that was attached to his testimony.

5 **Q. PLEASE ADDRESS MR. BOTHERSON'S DIRECT TESTIMONY.**

6 **A.** In my opinion, I believe Qwest's general terms and conditions are insufficient. I
7 am attaching to my testimony two documents that are taken from WorldCom's model
8 interconnection agreement. The first document is identified as Exhibit MWS-2 and is a
9 document comparing language taken from WorldCom's model "Part A, General Terms
10 and Conditions" with Qwest's corresponding language. It addresses many of the same
11 subjects identified in Qwest's SGAT, but not all and provides language not included in
12 Qwest's SGAT. The second document identified as Exhibit MWS-3 is entitled "Part B,
13 Definitions". It addresses some of the same definitions contained in Section 2 of Qwest's
14 SGAT, but also defines many terms that are not defined in Qwest's SGAT but are
15 relevant here.

16 **Q. DO YOU NEED TO EXPLAIN ANY OF THE PROVISIONS CONTAINED**
17 **IN THESE TWO DOCUMENTS?**

18 **A.** No. The language contained in these documents speaks for itself. However, as is
19 evident from the material contained in these documents, the WorldCom documents in
20 many instances more thoroughly address the subject matter of this workshop or address
21 matters not addressed in Qwest's SGAT that should be adopted here. I consider the
22 WorldCom language to be the type of standard general terms and conditions that would

1 be relevant to any interconnection agreements. The definitions are based on terms used
2 within the industry or where definitions have been provided by the federal Act, the
3 Federal Communications Commission (“FCC”) or other industry forums

4 **Q. DO YOU HAVE ANY SPECIFIC CONCERNS ABOUT THE SECTIONS**
5 **OF THE SGAT THAT MR. BROTHERSON HAS ADDRESSED IN THIS**
6 **WORKSHOP?**

7 **A.** Yes, I do. I have incorporated portions of the SGAT Lite provided by Mr.
8 Brotherson. He has made changes to the SGAT that are reflected in blue, and my
9 changes are in any other color. Although I prefer the language I have provided in MWS-
10 1, I have also provided a “redlined” version of sections within Qwest’s SGAT below.

11 **Q. PLEASE EXPLAIN WORLDCOM’S CONCERNS.**

12 **A.** I believe Qwest’s SGAT should be modified as follows:

13 **Section 1**

14 **Section 1.0 - GENERAL TERMS**

15 1.1 This Statement of Generally Available Terms and Conditions (“SGAT”)
16 for Interconnection, unbundled network elements, Ancillary Services, and Resale of
17 Telecommunications Services is filed by Qwest Corporation (“Qwest”), a Colorado
18 Corporation with offices at 1801 California Street, Denver, Colorado 80202, pursuant to
19 Section 252(f) of the Telecommunications Act of 1996, for purposes of fulfilling Qwest’s
20 obligations under Sections 222, 251(a), (b), and (c), 252, 271, and other relevant
21 provisions of the Act and the rules and regulations promulgated thereunder.¹

22
23 1.2 If this document, or portions thereof, is being used as the basis for
24 negotiations of an Interconnection Agreement, it is between _____,
25 (“Competitive Local Exchange Carrier” or “CLEC”) a _____ corporation and Qwest
26 Corporation (“Qwest”), a Colorado corporation, pursuant to Section 252(f) of the

¹ Note – Throughout this document, the term “U S WEST” has been replaced with the term “Qwest”. While all other changes in this document are shown with revision marks, the change of U S WEST to Qwest has not been shown with revision marks, only because of the substantial volume of the changes.

1 Telecommunications Act of 1996, for purposes of fulfilling Qwest’s obligations under
2 Sections 222, 251(a), (b), and (c), 252, 271, and other relevant provisions of the Act and
3 the rules and regulations promulgated thereunder.

4
5 1.3 This Agreement sets forth the terms, conditions and pricing under which
6 Qwest will offer and provide to any requesting CLEC network Interconnection, access to
7 unbundled network elements, separately or in any technically feasible combination,
8 Ancillary services, and Telecommunications Services available for resale within the
9 geographical areas in which both Parties are providing local exchange service at that
10 time, and for which Qwest is the incumbent Local Exchange Carrier within the State of
11 Washington for purposes of providing local Telecommunications Services. This
12 Agreement is available for the term set forth herein.

13
14 1.4 Individual CLECs may adopt this SGAT, in whole or in part, in lieu of, or
15 in addition to, entering into an individual Interconnection agreement, by signing the
16 Signature Page in Section 22 of this SGAT and by delivering a signed copy of this SGAT
17 to Qwest, pursuant to the notification provision of this SGAT contained in Section 5.21,
18 or by opt in notification. Upon adoption of the SGAT, or any portion thereof, by CLEC,
19 the SGAT becomes an Interconnection agreement between Qwest and CLEC, or a part of
20 an interconnection agreement between Qwest and CLEC. *The date on which Qwest*
21 *receives an executed copy of this SGAT shall hereafter be referred to as the “Effective*
22 *Date” of the Agreement between Qwest and CLEC.*

23
24 1.5 This SGAT, once it is approved or permitted to go into effect by the
25 Commission, offers CLECs an alternative, or an additional option, to negotiating an
26 individual Interconnection agreement with Qwest, ~~*purchasing from the Colorado Local*~~
27 ~~*Network Interconnection and Service Resale Tariff*~~ or adopting an existing approved
28 Interconnection agreement between Qwest and another CLEC pursuant to Section 252(i)
29 of the Act. In this respect, neither the submission nor approval of this SGAT, nor any
30 provision herein, shall affect Qwest’s willingness to negotiate an individual agreement
31 with any requesting carrier pursuant to Section 252 of the Telecommunications Act of
32 1996.

33
34 1.6 Qwest may modify this SGAT prior to the date it is approved or permitted
35 to go into effect. If Qwest files a modification, the section modified shall be considered
36 withdrawn, and the section as modified will be approved or permitted to go into effect
37 pursuant to the Schedule for Review set forth in 252(f) of the Act. For the purposes of
38 the Schedule for Review set forth in section 252(f) of the Act, the sixty ~~*sixty-calendar-*~~
39 ~~*day (60) day*~~ timeframe for this SGAT to take effect shall commence from the filing of
40 this SGAT and shall not be affected by the filing of any modification.

41
42 1.7 Following the date this SGAT is approved or allowed to take effect, Qwest
43 may file amendments to this SGAT, which shall be approved or permitted to take effect
44 pursuant to the Schedule for Review set forth in Section 252(f) of the Act. At the time

1 any amendment is filed, the section amended shall be considered withdrawn, and no
2 CLEC may adopt the section considered withdrawn following the filing of any
3 amendment, even if such amendment has not yet been approved or allowed to take effect.

4
5 1.7.1 Notwithstanding the above or anything contained in Section 1 of
6 this SGAT, if the Commission orders, or Qwest chooses to offer and CLEC
7 desires to purchase, new Interconnection services, access to additional
8 Unbundled Network Elements, additional Ancillary Services or
9 Telecommunications Services available for Resale which are not contained in
10 this SGAT, no formal amendment to the Interconnection Agreement is
11 necessary. Qwest will notify CLEC of the availability of these new services
12 through the product notification process through the Co-Provider Industry
13 Change Management Process ("CICMP"). CLEC must first update the relevant
14 section(s) of the New Product Questionnaire to establish ordering and billing
15 processes. Then by placing its orders, CLEC agrees to abide by all of the then
16 current rates, terms and conditions as set forth in the then current Template
17 Agreement applicable to such new services. If CLEC wishes to negotiate an
18 Amendment with different terms and conditions than defined in the then current
19 Template Agreement, CLEC agrees to abide by those terms and conditions until
20 the Amendment is approved and a parallel processing letter agreement is
21 executed.
22

23 **Section 2**

24 In Section 2, Qwest does not specifically include Washington state rules,
25 regulations and laws within the definition of “Existing Rules” although state rules,
26 regulations and laws are not specifically excluded. The definition of Existing Rules
27 should specifically include state rules and regulations and state laws. The SGAT should
28 also reflect in this section that this Agreement is in compliance with Existing Rules, as
29 opposed to “based upon” Existing Rules. In addition, Section 2.2 identifies some specific
30 rulings, but obviously not all. The references to specific rulings should be deleted for
31 more generic language.

32 Finally, language regarding the incorporation of Tariffs, IRRG product

1 descriptions, Technical Publications and other documents outside of the Agreement
2 which address matters set forth in the Agreement, should be revised so that Qwest cannot
3 do a “back-door”, unilateral amendment this Agreement by revising such documents or
4 filing a conflicting Tariff. Qwest should not be allowed to undercut or supercede
5 provisions of the SGAT, or interconnection agreement resulting from all or a portion of
6 the SGAT, by filing similar yet inconsistent provisions in Qwest tariffs. For the SGAT or
7 interconnection agreement to have a meaningful commercial purpose, the CLEC must be
8 able to rely on its terms and conditions and know that they cannot be unilaterally changed
9 by Qwest through otherwise unrelated tariff filings. This is an essential premise of a
10 contractual relationship and why Congress chose interconnection agreements - and not
11 interconnection tariffs - as the basis for ILEC/CLEC relationships under the Act.

12 The filing of a tariff to supercede the SGAT or interconnection agreement is
13 fundamentally at odds with the requirement of the Act that the parties "negotiate the
14 particular terms and conditions of agreements" to fulfill the duties described in the Act.
15 The Act contemplates that the detailed terms and conditions will be set forth in the
16 interconnection agreement between the parties. Section 251(c)(1) of the Act requires
17 Qwest to "negotiate in good faith ... the particular terms and conditions" of an
18 interconnection agreement. The tariff is a document prepared by Qwest; it is not a
19 product of negotiation by two parties. Any attempt to avoid obligations arising under an
20 individualized contract by referring to non-negotiable tariffs is a clear violation of the
21 Act. WorldCom proposes the following revisions to Section 2.

22 **Section 2.0 - INTERPRETATION AND CONSTRUCTION**

1 2.1 This Agreement includes this Agreement and all Exhibits appended hereto,
2 each of which is hereby incorporated by reference in this Agreement and made a part
3 hereof. All references to Sections and Exhibits shall be deemed to be references to
4 Sections of, and Exhibits to, this Agreement unless the context shall otherwise require.
5 The headings used in this Agreement are inserted for convenience of reference only and
6 are not intended to be a part of or to affect the meaning of this Agreement. Unless the
7 context shall otherwise require, any reference to any agreement, other instrument
8 (including Qwest or other third party offerings, guides or practices), statute, regulation, or
9 rule ~~or Tariff~~ applies to such agreement, instrument, statute, regulation or; rule ~~or Tariff~~
10 as amended and supplemented from time to time (and, in the case of a statute, regulation
11 or; rule ~~or Tariff~~, to any successor provision).

12
13 2.2 The provisions in this Agreement are based, in large part, on the existing
14 state of the law, rules, regulations and interpretations thereof, as of the date hereof (the
15 “Existing Rules”). Among the Existing Rules are the results of arbitrated decisions by
16 the Commission which are currently being challenged by Qwest or CLEC. Among the
17 Existing Rules are certain FCC rules and orders that are the subject of, or affected by, the
18 opinion issued by the Supreme Court of the United States in AT&T Corp., et al. v. Iowa
19 Utilities Board, et al. on January 25, 1999. Many of the Existing Rules, including rules
20 concerning which Network Elements are subject to unbundling requirements, may be
21 changed or modified during legal proceedings that follow the Supreme Court opinion.
22 Among the Existing Rules are the FCC’s orders regarding Bell Operating Companies’
23 (BOCs)’ applications under Section 271 of the Act. Qwest is basing the offerings in this
24 Agreement on the Existing Rules, including the FCC’s orders on BOC 271 applications.
25 Nothing in this Agreement shall be deemed an admission by Qwest or CLEC concerning
26 the interpretation or effect of the Existing Rules or an admission by Qwest or CLEC that
27 the Existing Rules should not be vacated, dismissed, stayed or modified. Nothing in this
28 Agreement shall preclude or estop Qwest or CLEC from taking any position in any forum
29 concerning the proper interpretation or effect of the Existing Rules or concerning whether
30 the Existing Rules should be changed, dismissed, stayed or modified. To the extent that
31 the Existing Rules are changed, vacated, dismissed, stayed or modified, then this
32 Agreement and all contracts adopting all or part of this Agreement shall be amended to
33 reflect such modification or change of the Existing Rules. ~~Where the Parties fail to agree~~
34 ~~upon such an amendment within sixty (60) days from the effective date of the~~
35 ~~modification or change of the Existing Rules, it shall be resolved in accordance with the~~
36 ~~Dispute Resolution provision of this Agreement.~~ It is expressly understood that this
37 Agreement will also be amended ~~corrected~~ to reflect the outcome of generic proceedings
38 or dockets initiated under or pursuant to the Act by the Commission for pricing, service
39 standards, or other matters covered by this Agreement. This Agreement does not
40 incorporate the rates, terms and conditions of any tariff. If Qwest files or is required to
41 file a tariff or makes or is required to make a similar filing that would otherwise be
42 governed by this Agreement, Qwest shall: (i) consult with CLEC reasonably in advance
43 of the filing about the form and substance of the filing; (ii) provide to CLEC its proposed
44 filing and obtain CLEC’s agreement on the form and substance prior to the filing; and

1 (iii) take all steps reasonably necessary to ensure that the tariff or other filing imposes
2 obligations upon Qwest that are as close as possible to those provided in this Agreement
3 and preserves for CLEC the full benefit of the rights otherwise provided in this
4 Agreement. Qwest may not otherwise file any tariff or similar filing that purports to
5 govern the services provided under this Agreement that is inconsistent with the terms and
6 conditions (including rates) set forth in this Agreement. -Where the Parties fail to agree
7 upon such an amendment within sixty (60) days from the effective date of the
8 modification or change of the Existing Rules or Commission order, it shall be resolved in
9 accordance with the Dispute Resolution provision of this Agreement. This Section 2.2
10 shall be considered part of the rates, terms and conditions of each Interconnection,
11 service and network element arrangement contained in this Agreement, and this Section
12 2.2 shall be considered legitimately related to the purchase of each Interconnection,
13 service and network element arrangement contained in this Agreement.

14
15 ~~2.3 In cases of conflict between Qwest's IRRG product descriptions, methods~~
16 ~~and procedures, or a Technical Publication, and this Agreement, the rates, terms and~~
17 ~~conditions of this Agreement shall prevail over such IRRG product descriptions, methods~~
18 ~~and procedures, or a Technical Publication.~~

19 In cases of conflict between Qwest's 1.) IRRG product descriptions, 2.) methods
20 and procedures, [or a] 3.) Technical Publications or 4.) any other Qwest information
21 or documentation, including but not limited to Product Notifications, that purport
22 to address matters that are addressed in this Agreement, and this Agreement, then
23 the rates, terms and conditions of this Agreement shall prevail over such IRRG product
24 descriptions, methods and procedures, [or a] Technical Publications or any other
25 Qwest documentation. In addition, no Qwest documentation shall add terms and
26 conditions that are not already contained in this Agreement. If Qwest believes that
27 any rate, term or condition contained in this Agreement needs further
28 clarifications, Qwest will submit such proposed clarifications to CLEC under the co-
29 provider change management process ("CICMP") described in Section of this
30 Agreement for negotiation and approval. In the event, Qwest and CLEC cannot
31 agree, Qwest may seek to amend this agreement if it desires to clarify the rates,
32 terms or conditions of this Agreement. Further, in the event, Qwest and CLEC
33 cannot agree, it shall be resolved in accordance with the Dispute Resolution
34 provision of this Agreement. In no event shall Qwest modify this Agreement or any
35 document referenced in this Agreement without CLEC approval or Commission
36 approval.
37

38 WorldCom has the right under Section 252 of the federal Act to negotiate the rates,
39 terms and conditions of its interconnection agreements with incumbent LECs. On this
40 point, there is no dispute. There is nothing in the federal Act that even implies that this

1 statutory right may be exercised only where the incumbent has not filed tariffs for various
2 telecommunications services or network elements. In fact, Section 252 is the proverbial
3 exception to the rule. It requires parties to negotiate in a regulatory environment that has
4 been otherwise strictly governed by the “filed rate doctrine.” Public Utilities Commissions
5 have alluded to this unique circumstance, noting that while the rate of a telephone company
6 duly filed is generally the only lawful charge, the federal Act created an exception to that
7 regulatory structure.

8 WorldCom’s right under the federal Act would be devoid of any meaning if Qwest
9 were permitted to simply cross-reference its filed state tariffs on the subject. Allowing
10 tariff prices and conditions to "float" with the tariff would allow the Qwest to enjoy an
11 undue, improper and very nearly unilateral control over a fundamental and critical
12 component of the interconnection agreement -- pricing.² Defaulting to filed tariffs gives
13 Qwest the power to change the interconnection agreement with WorldCom without
14 WorldCom’s consent or approval, thereby depriving WorldCom of its lawful rights as well
15 as the business certainty that is derived from having fixed prices for the life of the contract.

16 While Qwest may argue that WorldCom’s participation in cost proceedings
17 provides WorldCom with the opportunity to “influence” the rates, a generic cost docket is
18 hardly the appropriate forum for amending an interconnection agreement between two
19 parties. Moreover, the tariffs litigated in such proceedings represent the general rates,
20 terms and conditions available to the population of Washington CLECs. The tariffs are
21 neither intended nor designed to address the needs of individual CLECs with particularity.

1 Certainly, it has not been WorldCom’s experience that ILEC's discuss or negotiate such
2 proposed tariff rates, or changes to those rates, with its interconnection partners prior to
3 submitting such rates or rate modifications to the Commission for approval. The Act
4 provides for these particular needs to be addressed through negotiation of the
5 interconnection agreement between the parties. Qwest’s tariffed rates should apply only
6 where the parties to an interconnection agreement or the SGAT have expressly agreed that
7 a tariffed offering should be applied to the provision of a service covered under their
8 interconnection agreements.

9 CLEC's are entitled to certainty and predictability in their contractual terms and
10 contractual relationships. Adopting WorldCom’s proposed language would ensure such
11 certainty.

12 WorldCom’s proposed changes to Sections 2.2 and 2.3 are intended to prevent
13 Qwest from unilaterally attempting to modify the Agreement by modifying material
14 incorporated by reference in the SGAT. Since material incorporated by reference is a
15 part of the SGAT, Qwest cannot have unilateral control of such material. Qwest’s
16 proposed Section 2.3 only addresses a portion of the problems discussed in earlier
17 workshops. Finally, based upon the record in this proceeding, Qwest’s product
18 notifications have on occasion appeared to contradict and take precedence over existing
19 interconnection agreements. The language above is intended to preclude such unilateral
20 and unlawful action.

21 This language is consistent with Qwest’s stipulation recited below:

² See First Report and Order, at paragraph 618, in which the FCC noted that “the prices of interconnection and unbundled elements, along with prices of resale and transport and termination, are

1 Qwest agrees that, within 45 days of closing a workshop, it will
2 update its technical publications, product catalog (also known as the
3 IRRG), and product documentation for CLECs to reflect the agreements
4 made in the workshop and to make Qwest's documentation consistent with
5 its SGAT. Qwest will then submit the updated technical publications,
6 product catalog, and product documentation to the Change Management
7 Process (CICMP). When Qwest submits the documents to CICMP, Qwest
8 will file a notice in this proceeding indicating that the documents have
9 been updated and how to obtain copies. Qwest will take affirmative action
10 following the close of a workshop to communicate to appropriate
11 personnel and to implement the agreements made in such workshop.
12 Qwest acknowledges that any commission order or report recommending
13 that Qwest meet a checklist item will be conditioned on Qwest's
14 compliance with this commitment.

15
16 As stated above, CLECs are entitled to certainty and predictability in their
17 contractual terms and contractual relationships.

18 **Section 3**

19 **Implementation Schedule**

20 Qwest's proposed Section 3 is another golden opportunity for Qwest to delay
21 entry into the market. In order for WorldCom to complete Qwest's CLEC Questionnaire
22 in a timely manner Qwest must participate in the completion of the Questionnaire within
23 one business day of CLEC's request.

24 Also with regard to Section 3, the proposed "negotiation of an Interconnection
25 Implementation schedule" is another Qwest method of delay and is simply unnecessary.
26 Early in 2000 WorldCom began negotiations required by Qwest for the ordering of UNE
27 combinations, even though the interconnection agreement expressly required Qwest to
28 provide UNE combinations. Today, more than a year later, the "negotiations" are not

critical terms and conditions of any interconnection agreement.

1 complete and Qwest will not allow the ordering of UNE combinations. Obviously, this
2 delay benefits Qwest and only hurts WorldCom.

3 The completion of the CLEC Questionnaire provides Qwest with the information
4 that it needs to begin provisioning interconnection, unbundled network elements and
5 combinations thereof, ancillary services, resale and any other product and services set
6 forth in the Agreement. Qwest has agreed to provision those products, facilities and
7 services in accordance with its standard intervals. Therefore, Section 3. should be further
8 revised as follows:

9 **Section 3.0 - IMPLEMENTATION SCHEDULE CLEC QUESTIONNAIRE**

10 3.1 Except as otherwise required by law, Qwest will ~~not promptly~~ provide or
11 establish Interconnection, unbundled network elements, ancillary services and/or resale
12 of Telecommunications Services in accordance with the terms and conditions of this
13 Agreement, or portions thereof, prior to following CLEC's execution of this Agreement
14 or an interconnection agreement. Thereupon, the Parties shall complete Qwest's "CLEC
15 Questionnaire," ~~and negotiate an Interconnection implementation schedule~~ as it applies to
16 CLEC's obtaining of Interconnection, unbundled network elements, ancillary services,
17 and/or resale of Telecommunications Services hereunder.

18
19 3.2 Prior to placing any orders for services under this Agreement, the Parties
20 will jointly complete Qwest's "CLEC Questionnaire." Qwest personnel shall be
21 available to participate in the completion of the CLEC Questionnaire upon oral request of
22 CLEC within one business day from such request. This questionnaire will then be used
23 to:

- 24
- 25 Determine geographical requirements;
- 26 Identify CLEC ~~h~~identification ~~C~~codes;
- 27 Determine Qwest system requirements to support CLEC's specific activity;
- 28 Collect credit information;
- 29 Obtain billing information;
- 30 Create summary bills;
- 31 Establish input and output requirements;
- 32 Create and distribute Qwest and CLEC contact lists; and
- 33 Identify CLEC hours and holidays.
- 34

1 3.3 ~~Prior to placing any orders for services under this Agreement, the Parties~~
2 ~~will finalize an Interconnection implementation schedule. Upon completion of the CLEC~~
3 ~~Questionnaire Qwest shall process CLEC orders in accordance with Qwest's standard~~
4 ~~provisioning intervals. Subject to the terms and conditions of this Agreement, each Party~~
5 ~~shall exercise reasonable efforts to adhere to the Interconnection implementation~~
6 ~~schedule.~~

7
8 3.4 ~~Intentionally Left Blank CLEC will provide an initial two (2) year forecast~~
9 ~~prior to placing any orders for service under this Agreement. During the first year of the~~
10 ~~term of this Agreement, the forecast shall be updated and provided to Qwest on a~~
11 ~~quarterly basis. During the remaining term of this Agreement, CLEC will provide~~
12 ~~updated forecasts from time to time, as requested by Qwest. The information provided~~
13 ~~pursuant to this paragraph shall be considered Proprietary Information under the~~
14 ~~Nondisclosure Section 5.16 of this Agreement. The initial forecast will minimally~~
15 ~~provide:~~

16
17 ~~3.4.1 The date service will be offered (by city and/or state);~~

18
19 ~~3.4.2 The type and quantity of service(s) which will be offered;~~

20
21 ~~3.4.3 CLEC's anticipated order volumes; and~~

22
23 ~~3.4.4 CLEC's key contact personnel.~~
24

25 **Section 4**

26 Mr. Brotherson does not address Section 4 which contains Qwest's definitions.

27 It is my understanding that some definitions have been addressed and agreed upon.

28 However, WorldCom's Part B – Definitions (Exhibit MWS-2) contains many

29 definitions that are omitted in Qwest's SGAT. These definitions should be included

30 because they are relevant to the terms and conditions contained in the SGAT. Further

31 to the extent a definition has not been previously agreed upon, and has not been

32 discussed, WorldCom's definition should be used and Qwest's replaced.

33 WorldCom has the following initial comments regarding Qwest's definitions.
34

1 The term "Affiliate" is used throughout the SGAT, the following Affiliate
2 definition should be inserted:

3 "AFFILIATE" is an entity that directly or indirectly owns or controls, is owned or
4 controlled by, or is under common ownership or control with, another entity. For the
5 purposes of this paragraph, "own" or "control" means to own an equity interest (or
6 equivalent) of at least 10%, or the right to control the business decisions, management
7 and policy of another entity.

8
9 The phrase "Basic Exchange Feature" found in Section 4.6 should be deleted
10 because WorldCom is unable to locate "Basic Exchange Feature" in the SGAT.

11 The definition of "Bona Fide Request" should be modified as follows:

12
13 4.8 "Bona Fide Request" or "BFR" means ~~a request for a new~~
14 ~~interconnection or for an unbundled element not already available in this Agreement for~~
15 ~~the provision of local Telecommunications Services. Any request that requires an~~
16 ~~analysis of technical feasibility shall be treated as a Bona Fide Request (BFR), and will~~
17 ~~follow the BFR Process set forth in this Agreement. The BFR process shall be used for,~~
18 ~~among other things, the following:~~

- 19
20 a. ~~Requests for access to an unbundled network element that has not been~~
21 ~~defined by the FCC or the State Commission as a network element to which~~
22 ~~Qwest is obligated to provide unbundled access,~~
23
24 b. ~~Requests for UDIT and EEL above the OC-192 level, unless existing in~~
25 ~~Qwest's network and technically feasible,~~
26
27 c. ~~Requests for combinations of Unbundled Network Elements that are not~~
28 ~~ordinarily combined in the Qwest network.~~
29

30 Exchange Message Record found in Section 4.21 is not the most current
31 standard for the exchange of telecommunications message information. The
32 most current standard is Exchange Message Interface ("EMI"). EMI is defined
33 as:

34 "Exchange Message Interface" or "EMI" means the format used for exchange of
35 Telecommunications message information among Telecommunications Carriers.

1 Alliance for Telecommunications Industry Solutions (ATIS) document that defines
2 industry guidelines for the exchange of message records."

3 In Section 4.22 entitled "Exchange Service" Qwest indicates that Exchange
4 Service is limited to traffic that is originated and terminated within the local calling area.
5 This broad "termination" language may create opportunity for Qwest to exclude ISP
6 traffic from Exchange Service, as it does not technically "terminate" in the calling area,
7 rather is dumped into a modem bank. ISP traffic should be included in the definition of
8 Exchange Service, and the definition should be altered to include calls going into a
9 modem bank.

10 In Section 4.30 entitled "Exchange Access" (IntraLATA Toll), Qwest excludes
11 Toll provided using Switched Access purchased by an IXC. Qwest is trying to redefine
12 what Exchange Access is by adding an exclusion of toll provided using Switched Access
13 provided by IXC. Qwest should use the definition of Exchange Access found in the
14 federal Act (section 3 Definitions of the Telecom Act), and leave any limitations to what
15 it provides within that service to the sections where it is referenced, for fair consideration.

16 Section 4.32 entitled "Local Interconnection Service Entrance Facility" should
17 not be included in the SGAT. Entrance facilities should be determined and designated by
18 the network engineers in designing the Interconnection. The architecture does not
19 necessarily work within this vague definition for entrance facilities. For example, in
20 Seattle, the switch for WorldCom is a greater distance from the collocation, which also
21 transits the traffic. Under this definition, WorldCom would be susceptible to pay a
22 lengthy distance of Entrance facilities to the switch. Similarly, the language needs to be

1 clear that the POI would be that designated at the CLEC's option for the purposes of
2 determining entrance facilities.

3 Regarding Section 4.49 entitled "Ready for Service" Qwest uses RFS dates as the
4 starting point for billing of products/services. Therefore, the ready for service date
5 should not commence when Qwest unilaterally decides the product is ready, but rather
6 when the CLEC has also checked and approved the deliverable. If there is dispute as to
7 whether the product is really ready, CLEC is not subjected to mistake on the part of
8 Qwest, nor liable for costs when the product is not satisfactory.

9 The Special Request Process which is used in the SGAT should be defined as
10 follows:

11 Special Request Process - The Special Request Process shall be used for the following
12 requests:

- 13
- 14 a. Requesting specific product feature(s) be made available by Qwest that are
15 currently available in a switch, but which are not activated.
- 16
- 17 b. Requesting specific product feature(s) be made available by Qwest that are
18 not currently available in a switch, but which are available from the switch
19 vendor.
- 20
- 21 c. Requesting a combination of Unbundled Network Elements that is a
22 combination not currently offered by Qwest as a standard product and:
- 23
- 24 i. that is made up of UNEs that are defined by the FCC or the
25 Commission as a network element to which Qwest is obligated to
26 provide unbundled access, and; (This has been agreed to by Qwest)
- 27
- 28 ii. that is made up of UNEs that are ordinarily combined in the Qwest
29 network.
- 30
- 31 d. Requesting an Unbundled Network Element that has been defined by the
32 FCC or the State Commission as a network element to which Qwest is

1 obligated to provide unbundled access, but for which Qwest has not
2 created a standard product, including OC-192 UDIT and EEL between
3 OC-3 and OC-192.

4
5 **Section 5**

6 Matters addressed in Section 5.0 should be replaced where the language conflicts
7 with or is inconsistent with WorldCom’s model language addressing the same subject
8 matter which is generally identified by the titles.

9 Section 5.1.1 should be deleted for the reasons stated earlier regarding Qwest’s
10 Implementation Schedule.

11 Section 5.3 entitled “Proof of Authorization” should be deleted in its entirety
12 because the proof of authorization rules are already addressed by the FCC, set forth in 47
13 CFR Section 64.100 et seq., and it is not necessary to attempt to paraphrase certain
14 portions thereof in Section 5.3.

15 In the alternative, Section 5.3 should simply state that:

16 The Parties agree to abide by the FCC rules regarding Changes in subscriber carrier
17 selections set forth in 47 CFR Section 64.100 et seq. An executing carrier shall not
18 verify the submission of a change in a subscriber's selection of a provider of
19 telecommunication service received from a submitting carrier. For an executing carrier,
20 compliance with the procedures prescribed in 47 CFR Section 64.100 et seq. shall be
21 defined as prompt execution, without any unreasonable delay, of changes that have been
22 verified by a submitting carrier.

23
24 Section 5.5 should be revised as follows:

25
26 **5.5 Taxes**

27
28 5.5.1 Each Party purchasing services hereunder shall pay or otherwise be
29 responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or
30 similar taxes, fees or surcharges levied against or upon such purchasing Party by law (or
31 the providing Party when such providing Party is permitted to pass along to the
32 purchasing Party such taxes, fees or surcharges), for the purchase of the services, except

1 for any tax on either Party's corporate existence, status or net income. Whenever
2 possible, these amounts shall be billed as a separate item on the invoice. To the extent a
3 sale is claimed to be for resale ~~tax~~ exemption, the purchasing Party shall furnish the
4 providing Party a proper resale ~~tax~~ exemption certificate as authorized or required by
5 statute or regulation by the jurisdiction providing said resale ~~tax~~ exemption. Until such
6 time as a resale ~~tax~~ exemption certificate is provided, no exemptions will be applied.

7
8 Section 5.6 entitled "Insurance" should be reciprocal because the CLEC needs to
9 be assured that Qwest also has insurance in place. Qwest's limits for excess Umbrella
10 insurance are unnecessarily high. WorldCom proposes the revised limits below. Further,
11 the last two sentences of section 5.6.1.5 should be deleted. The statement that CLEC
12 may elect to purchase business interruption insurance lends nothing to the Agreement and
13 should be deleted. The statement that Qwest has no liability for loss of profit due to an
14 interruption of service is limitation of liability language, and therefore, improper in the
15 insurance section, is contrary to the WorldCom limitation of liability language, and is
16 also improper since it absolves Qwest of all liability for the interruption of service even if
17 caused by the acts of Qwest, whether they be negligent, grossly negligent or even
18 intentional. This section should be revised as follows:

19 **5.6 Insurance**

20
21 5.6.1 Each Party CLEC shall at all times during the term of this Agreement, at its
22 own cost and expense, carry and maintain the insurance coverage listed below with
23 insurers having a "Best's" rating of B+XIII.

24
25 5.6.1.1 Workers' Compensation with statutory limits as required in the
26 state of operation and Employers' Liability insurance with limits of not less than
27 \$100,000 each accident.

28 5.6.1.2 Commercial General Liability insurance covering claims for bodily
29 injury, death, personal injury or property damage occurring or arising out of the
30 use or occupancy of the premises, including coverage for independent
31 contractor's protection (required if any work will be subcontracted), premises-
32 operations, products and/or completed operations and contractual liability with

1 respect to the liability assumed by ~~CLEC each Party~~ hereunder. The limits of
2 insurance shall not be less than \$1,000,000 each occurrence and \$2,000,000
3 general aggregate limit.

4 5.6.1.3 Comprehensive automobile liability insurance covering the
5 ownership, operation and maintenance of all owned, non-owned and hired motor
6 vehicles with limits of not less than \$1,000,000 per occurrence for bodily injury
7 and property damage.

8 5.6.1.4 Umbrella/Excess Liability insurance in an amount of ~~\$10,000,000~~
9 ~~\$4,000,000~~ excess of Commercial General Liability insurance specified above.
10 These limits may be obtained through any combination of primary and excess or
11 umbrella liability insurance so long as the total limit is ~~\$11,000,000~~ ~~\$5,000,000~~.

12 5.6.1.5 “All Risk” Property coverage on a full replacement cost basis
13 insuring all of ~~CLEC a Party's~~ personal property situated on or within the
14 premises. ~~CLEC may elect to purchase business interruption and contingent~~
15 ~~business interruption insurance. Qwest has no liability for loss of profit or~~
16 ~~revenues should an interruption of service occur.~~

17
18 5.6.2 ~~CLEC Each Party~~ shall provide certificate(s) of insurance evidencing
19 coverage, and annually thereafter within ten (10) calendar days of renewal of any
20 coverage maintained pursuant to this Section. Such certificates shall (1) name ~~Qwest the~~
21 ~~other Party~~ as an additional insured under commercial general liability coverage as
22 respects ~~Qwest's such other Party's~~ interests; (2) provide ~~Qwest the other Party~~ thirty
23 (30) calendar days prior written notice of cancellation of, material change or exclusions
24 in the policy(s) to which certificate(s) relate; (3) indicate that coverage is primary and not
25 excess of, or contributory with, any other valid and collectible insurance purchased by
26 ~~Qwest the other Party~~; and (4) provide severability of interest/cross liability coverage.

27
28 . Section 5.8 entitled “Limitation of Liability” should be reciprocal. WorldCom’s
29 language found in MWS-1 is fair and is the standard limitation of liability language used
30 in commercial contracts. At page 13 of his direct testimony, Mr. Brotherson states that
31 the Qwest's limitation of liability language is "universally used in services offered on the
32 interstate level in FCC tariffs." Mr. Brotherson is mixing apples and oranges. This
33 SGAT is not similar to a tariff between an interexchange carrier and its millions of end
34 users, but is a commercial contract between carriers.

1 Knowing that it provides essentially all products and services under this SGAT,
2 on which the CLEC depends for essentially any and all revenues from local services,
3 Section 5.8.2 is carefully crafted by Qwest to absolve it of any liability for lost profits
4 regardless of the form of action or its negligence of any kind. Qwest's section 5.8.2 is
5 unconscionable and should be replaced with WorldCom's proposed language.

6 Section 5.8.3. Qwest attempts to place a cap on its direct damages resulting from
7 its acts or omissions on the performance of this Agreement, which is the amount that
8 would have been charged for the service. While this cap may be acceptable for an end
9 user tariff, it is improper and completely inadequate in this context and amounts to a
10 small slap on the hand for failing to abide by this Agreement and the law. Qwest is well
11 aware that its poor service pursuant to this Agreement may completely sink CLEC's
12 competitive entry into the local market

13 Qwest's exception in 5.8.4 is limited to only willful or intentional misconduct,
14 therefore, absolving Qwest of liability for its egregious, grossly negligent acts and
15 repeated breaches of the material obligations of the Agreement, and is therefore,
16 improper.

17 While Qwest argues that its language is universally used, I have yet to see
18 standard limitation of liability language contain a fraud provision. The fraud provision is
19 improper and any language dealing with fraud is more properly contained in WorldCom's
20 20.2 Revenue Protection language.

21 Regarding Section 5.9 entitled "Indemnification", the WorldCom indemnity
22 language is standard indemnity language, reciprocal, fair, and clear, and should be used

1 in place of the Qwest language. Mr. Brotherson states that Qwest's language is standard,
2 but in fact it is not. Qwest's language is heavily weighted in its favor and contains many
3 strategically placed exceptions that absolve it from responsibility for its own actions.

4
5 Section 5.9.1.2 improperly requires CLECs to indemnify Qwest against claims
6 made by the CLEC's end user even where Qwest's negligent or even grossly negligent
7 conduct was the cause of the end user's loss. As such, Qwest language continues to
8 absolve Qwest for its responsibility for its negligent or even grossly negligent conduct,
9 and allows Qwest to provide shoddy services which flow through to the CLEC end users
10 and leaves the CLEC holding the bag. The WorldCom language has no such self-serving
11 exception. The WorldCom language is fair and comprehensive and has each Party
12 indemnify the other for claims resulting from the other Party's acts or omissions or the
13 failure to perform its obligations under the Agreement. Simply put, if a Party's acts or
14 omissions cause a loss, it should be held responsible.

15
16 Section 5.9.1.4 is yet another example of nonstandard, confusing and unnecessary
17 language that is already covered by the WorldCom language. As with separate facilities,
18 separate bandwidths are completely separate and distinct, and each Party is a separate and
19 distinct service to its end user on its bandwidth. WorldCom's language that each Party
20 indemnifies the other for claims resulting from the acts or omissions of the Indemnifying
21 Party would cover this situation. This is analogous to Parties having their separate cables

1 side by side in the same trench or cable bundle, which would not necessitate a separate
2 section such as 5.9.1.4.

3 The WorldCom language regarding notice, authority to defend and settle is
4 standard language, and more clearly written than the Qwest version in 5.9.2. The Qwest
5 language seems to contradict itself by first stating that indemnification IS conditioned on
6 prompt notice of claim by the indemnified Party to the indemnifying Party, then stating
7 that indemnification is NOT COMPLETELY conditioned on such notice, but then again
8 it IS conditioned to the extent the failure to promptly notify prejudices the indemnifying
9 Party's ability to defend the claim.

10 Qwest's warranty language in Section 5.11 is inadequate. WorldCom proposes
11 language that is complete and appropriate. Further, under the nondiscrimination
12 provisions of the Act, Qwest may not disclaim that the services that it provides under the
13 Act are identical to the services that it provides to itself.

14 Similarly, Section 5.16 concerning nondisclosure is inadequate and incomplete by
15 not identifying who can see confidential or proprietary material as is discussed in
16 WorldCom's proposed language addressing this matter.

17 Qwest's dispute resolution language in Section 5.18 is inadequate and incomplete.
18 WorldCom's language is more complete and should be adopted.

19 Section 5.24 concerning referenced documents suffers from the same problems
20 discussed in regard to Section 2, namely Qwest's apparent unilateral ability to modify
21 documents incorporated into the SGAT. This section should be deleted as written for the

1 reasons stated in my discussion of Section 2.

2 Section 5.32 has been replaced by Section 1.7 that is more specific and should
3 be deleted.

4 **Section 11**

5 My exhibit, MWS-1 provides alternative language addressing network security
6 that should be considered where matters are omitted from Qwest SGAT, or are
7 inconsistent in the SGAT.

8 **Section 17**

9 .Section 17, entitled “Bona Fide Request Process” should be revised. In addition
10 to Section 17, the Bona Fide Request (BFR) Process is also discussed in the Special
11 Request Process Exhibit F, and the BFR process language in Section 17 must be
12 consistent with the BFR process language in Exhibit F. In addition, Qwest’s bona fide
13 request process is fraught with unreasonable delay. This section should be revised as
14 follows:

15 **Section 17.0 - BONA FIDE REQUEST PROCESS**

16
17 17.1 Any request for Interconnection or access to an unbundled network element
18 or ancillary service that ~~does is not already available as described in other sections of this~~
19 ~~Agreement occur anywhere in the Qwest network~~ shall be treated as a Bona Fide Request
20 (BFR). Qwest shall use the BFR Process to determine the terms and timetable for
21 providing the requested Interconnection, access to UNEs or ancillary services, if ~~such~~
22 ~~requested Interconnection, access to UNEs or ancillary services, or something~~
23 ~~substantially similar thereto does not occur anywhere in the Qwest network available~~, and
24 the technical feasibility of new/different points of Interconnection. ~~The term "technical~~
25 ~~feasibility" refers solely to technical or operational concerns, rather than economic,~~
26 ~~space, or site considerations. The obligations imposed by sections 251(c)(2) and~~
27 ~~251(c)(3) include modifications to Qwest's facilities to the extent necessary to~~

1 accommodate interconnection or access to network elements and the Act bars
2 consideration of costs in determining technical feasible points of interconnection or
3 access. Preexisting interconnection or access at a particular point evidences the technical
4 feasibility of interconnection or access at substantially similar points. If CLEC disputes
5 the technically feasible determination of Qwest, CLEC may immediately take the matter
6 to the Commission and Qwest must prove to the Commission that the particular
7 interconnection or access point the subject of the BFR request is not technically feasible.

8 Qwest will administer the BFR Process in a non-discriminatory manner.
9

10 17.2 A BFR shall be submitted in writing and on the appropriate Qwest form for
11 BFRs. CLEC and Qwest will work together to prepare the BFR form and Qwest shall
12 provide such assistance in preparing the BFR form within 24 hours of CLEC's oral
13 request for same. This form shall be accompanied by the ~~non-refundable~~ Processing Fee
14 specified in Exhibit A of this Agreement. The form will request, and CLEC will need to
15 provide, the following information, as well as and may also provide any additional
16 information that may be helpful in describing and analyzing CLEC's request:
17

18 (a) a technical description of each requested Network Element or
19 new/different points of Interconnection or ancillary services, that are not offered
20 to any other carrier or are not found in the Qwest network;

21 (b) the desired interface specification;

22 (c) each requested type of Interconnection or access;

23 (d) a statement that the Interconnection or Network Element or ancillary
24 service will be used to provide a Telecommunications Service;

25 (e) the quantity requested;

26 (f) the specific location requested;

27 (g) if the requested unbundled network element is a proprietary element as
28 specified in Section 251(d)(2) of the Act, or CLEC must submit documentation
29 that demonstrates that access to such Network Element is necessary, that the
30 failure to provide access to such Network Element would impair the ability of
31 CLEC to provide the services that it seeks to offer, and that CLEC's ability to
32 compete would be significantly impaired or thwarted without access to such
33 requested proprietary element; and

34 ~~(h)~~ if the requested Unbundled Network Element is a non-proprietary element
35 as specified in Section 251(d)(2) of the Act, and the requested element is not
36 required by the FCC or the Commission to be offered as a UNE, either Party may
37 take the request to the Commission for expedited resolution of the request and

1 ~~Qwest having the burden of proof regarding the proprietary nature of the UNE.~~
2 ~~CLEC must submit documentation that demonstrates that denial of access to such~~
3 ~~non-proprietary unbundled network element would impair the ability of CLEC to~~
4 ~~provide the services that it seeks to offer, and that CLEC's ability to compete~~
5 ~~would be significantly impaired or thwarted without access to such unbundled~~
6 ~~network element.~~

7 17.3 Within fifteen (15) calendar days of its receipt, Qwest shall acknowledge
8 receipt of the BFR and in such acknowledgment advise CLEC of missing information, if
9 any, necessary to process the BFR. Thereafter, Qwest shall promptly advise CLEC of the
10 need for any additional information required to complete the analysis of the BFR.

11
12 17.4 Within fifteen (15) calendar days of its receipt of the BFR and all
13 information necessary to process it, Qwest shall provide to CLEC a preliminary analysis
14 of the BFR. The preliminary analysis shall specify Qwest's conclusions as to whether or
15 not the requested Interconnection or access to an unbundled network element complies
16 with the unbundling requirements of the Act.

17
18 17.5 If Qwest determines during the fifteen (15) day period that a BFR does not
19 qualify as an unbundled network element or Interconnection or ancillary service that is
20 required to be provided under the Act, Qwest shall advise CLEC as soon as reasonably
21 possible of that fact, and Qwest shall promptly, but in no case later than ten (10) calendar
22 days after making such a determination, provide a detailed written report setting forth the
23 basis for its conclusion.

24
25 17.6 If Qwest determines during the fifteen (15) day period that the BFR
26 qualifies under the Act, it shall notify CLEC in writing of such determination within ten
27 (10) calendar days.

28
29 17.7 As soon as feasible, but in any case within forty-five (45) calendar days
30 after Qwest notifies CLEC that the BFR qualifies under the Act, Qwest shall provide to
31 CLEC a BFR quote. The BFR quote will include, at a minimum, a description of each
32 Interconnection, Network Element, and ancillary service, the quantity to be provided, any
33 interface specifications, and the applicable rates (recurring and nonrecurring) including
34 the separately stated development costs and construction charges of the Interconnection,
35 unbundled network element or ancillary service and any minimum volume and term
36 commitments required, and the timeframes the request will be provisioned.

37
38 17.8 A CLEC has sixty (60) ~~thirty (30)~~ business days upon receipt of the BFR
39 quote, to either agree to purchase under the quoted price, cancel its BFR, or seek
40 mediation or arbitration resolve the issue in accordance with the Dispute Resolution
41 provisions of the Agreement.

42
43 17.9 If CLEC has agreed to minimum volume and term commitments under the

1 preceding paragraph, CLEC may cancel the BFR or volume and term commitment at any
2 time, ~~but in the event of such cancellation CLEC will pay Qwest's reasonable~~
3 ~~development costs incurred in providing the Interconnection, Unbundled Network~~
4 ~~Element, or ancillary service to the extent that those development costs are not otherwise~~
5 ~~amortized.~~

6
7 17.10 ~~If either Party believes that the other Party is not requesting, negotiating or~~
8 ~~processing any BFR in good faith, or disputes a determination or quoted price or cost, it~~
9 ~~may seek arbitration pursuant to the Dispute Resolution provision of this Agreement. If~~
10 ~~CLEC believes that Qwest is not negotiating or processing a BFR in good faith, is failing~~
11 ~~to act in accordance with the Act, or CLEC disputes a determination of feasibility or~~
12 ~~availability or a price/cost quote, CLEC may seek immediate mediation or arbitration by~~
13 ~~the Commission, including the use of any available expedited procedures. The relief~~
14 ~~sought can include, but is not limited to, a determination that Qwest be required to~~
15 ~~provide the requested method, arrangement, or Network Element Combination. The full~~
16 ~~burden of proof in any such hearing, mediation, or arbitration is on Qwest to prove~~
17 ~~technical infeasibility.~~

18
19 17.11 All time intervals within which a response is required from one Party to another
20 under this Section are maximum time intervals. Each Party agrees that it will provide all
21 responses to the other Party as soon as the Party has the information and analysis required
22 to respond, even if the time interval stated herein for a response is not over.

23
24 17.12 In handling a BFR pursuant to this section 17, Qwest shall, to the extent possible,
25 utilize information from previously developed BFRs in order to shorten response times.

26
27 17.13 Once a BFR has been fully completed and Qwest has delivered the requested item
28 or service sought, CLEC and Qwest agree that future requests by CLEC for the same item
29 or services shall not require a BFR, the Special Request Process or an amendment to the
30 Agreement.

31
32 17.14 Unless the Parties agree otherwise, a BFR under this section 17 must be priced in
33 accordance with section 252(d)(1) of the Act, and any applicable FCC or Commission
34 rules, regulations or orders.

35
36 17.15 The total cost charged to CLEC shall not exceed the BFR quoted price.
37

38 In accordance with its negotiated interconnection agreement (“ICA”) with
39 WorldCom, Qwest has agreed that to the extent it is not required by the terms of that
40 agreement to provide database or other network related information, and to the extent

1 Qwest does not ordinarily provide such information to its affiliates, customers, other
2 carriers or any other person, Qwest shall allow use of the BFR process to request access
3 to such databases and/or network information. Qwest shall not deny CLECs access to
4 information relevant to provision of service to its (CLEC's) own customers.

5 SGAT Section 17.1 should be modified to reflect that the BFR process will
6 support requests for such data base access.

7 WorldCom opposes the requirements found in Subsection 17.2 (g) and (h).
8 WorldCom's ICAs do not have these requirements. This information is not necessary for
9 Qwest provide access to an unbundled network element. A CLEC should only be
10 required provide the technical details needed for more a detailed assessment or quote.
11 In accordance with its negotiated ICA with WorldCom, Qwest has agreed to
12 acknowledge receipt of a BFR request within forty-eight hours of receipt, also Qwest will
13 review such request for initial compliance with the ICA section addressing BFR contents
14 (Section 17.2 above) and, in its receipt acknowledgment, will advise WorldCom of any
15 missing information reasonably necessary to move the Request to the preliminary
16 analysis. Given this prior commitment on Qwest's part, the proposed SGAT timeframes
17 in section 17.3 are an unreasonable delay to CLECs attempting to complete the BFR
18 process.

19 Regarding Section 17.4, 17.5 and 17.6, this activity should be completed within
20 15 calendar days, not 21 days, and should include a cost estimate. Further in accordance
21 with its negotiated ICA with WorldCom, Qwest has agreed to provide weekly status

1 updates, which are not offered here. The proposed SGAT timeframes constitute another
2 unreasonable delay to CLECs using the BFR process.

3 In accordance with its negotiated ICA with WorldCom, Qwest has agreed, to the
4 extent possible, to utilize information from previously developed BFRs to address similar
5 arrangements in order to shorten the response times for the currently requested BFR.

6 Language reflecting agreement between Qwest and WorldCom should be added to SGAT
7 Section 17.7 as follows:

8 In the event a CLEC has submitted a Request for an Interconnection, a Network
9 Element or any combination thereof and Qwest determines in accordance with the
10 provisions of this Section 17 that the request is technically feasible, subsequent requests
11 or orders for the identical type of interconnection, network element or combination by
12 that CLEC shall not be subject to the BFR or the Special Request Process. To the extent
13 Qwest has deployed an identical network element or combination under a previous BFR,
14 a subsequent BFR or Special Request Process shall be not required. Qwest may only
15 require CLEC to complete a CLEC questionnaire before ordering such network elements
16 or combinations thereof. For purposes of this Section 17.7, an “identical” request shall
17 be one that is materially identical to a previous request with respect to the information
18 provided pursuant to Subsections (a) through (e) of Section 17.2 above.

19
20 **Special Request Process**

21
22 WorldCom proposes the following revisions to Exhibit F:

23 **EXHIBIT F –**

24 **SPECIAL REQUEST PROCESS**

- 25
26 1. The Special Request Process shall be used for the following requests:
27
28 a. Requesting specific product feature(s) be made available by Qwest that are
29 currently available in a switch, but which are not activated.
30
31 b. Requesting specific product feature(s) be made available by Qwest that are
32 not currently available in a switch, but which are available from the switch
33 vendor.
34

- 1 c. Requesting a combination of Unbundled Network Elements that is a
2 combination not currently offered by Qwest as a standard product and:
3
4 ~~iii.~~ that is made up of UNEs that are defined by the FCC or the
5 Commission as a network element to which Qwest is obligated to
6 provide unbundled access~~Qwest as products~~, and; (This has been
7 agreed to by Qwest)
8
9 ii. that is made up of UNEs that are ordinarily combined in the Qwest
10 network.
11
12 d. Requesting an Unbundled Network Element that has been defined by the
13 FCC or the State Commission as a network element to which Qwest is
14 obligated to provide unbundled access, but for which Qwest has not
15 created a standard product, including OC-192 UDIT and EEL between
16 OC-3 and OC-192.
17
18 2. Any request that requires an analysis of technical feasibility shall be treated as a
19 Bona Fide Request (BFR), and will follow the BFR Process set forth in this
20 Agreement. The BFR process shall be used for, among other things, the
21 following:
22
23 ~~a. Requests for Interconnection not already available as described in this~~
24 ~~Agreement,~~
25
26 ~~b.c.~~ Requests for access to an unbundled network element that has not been
27 defined by the FCC or the State Commission as a network element to which
28 Qwest is obligated to provide unbundled access,
29
30 ~~e.d.~~ Requests for UDIT and EEL above the OC-192 level, unless existing in
31 Qwest's network and technically feasible,
32
33 ~~d. Requests for combinations of Unbundled Network Elements that include UNEs~~
34 ~~that are not defined by Qwest as products, and~~
35
36 e. Requests for combinations of Unbundled Network Elements that are not
37 ordinarily currently combined in the Qwest network.
38
39 3. A Special Request shall be submitted in writing and on the appropriate Qwest
40 form, which is located on Qwest's website. The form must be completely filled
41 out.
42
43 4. Qwest shall acknowledge receipt of the Special Request within five (5) business
44 days of receipt.

- 1
2 5. Qwest shall respond with a preliminary analysis, including costs and timeframes,
3 within fifteen (15) business days of receipt of the Special Request. In the case of
4 UNE combinations, the preliminary analysis shall include whether the requested
5 combination is a combination of elements that are ordinarily combined in the
6 Qwest network. If the request is for a combination of elements that are not
7 ordinarily combined in the Qwest network, the preliminary analysis shall indicate
8 to CLEC that it should use the BFR process if CLEC elects to pursue its request.
9
10 6. All timeframes will be met unless extraordinary circumstances arise. In such a
11 situation, CLEC and Qwest will negotiate a reasonable response timeframe.
12

13 **Individual Case Basis (“ICB”) Pricing and Provisioning**

14 Mr. Brotherson's supplemental testimony comments upon Sections 8 & 9 of the
15 SGAT, dealing with ICB provisioning. WorldCom has consistently expressed concern
16 over ICB pricing and provisioning in the Checklist Items Workshops.. Like
17 incorporating Qwest documents or a tariff into its SGAT by reference, allowing Qwest to
18 establish rates or provision services on an ICB gives Qwest unilateral control over ICB
19 pricing and provisioning.

20 Presumably, if a CLEC does not agree to the ICB price proposed by Qwest, it has
21 two options, 1.) pay the price and file a complaint at the Commission where it may have
22 the burden of proving the ICB price to be unreasonable; or 2.) not pursue unbundled
23 packet switching from Qwest in order to serve a potential or existing CLEC customer.
24 Neither option benefits consumers and both options interpose uncertainly and delay for
25 CLECs trying to serve customers. Likewise, with ICB provisioning, CLECs have no alternatives.

26 Obviously not knowing the wholesale price a CLEC will be charged by Qwest
27 when the CLEC is attempting to serve a customer makes it difficult, if not impossible, to
28 set a retail price for the CLEC customer. In addition, not serving a customer because the

1 ICB price is in dispute or is too high, does not allow customers choices or allow CLECs
2 to offer a full range of services if some of those services are priced on an ICB. Having to
3 wait until Qwest sets its ICB prices adds more delay that CLECs and their customers
4 must endure. While Qwest has not established an ICB process in its SGAT, it is likely
5 that Qwest will require time to provide its ICB price that will add further delay for
6 CLECs and their customers. Likewise, ICB provisioning creates the similar problems.

7 Having an ICB pricing and provisioning process creates delay and uncertainty for
8 CLECs. Therefore, the Commission must carefully scrutinize the use of the ICB pricing
9 and provisioning process by requiring Qwest to establish standard offerings and not allow
10 Qwest to unilaterally set prices or provisioning intervals on an ICB.

11 Qwest should not be permitted to set prices or provision services using ICB,
12 except in very rare cases and only where Qwest demonstrates it cannot provide a service
13 as a standard offering. Qwest has failed to describe its ICB processes and has not
14 justified why any particular service must be priced or provisioned on an ICB. In the event
15 Qwest is permitted to use ICB pricing under limited circumstances, WorldCom
16 recommends that when the ICB pricing process is addressed, the process should include
17 the following language as follows:

- 18 1. As indicated by the acronym "ICB", which stands for "individual
19 case basis", contained in Exhibit A of this Agreement addressing
20 Rates, rates for some Network Elements or services ("ICB Rates")
21 have not been approved by the Commission as of the Effective
22 Date of this Agreement. With respect to all ICB Rates, prior to
23 CLEC ordering any Network Element or service with an ICB Rate
24 identified in Exhibit A to this Agreement, the Parties shall meet, at
25 CLEC's request, to establish applicable interim rates.

- 1 2. During such meeting and upon CLEC request, Qwest shall provide
2 CLEC, without limitation, with its TELRIC-based cost analysis
3 and related supporting detail for the Network Element or service
4 that CLEC wishes to order. Such cost analysis and supporting
5 documentation shall be treated as confidential information if
6 requested by Qwest under the non-disclosure sections of this
7 Agreement.
- 8 3. If no agreement on a rate is reached within thirty (30) days of
9 CLEC's request for a meeting, the Parties shall propose rates for
10 the Network Element or service in question to the Commission in
11 an appropriate proceeding. The Parties agree that they will jointly
12 seek an expeditious resolution and final decision from the
13 Commission in the proceeding in which the rates in question will
14 be set. In the proceeding, Qwest shall have the burden of proving
15 that its proposed prices are just and reasonable and compliant with
16 TELRIC principles.
- 17 4. In the interim, prior to the issuance of a final Commission
18 decision, Qwest shall provide the Network Element or service and
19 shall set the price(s) for the Network Element or service based on
20 its TELRIC.
- 21 5. Qwest shall track and record all quantities provisioned, durations,
22 and amounts of payment for the Network Element or service
23 ordered by CLEC.
- 24 6. If the Commission-determined price is lower than the price set by
25 Qwest, Qwest shall refund to CLEC all payments in excess of the
26 Commission established price, with simple interest at Qwest's
27 weighted cost of capital within 30 days of the issuance of the final
28 Commission decision.
- 29 7. If the Commission-determined price is higher than the price set by
30 Qwest, CLEC shall be responsible for payment of the difference
31 between the prices, with simple interest at Qwest's weighted cost
32 of capital within 30 days of the issuance of the final Commission
33 decision.

34 **Q. DOES THIS CONCLUDE YOUR TESTIMONY AT THE TIME?**

35 **A. Yes, it does.**